

Damage caused by many is different. – היזקא דרבים שאני

Overview

The כופין of משנה 10 attempted to prove that היזק ראייה לא שמיה היזק, from the בית שער of גמרא. The גמרא rejected this proof, and stated that in the case of היזק ראייה everyone agrees that the היזק ראייה there is שמיה היזק, since it is a היזק ראייה. The רבנים will discuss why indeed is it a היזק ראייה.

תוספות asks:

later¹ גמרא – and even though it seems from the **משמע** – **that** this particular **משנה** is **discussing a חצר** which is not nearby to the **ר"ה²**. If the **חצר** is not **לרה"ר** סמוכה לרה"ר, why is there **היזקא דרבים**.

תוספות answers:

היזקא דרבים – nevertheless there is מכל מקום איכא היזקא דרבים
רה"ר – for occasionally the multitude of people crowd the רה"ר
 and it is uncomfortable to walk in the רה"ר –
ועיילי להתם – and they enter into the area near the חצר; even though it is not the רה"ר, people walk there nevertheless. That it why even by a חצר שאינה סמוכה לרה"ר, there can be היזקא דרבים.
כדאמרינן לקמן – as the גמרא states later when it explains the view of the רבנן; that even a חצר שאינה סמוכה לרה"ר requires a בית שער because of היזקא דרבים.

anticipates the following question. This חצר is רש"ג. אינה סמוכה לרה"ר. We are not concerned about the public, since they are at a distance from the חצר. Why then does רש"ג require the building of a door for the חצר? Seemingly there is no רבים on the outside to cause היזק ראייה.³ תוספות responds:

– **even though** – and – **ורבן שמעון בן גמליאל אף על גב**
– **he does not agree with this reasoning** – דלית ליה האי טעמא
– **that occasionally the multitudes crowd** the רה"ר and the
people walk near the חצר therefore maintains that a בית שער is not required for a
חצר שאינה סמוכה לרה"ר.
– **nevertheless**, even though people remain at a distance from the חצר -
– **they can see, from afar, inside** the חצר and cause
היזק ראייה.⁴

¹ בדף 72.

² The phrase בית שער there mentions that רשב"ג maintains that the requirement to build a בית שער is limited only to a חצר הסמוכה לרה"ר. The חצר שאינה סמוכה לרה"ר requires a בית שער.

³ See 'Thinking it over'.

⁴ We can imagine the three walls of a חצר shaped as a 'ה'. The bottom of the 'ה' opens to a 'מבוי', not directly to the רה"ר. The bottom of the 'ה' is closed with a door. The door however is being opened and closed by the

and therefore רשב"ג does not argue with the בית שער except for the case of a שער רבנן
however concerning a door for the חצר, even רשב"ג admits
that the members of the חצר –
can coerce any individual of that חצר to participate in building the door.

Summary

A חצר is still subject to היזקא דרבים since זימנין דדחקי רבים. A door however, is required even if we are not concerned for זימנין דדחקי; since the בני רה"ר can look into the חצר from afar, if there is no door.

Thinking it over

How can we understand that תוספות question on רשב"ג (why does he require a דלת), is not merely a question in order to understand the position of רשב"ג⁵, but rather a way to prove that היזקא ראייה שמייה היזק⁶?

To insure additional privacy a (half-circular) wall is built outside the door with an opening on its side (not directly in front of the door, but rather on the side of the semi-circle). For someone to see inside the בית שער (who sits in this opening) he would have to at least get close to the opening of the שער. If we are not concerned of discouraging people from venturing close to this opening, then there is no need for a שער because no one is near the חצר. However that is true only if there is a door for the חצר. If there would be no door (and no שער) the opening to the חצר (the bottom of the 'ח') is fully exposed. The people in the distant רה"ר, would be constantly looking at the inside of the חצר. The door prevents that היזקא ראייה.

⁵ If that were so, then תוספות would have asked the question later in that סוגיא.

⁶ See בית לחם יהודה.