



## Babba Kama Daf 30

### ONE WHO HIDES THORNS IN ANOTHER PERSON'S WALL

בבבא קמא דף ל'. תנו רבנן המצניע קוצותיו וזכוכיותיו לתוך כותל של חבירו, ובא בעל כותל וסתר כותלו, ונפל לרשות הרבים, והזיקו, חייב המצניע. אמר רבי יוחנן לא שנו אלא בכותל רעוע, אבל בכותל בריא, המצניע פטור, וחייב בעל הכותל. אמר רבינא, זאת אומרת המכסה בורו בדליו של חבירו, ובא בעל דלי ונטל דליו, חייב בעל הבור. פשיטא, מהו דתימא התם הוא דלא הוי ידע ליה דלודעיה, אבל הכא דידע ליה, הוה ליה לאודועיה, קא משמע לן.

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### A baal habor cannot prevent someone from taking down his own wall

*An explanation of the words of the Gemora and the Rishonim / If another man took down the wall / The reason that the baal hadeli and the baal hakosel are exempt is that a person is allowed to do as he pleases in his domain even if damage is caused by this to others / One who throws someone else's item onto some pillows and the owner of the pillows removes them / Hiding a pit in someone else's earth*

-נמוק"י בשם רמ"ה, דברי יחזקאל, שלטי גבורים, חזון איש-

א. As is mentioned in the Gemora, one who hides thorns in someone else's wall and the owner of the wall destroys it, causing the thorns to fall into the *reshus harabim* where they do damage, is liable for the damages of *bor* and the owner of the wall is exempt if the wall was shaky. The reason why the owner of the thorns is liable is that, as Rashi<sup>1</sup> explains, he should have thought about the possibility that the wall would be taken down. The owner of the wall is exempt, as the Rosh<sup>2</sup> and the Nemukei Yosef<sup>3</sup> explain, because he is not expected to look for thorns in his shaky wall.

However, if the wall were strong, the one who hid the thorns would be exempt because he is not expected to think that the wall might be destroyed, and the owner of the wall is liable because he should have thought about the possibility that people sometimes hide thorns in walls belonging to other people if that wall is strong. This

can be compared to one who opens a covered pit, who is liable. This halachah is brought in Shulchan Aruch.<sup>4</sup>

As is mentioned in the Gemora, Ravina extrapolates a halachah from the fact that the one who hid the thorns is liable if the wall was shaky. He says that if one covers a pit with someone else's bucket and the owner of the bucket takes it, the one who covered the pit is liable. This is also because he should have thought that the owner of the bucket would take his possessions. This halachah is also brought in Shulchan Aruch.<sup>5</sup>

The Nemukei Yosef<sup>6</sup> writes, quoting the Remah, that the halachah that, when the wall is shaky, the one who hides the thorns is liable and the owner of the wall is exempt is said only when the owner of the wall himself takes down the wall. If another person would destroy the wall without the owner's permission, that person would be liable for the damages even if the wall was shaky and the one who hid the thorns would be exempt.

The Divrei Yechezkel<sup>7</sup> writes that it can be learned from his words that, in the case of covering a pit with someone else's bucket too, if another person would remove the bucket without being asked to by its owner, that person would be liable and not the one who made the *bor*.

He explains that it can be learned from here that the reason that the owner of the bucket is not liable when he removes the cover is that he is not obligated to leave his items on the *bor*. It is his right to use any of his possessions whenever he wants. Since he does not have to leave his bucket covering the pit, he cannot be held responsible for removing it, regardless of the fact that this leaves a pit uncovered. The same applies to the case of the thorns in the wall. Since one is permitted to use his items as he likes, he does not have to hold back from destroying his wall just because someone left thorns in it. [1]

Similarly, the Shiltei Giborim<sup>8</sup> explains the opinion of the Rambam,<sup>9</sup> who writes that if one throws his own item onto pillows and someone removes the pillows, causing the item to break, the person who removed the pillows is liable for the damage as if he broke the item directly. This is a halachah of *garmi*. However, if one threw someone else's item onto some pillows and the owner of the pillows removed them, the one who threw the items is liable. The owner of the pillows cannot be held responsible for removing his own property because he is allowed to move them whenever he wants. The one

who threw the item had no right to do so on the assumption that the owner of the pillows will not remove his property.

The Chazon Ish<sup>10</sup> supports this with the words of the current Gemora that states that the owner of the bucket is exempt for removing his bucket because the one who dug the pit cannot prevent the owner of the bucket from moving something that belongs to him. This halachah is said even if the bucket was removed by its owner when there was an animal in the vicinity of the pit. The same thing should be said, therefore, about one who throws something onto some pillows. The owner of the pillows has the right to remove his own property without being concerned about the damage that might occur. Regardless of the fact that the pillows were there when the items were thrown, the liability is on the one who threw them because he has no right to prevent the owner of the pillows from moving something that belongs to him.

