

Shechainim

PART I THREE CATEGORIES OF HILCHOS SHECHEINIM

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

In the following series of *shiurim*, we will be discussing the halachos of *shecheinim* (neighbors). Let us introduce this topic by delineating three basic categories of hilchos *shecheinim*.

The first is *hezek reiyah*, privacy concerns. The Mishna (Bava Basra 2a) states that if two partners who jointly own a courtyard wish to construct a "*mechitzah*" in the courtyard to split it, they are to construct a wall in the middle. The Gemara presents two interpretations of the word "*mechitzah*" – either it means that they wish to construct an actual wall, and we therefore require them to give some of their property to build it, or it means that if they wish to split ownership of the courtyard, they are required to construct a wall in between their halves for purposes of *hezek reiyah*. The accepted halacha follows the second interpretation that neighbors must avoid *hezek reiyah* by ensuring that neither one can see the other.

The Mishnayos later in Bava Basra (59b-60a) present additional details of *hezek reiyah*. One may not construct a window that overlooks a jointly owned courtyard, and one certainly may not construct a window overlooking an individual neighbor's property since it infringes on his privacy and violates *hezek reiyah*. The Mishnah also states that one may not construct a door directly opposite the door of one's neighbor or a window that faces his window.

The second category, known as *nizkei shecheinim*, includes placing hazardous materials or engaging in unsafe activities adjacent to a neighbor's property that might cause damage. Thus, the Mishnah (17a) prohibits digging an irrigation pit adjacent to the pit of a neighbor, since the moisture could damage or erode the wall of the neighbor's pit. In addition, various materials that give off heat may not be placed close to the wall of one's neighbor, and the same applies to placing items that could shake the ground, or a furnace or a tree in close proximity of a neighboring property. In all these cases, the items may cause damage to the neighbor's property. Modern examples of this category might include using dangerous chemicals near a neighbor's property or placing rotten wood there that could attract termites.

The third category refers to cases of property usage where a person can potentially claim that he has a *chazaka* permitting his usage of a neighbor's property. For example, the Gemara (6a) states that if one places beams or other items on top of a brick wall belonging to his neighbor to construct a structure, he may continue to do so if the neighbor does not protest, as this qualifies as a *chazaka*. Similarly, the Mishna (58b) states

that one can create a *chazaka* to lean his large ladder against his neighbor's wall or allow water from a fixed gutter to flow into his neighbor's property if they do not protest his usage.

CASES OF NIZKEI SHECHEINIM:

Let us begin our study of Hilchos Shecheinim with a discussion of some cases of *nizkei shecheinim*, which will be relevant in the upcoming *shiurim*.

The Gemara (17b) records a *machlokes* whether one may dig a pit next to the boundary of his neighbor's yard if his neighbor does not currently have a pit there, given that it may ultimately prevent the neighbor from digging a pit or wall in that location. According to *Abaye*, this does not constitute *nizkei shecheinim* and one may dig such a pit, while *Rava* says that one must preemptively distance his pit from the property line as would be required if the neighbor already had a pit there. The Gemara first suggests that they argue when the neighbor's field is not usually used for digging pits. In such a case, *Abaye* says that since it is unlikely that the neighbor will dig one, one is permitted to preemptively dig his pit nearby. *Rava* disagrees and says that one may not do so since the neighbor may still decide to dig there at some point. However, both would agree in a case where the field is usually used for digging that one may not dig a pit next to the property line.

According to the second understanding presented by the Gemara, they disagree specifically in the case of a field that is usually used for digging pits. Whereas, if the field is not usually used for pits both would agree that one may dig a pit next to the property line. Although the halacha follows *Rava's* view, the *Rishonim* disagree whether this would apply in all cases or only in cases such as this where some amount of damage is caused immediately. This *machlokes* will be relevant to any situation where one places a potentially damaging or hazardous material next to a neighbor's property that may prevent the neighbor from using that area in the future.

