

22.1.06

6b (הנהו בי תרי) → 7b (ש"מ זיופי זייפיה)

- I Case Law relating to חזקה for use of another's wall etc.
- a 2 men: inherited a house, one the ground floor the other the upper floor, then the house sunk so that it was impossible to enter the lower apartment easily
- i Claim: lower told upper that they should build it up together
    - 1 Response: he was comfortable with the (new) status quo
  - ii Comeback: offer to tear down entire structure and rebuild
    - 1 Response: nowhere to live
  - iii Comeback: offer to rent him a place to live
    - 1 Response: too much trouble
  - iv Ruling (ר' חמא): respondent is within his rights
    - 1 Limitation: only if it hasn't gotten so low that the floor of the upper floor is within ט"ו of the ground
    - 2 Additional limitation: if they made an agreement between them that if it sinks, they'd rebuild
      - (a) Measure (ר' ר' quoting ר' ר' to ר' ר'): height is  $\frac{1}{2} L + \frac{1}{2} W$  (as in היכל – 20Wx40L → 30H)
        - (i) Rejection (ר' ר'): ר' really ruled that as long as it is normal living height, that is sufficient
          1. Detail: high enough to bring in a string of containers around
- b Neighbor: built a wall next to another's windows, blocking windows
- i claim: he'll seal other's windows and make new ones higher up
    - 1 response: old wall won't sustain higher windows
  - ii claim: he'll rebuild wall until that point
    - 1 response: old foundation and new wall won't stand
  - iii claim: he'll rebuild entire wall
    - 1 response: one new wall with three old walls won't stand
  - iv claim: he'll rebuild entire house
    - 1 response: nowhere to live
  - v claim: he'll rent him a house to live in
    - 1 response: too much trouble
  - vi Ruling (ר' חמא): respondent is within his rights
    - 1 Justification: even if the house is just a storage shed, he may refuse to allow other to build adjacent wall
- c 2 brothers: inherited father's property, one took the mansion, the other took the garden; the garden-dweller built a wall that blocked the house
- i Claim: he (garden-owner) is building on his own property
  - ii Ruling (ר' חמא): he is within his rights
    - 1 Challenge (to ר' אשי): if 2 brothers take property, one a vineyard and the other a grain-field, the vineyard gets א"ד of the grain-field for vineyard-work
    - 2 Answer: in that case, they reckoned that in when dividing
      - (a) Challenge: didn't these brothers reckon their space when dividing
        - (i) Answer: they reckoned the materials etc., but not the air-space
      - (b) Challenge: why doesn't house-owner claim that it has now been turned into a narrow place?
        - (i) Answer: he took a "house", by name, a la בית כור etc.
      - (c) Block: in that case, he is buying a "בית כור" or "כרם" etc.; here, he divided into claim that he took the house to live in it like his father did (without a wall)
      - (d) Answer (ר' ר' sons to ר' אשי): this is the נהרדעי approach (ר' חמא is from נהרדעא, and he follows שמואל):
        - (i) If: brothers separate, each can do what he wishes in his own property
          1. Dissent (ר' ר'): the brothers do have a claim of easement from the other
- d Orphans who were owed a debt of their father's: after his death, a שובר was produced, indicating it had been paid
- i Ruling (ר' חמא): the שטר cannot be collected (due to שובר) but can't be ripped up (perhaps יתומים, when they mature, will bring proof that it is forged and will be able to collect
- e אבנא in all these cases, הלכה follows חמא ר' except the last one – and we may tear up the שטר
- i Reason: we don't assume false witnesses (on שובר)
  - ii Dissent (מר זוטרא): here also we follow חמא ר'; if the שובר was valid, the debtor should have produced it while the father was alive