The Chazon Ish<sup>11</sup> writes further that the halachah that the owner of the bucket can remove it from the pit is not only said about when someone covered a pit with someone else's bucket but even if he filled the pit in with someone else's earth. Even in that case, the owner of the

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*Whether the owner of the bucket is exempt because it is his right to take the bucket or because the pit is not considered to be covered because he is known to be going to take it / A ramification of this question is when another person takes the bucket*

-מאירי, רמ"ה, דברי יחזקאל-

[1] However, the Chiddushei Hameiri adds to Ravina's halachah that if a pit is covered with someone else's bucket, the owner of the bucket can take it and the one who dug the pit will be liable for the damages of the pit. He writes that this is not only when the owner of the bucket takes his bucket but even if someone else takes the bucket, the one who dug the pit will be exempt. This is because the one who dug the pit behaved negligently when he covered the pit with someone else's bucket. This is not like the Remah, who writes, concerning the case of the wall, that only the owner of the wall will be exempt but not another person.

The Divrei Yechezkel<sup>13</sup> explains the dispute between the Remah and the Meiri. He writes that the halachah that the owner of the bucket is exempt when he takes his bucket can be explained in one of two ways. It can be explained that the reason is that an owner of an item is not obligated to keep his possessions in one place. Since the owner of the bucket is not obligated to keep it on the pit, he cannot be liable for opening up the pit.

Another explanation can be given. The reason that the owner of the bucket is exempt for taking the bucket is that even if the bucket is on the pit, the pit is not considered to be covered. Since it is expected that the owner of the bucket will come and take the bucket from the pit, it is as if the one who put the bucket there did not cover the pit with it. Therefore, when the bucket is eventually taken, the one who dug the pit is liable.

He writes that the Remah holds that the reason that the owner of the bucket is exempt for taking the bucket is not because the pit is not considered covered. Rather, even if the pit is considered to be covered and the becomes uncovered when the bucket is taken, he has a right to take his possessions whenever he likes. Since he is not obligated to leave his bucket on the pit, he is not liable for the damage that the pit causes even though he opens it.

The Meiri explains that the reason that the owner of the bucket is exempt and the one who dug the pit is liable is that, covering the pit with someone else's bucket, the pit is not considered to be covered because the bucket is going to be taken by its owner. If so, there is no difference between the owner of the bucket taking it and someone else taking it. Either way, one who takes it is not revealing a covered pit.

earth is allowed to remove the earth even though he will be digging the pit afresh by doing so, and the person who originally dug the pit will be liable.

There is a proof for this halachah. The source for the halachah that allows the owner of the bucket to remove his bucket is from the halachah that allows the owner of the wall to knock down his wall even though someone hid thorns in there. Thorns hidden in the wall do not pose any threat to the passers-by and are not classified as a *bor* (as can be seen on daf 29b from the fact when a

pile of manure is lifted up three *tefachim*, it is not called a *bor*). Nevertheless, the owner of the wall does not become liable for them when they become a *bor* in the *reshus harabim* as a result of his actions. The one who hid them there is liable because he should not have relied on the other person to be careful about them. If so, the same applies to one who filled up a pit with someone else's earth. He cannot rely on the owner of the earth not to remove his earth, and if it is removed, the one who dug the pit is liable. [2]

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### Taking down the wall when the owner knows that there are thorns in it

*The exemption of the owner of the wall is based on him not being expected to investigate the matter / When he knows that there are thorns in the wall / The difference between one who destroys his wall and one who takes his bucket from on top of a pit*

-חזון איש-

ב. As has been mentioned, it is evident in the Rosh and the Nemukey Yosef that the reason that when someone hides thorns in a shaky wall, the owner of the wall is exempt when he knocks the wall down is that the owner of a shaky wall is not expected to look if there are hazards hidden in the wall. This is the difference between a shaky wall and a strong wall. If the wall is strong, the owner is expected to look for potential hazards before he knocks it down and he will therefore be liable for damages that

occur as a result of his actions. When the wall was shaky, however, he did not have to look for this.

However, the Chazon Ish<sup>12</sup> makes a very important point. It emerges from their words that if the owner of the wall, even if it shaky, knows that there are thorns hidden inside it, he will be liable for the damage caused by the thorns when they fall out and become a *bor*. As has been mentioned, he is exempt only because he is not expected to look for hazards before he knocks down his wall, but if he knows that they are there, he will be liable.