CHAZAKA IN CASES OF NIZKEI SHECHEINIM AND HEZEK REIYAH:

Let us now focus on the question of *chazaka*. Similar to the halacha of *chezkas tashmishim* (easement), where a neighbor establishes rights of usage upon the property of another, the Gemara says that a *chazaka* is effective for

nizkei shecheinim. For example, if one keeps residue of olives (which were harmful to a standing wall) near a neighbor's property and he did not protest, this creates a *chazaka* and he is permitted to continue leaving them there. There is a *machlokes Rishonim* regarding how to establish a *chazaka* for *chekas tashmishim* and *nizkei shechnim*. Some hold that three years are required for both, similar to the halacha concerning property claims, where the Mishnah (28a) states that if one claims to have purchased property and proves that he has had control of it for three years, we assume that it is his. So, too, if one places a beam upon his neighbor's wall for three years, he has established a *chazaka* that the neighbor does not mind (Tosafos). Other Rishonim maintain that the neighbor is expected to protest immediately after seeing someone else use his property or place hazardous material next to his property boundary. According to them, if he does not protest immediately, then the *chazaka* takes effect (Rambam).

There's an additional *machlokes* whether one requires some sort of *ta'anah* (claim) to establish this *chazaka*, such as that the owner sold him this right, or explicitly allowed him to have it, similar to the case of property *chazaka*, where it is required. The Halacha follows the view that the *chazaka* is effective immediately and even without a specific *ta'anah*.

WHERE A CHAZAKA IS INEFFECTIVE:

The Gemara (23a) states that certain activities never attain the rights of a *chazaka* even if the neighbor specifically allowed it at the time. These include cases such as a chimney that causes excessive smoke or an outhouse whose fumes reach the neighbors.

Another relevant source pertaining to *chazaka* for *hezek reiyah* can be found later in the Gemara (59b), which records a *machlokes* whether one who constructs a window opening into a joint courtyard can achieve a *chazaka*. The Halacha is according to the opinion of R. Chiya who maintains that he must block it. The Rishonim disagree as to the reason for this. Some explain that it is because a *chazaka* for *hezek reiyah* is only valid after three years and R. Chiya was referring to within three years, while others maintain that no *chazaka* can ever be achieved in cases of *hezek reiyah*, like the case of excessive smoke or the outhouse.

A DOOR ACROSS FROM A DOOR:

The Mishna (60a) states that one may not construct a door directly opposite the door of one's neighbor or a window

directly opposite his window. In contrast to the case above (of constructing a window opposite the courtyard), it seems that all agree that in this case, no *chazaka* can ever be attained through such *hezek reiyah*. Why is this case considered more severe? The answer is that this halacha is derived from a *pasuk*. The Gemara states that when Bilaam saw that the entranceways of the Jews did not directly face each other, he exclaimed that they were worthy of having the Shechinah rest upon them. The Nesivos writes that since this halacha is derived from a *pasuk*, it has the status of an *issur deoraisa*. Consequently, all would agree that there is no *chazaka* for this type of *hezek reiyah* even if the neighbor gave explicit permission since it is considered a breach of *tznius*.

HEZEK REIYAH TODAY:

Nowadays, the accepted practice is to have doors or windows from which one can see into a neighbor's home. It is difficult to understand how this is allowed when the Mishna and Gemara appear to rule definitively that it is forbidden. Moreover, the Rashba stresses that even if the accepted practice is that people are unconcerned with *hezek reiyah*, it is still forbidden.

Some *teshuvos* on the subject have suggested that if there is an established *minhag* to allow windows or doors opposite those of adjacent houses, it is permitted. However, the earlier *teshuvos* limit this leniency as applying only to cases that do not involve a serious breach of privacy.

Contemporary poskim offer an additional consideration for leniency. They note that since we have window shades or blinds that can be closed whenever a person desires (which were not necessarily available in the Talmudic era), there is no problem of *hezek reiyah*. The basis for this approach could be as follows: The Gemara (2b) states that in a case where two neighbors were accustomed to not having a wall, they have no obligation to build one even if the halacha is that *hezek reiyah* is forbidden since they were already used to not having one. It is apparent from here that *hezek reiyah* is more severe if the victim is accustomed to having privacy and engaging in private actions there. Accordingly, today, when we are not careful about the rules of *hezek reiyah* due to the possibility of using the shades, we have created our own standards for ourselves not to engage in private activities at home unless the shades are pulled down. Therefore, it would be permitted to have doors or windows directly opposite those of a neighbor.

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