

## בונין את הכותל באמצע פשיטא –

**They build the wall in the middle; that is obvious!**

### OVERVIEW

The גמרא concluded the discussion concerning the מ"ד that מחיצה means a wall (negating the possibility that it means 'to divide'). The גמרא then cites the משנה which states בונין את הכותל באמצע and asks: פשיטא! It may seem that this is a general question on the משנה, regardless whether we maintain that מחיצה is either גודא or פלוגתא. This view may be bolstered by the following גמרא, which challenges היזק היזק. The גמרא continues to cite no less than six sources (identified by a preceding סימן) that contradict this view. This would seem to indicate that the questions on the מ"ד who maintains לאו שמיה היזק, begin only at this point, and not by the previous question of פשיטא; which is a general question according to either opinion. תוספות will negate this view.<sup>2</sup>

למאן דאמר גודא פריך כמו כל הנך פירכי דלקמן<sup>3</sup> –

**This question is (only) on the one who maintains that** the word מחיצה in the משנה refers to **a wall, just like all these questions mentioned further** in our גמרא.

גודא is מחיצה that מ"ד will first explain why this question is valid according to the תוספות

דכשהקנו<sup>4</sup> לעשות גודא כך הקנה זה כמו זה ופשיטא דבאמצע –

**For when they contracted to build a wall, it is obvious that that this one contracted to build the wall just as the other contracted to build a wall. And it is obvious that it must be built in the middle.**<sup>5</sup>

מחיצה means to divide that מ"ד will now explain why there is no difficulty according to the תוספות

אבל למאן דאמר פלוגתא איצטריך למימר –

**However according to the one that maintains that מחיצה means to divide, it is required that the משנה say so explicitly.** For had the משנה not stated that they build it in the

<sup>1</sup> The סברא that מחיצה גודא is contingent on the opinion that מחיצה means a wall.

<sup>2</sup> See footnote # 7 to the 'Summary' for an explanation why the questions in the גמרא are divided into two parts.

<sup>3</sup> The גמרא will immediately pose six difficulties for the מ"ד that מחיצה means גודא.

<sup>4</sup> The גמרא later (ג,א) explains that when the משנה states 'שרצו' – they agreed (to build a wall), it does not mean merely a verbal agreement. It means that there was a valid contractual obligation to build the wall.

<sup>5</sup> They both took upon themselves a contractual obligation to build a wall jointly. It is obvious that the responsibility of building this wall lies on both of them equally; in regards to material as well as to space. Therefore the גמרא rightfully asks 'פשיטא'! See 'Thinking it over'.

middle -

**סלקא דעתך אמינא דמשום היזק ראייה יש לו לסייע בבנין הכותל –**

**It would enter our minds to say, granted that on account of ראייה, the reluctant partner is required to help in the building of the wall -**

**אבל אין לו לבנות בחלקו בשביל כך:<sup>6</sup>**

**However he is not required on account of ראייה to build the wall in his portion** of the property. There was never a קנין between the two partners to build a wall (according to this מ"ד). We are obligating him to build a wall because he is (also) contributing to the היזק ראייה of his neighbor. We may argue (were it not for the משנה) that this obligation is limited to material but not space. The משנה therefore rightfully teaches us that היזק ראייה requires one to contribute space as well (even by a חצר שאין בה דין חלוקה).

### SUMMARY

The question פשיטא is only according to the מ"ד that מחיצה is גודא.<sup>7</sup> According to this מ"ד both partners contractually obligated themselves to build the wall (otherwise there is no obligation to build anything); it is therefore obvious that both have to give the space equally. The בונין את הכותל באמצע דין is seemingly superfluous. However, according to the מ"ד that מחיצה פלוגתא there was never an agreement to build a wall; rather the partners are coerced to build it on account of היזק ראייה. Had the משנה not specifically told us that it must be in the middle, we would have given credence to the argument that היזק ראייה can only obligate one to pay for the expenses, but not to give up property.

### THINKING IT OVER

How does the גמרא answer the קשיא of 'פשיטא';<sup>8</sup> according to תוספות<sup>9</sup>

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<sup>6</sup> The reluctant partner may claim that his loss of property (in a חלוקה בו דין חלוקה), caused by the wall, is as damaging to him (if not more), as the resultant היזק ראייה he is causing his neighbor. The lack of mentioning את בונין, הכותל באמצע, in the משנה may lead us to accept this argument.

<sup>7</sup> The reason that the גמרא breaks up the questions on this מ"ד into two sections; first the question of פשיטא and then the six following questions, may be as follows: The question of פשיטא deals specifically with the translation of מחיצה to mean גודא. This translation forces us to understand that they (contractually) agreed to build a wall. Thereby eliciting the question פשיטא! The following six questions, however deal specifically with the היזק ראייה לאו שמיה היזק component of this opinion. Therefore they are asked separately (with their own סימן designation).

<sup>8</sup> See footnote # 5

<sup>9</sup> See דוד אור צו.