This is very difficult to understand. The Gemora learns from this halachah that if a pit is covered by someone's bucket, the owner of the bucket can take it and the one who dug the pit will be liable for the damages that ensue. If it is true that the owner of the wall will be liable

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*The difference between taking a bucket from on top of a pit and taking one's own stone from under a barrel that is leaning on it*

-דרכי משה, רמ"א, הגהות דרישה ופרישה-

[2] The Darkei Moshe,<sup>14</sup> quoting the Shut Harosh,<sup>15</sup> writes that if a barrel is leaning on someone's stone and the owner of the stone removes his stone from under the barrel, he is liable to pay for the damage to the barrel because he should have found another stone to put in its place. The Rema<sup>16</sup> brings this halachah. However, in Darkei Moshe, he questions it heavily. What could be the difference between this case and one who covers his pit with someone else's bucket, in which case, the owner of the bucket is allowed to take it and will not be liable for the damage that the pit causes?

The Hagahos Drishah and Prishah indeed makes a distinction

between the two cases. He writes that one who takes his stone from under a barrel is causing direct damage to the barrel by doing so. He is not permitted to damage the barrel in order to take his stone. However, one who takes his bucket from on top of a pit is not causing direct damage. All he is doing is providing a situation where damage could be caused if an animal falls into it. Therefore, he is permitted to take his bucket, because he has a right to move his possessions being that no direct damage is being caused.

According to the above, it can be said that one who throws someone else's item to the floor and the owner of the pillows takes his pillows from under the item, it can also be considered as if no direct damage is being done. Therefore, it would be similar to the case of the bucket on the pit and not to the case of the stone under the barrel.

if he knows that there are thorns in his wall, the same should be true of someone who removes his bucket that was covering a pit. He surely knows that there is a pit underneath the bucket and he should be compared to one who knocks down his wall knowing that there are thorns in it.

The Chazon Ish writes that the reason that one may not knock down his wall if he knows that there are thorns in it is that he is doing something more than what was done by the person who put the thorns there initially. That person only hid the thorns in the wall. Now that the wall is knocked down, the thorns are thrown into the *reshus harabim* by the person who knocked down the wall. It is true that the one who put the thorns there was wrong for having put them in a place from where they were likely to end up causing damage, but what did the passers-by do wrong that allows the owner of the wall to actually throw those thorns in the road?

If the thorns had been put low down in the wall, and when the wall was knocked down, the thorns would not be moved but would merely be uncovered, it would be permitted for the owner of the wall to knock it down even if he knows about the presence of the thorns and even if he knows that they will become a *bor* in the *reshus*

*harabim*. This is because it is his prerogative to do as he wishes with his own wall and the one who hid the thorns cannot prevent him from doing that. However, when the thorns are placed in the middle of the wall, and by knocking down the wall he is throwing the thorns into the road, he can only be exempted for this if he is *ones*, not being expected to check the wall before destroying it. As long as he knows about this, however, he may not damage the *reshus harabim* by throwing the thorns into the road.

This is the difference between taking a bucket from on top of a pit, which is permitted although he knows that there is a pit underneath and knocking down a wall, which is forbidden if he knows that it contains thorns. When he takes away his bucket, he is acting within his rights to move his own property and the one who dug the pit cannot prevent that. By doing this, he is merely removing what the first person did to cover the pit. However, when he knocks down his wall, he is doing something extra by throwing the thorns in the *reshus harabim*. Nothing can permit this extra action aside for not being expected to look if they are there. Therefore, if he knows that there are thorns there, he may not knock down the wall without removing the thorns. [3]

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[3] The Gemora learns the halachah of taking one's bucket from the halachah of knocking down one's wall, although in the latter case, the owner of the wall is exempt because of *ones*, unlike the case of the bucket, because the principle aspect of the comparison is the liability of the one who dug the pit to the one who left

the thorns in the wall. Just as in the case of the wall, knocking down the wall is considered a *ruach metzuyah* that can hold the one who left the thorns there liable, so too in the case of the bucket. Because the owner of the bucket is allowed to move it, it is considered as a *ruach metzuyah* and the one who dug the pit will be liable.

#### מראי מקומות

1. ד"ה חייב 2. סי' ו' 3. פ' י"ד. מדפי הר"ף 4. חו"מ סי' תט"ו סעיף ב' 5. חו"מ סי' ת"י סעיף כ"ט 6. דף י"ד. מדפי הר"ף 7. סי' נ' (אות א') 8. לעיל דף כ"ז: (דף י"ב מדפי הר"ף)
9. פרק ד' מהלכות חובל ומוזק הלכה ז' ח' 10. ב"ק סי' ב' (אות ט"ז) 11. שם (אות כ') 12. ב"ק סי' ב' (אות כ') 13. שם 14. סי' ת"י 15. כלל ק"א (סי' ג') 16. סי' שפ"ג סעיף ב'