

ואי בעית אימא הא והא מבראי –

And if you wish I can say; this and that are from the outside

OVERVIEW

The גמרא reconciles the משנה which requires a בית שער for a חצר, with the episode which indicates that it is not desirable, in the following manner. 1. If the בית שער is inside the חצר it is undesirable; outside the חצר it is desirable. 2. Alternately even if it is outside the חצר, nevertheless if it has a door it is undesirable; no door - it is desirable. 3. And even with a door nevertheless without a lock (פותחת) – desirable; with a lock it is undesirable. 4. In addition even if it is [outside the חצר] with a door and a lock, but if it can be opened from the outside it is desirable, from the inside – undesirable. תוספות explains why other options are not offered.

ולא גרסינן הא והא מגוואי דמגוואי אין שייך לחלק בין אית ליה דלת ללית ליה –

And our text do not read, 'הא והא מגוואי', both cases are where the בית שער is inside the חצר for if the בית שער is inside the חצר, it is not possible to differentiate whether the בית שער has a door or whether it does not have a door; in both cases it would not be desirable since the בית שער is in the חצר -

ובין אית ליה פותחת¹ ללית ליה –

And if the בית שער is מגוואי we could also not differentiate whether the בית שער has a פותחת or whether it does not have a פותחת -

דבכל ענין הוא רע כיון שאין יכול לבא אלא עד פתח החצר² –

For in any event (with or without a דלת or פותחת), having a בית שער מגוואי is bad, since the poor man cannot come only up to the door of the חצר, and the בית שער does not let his screams to be heard inside the חצר.

גורס הא והא מגוואי be תוספות rejects an alternate explanation which would allow us to be

ואין לפרש הא דאית ליה דלת כולי אחר קאי³ –

And we cannot explain that which the גמרא differentiates, that this case where it is undesirable is in a situation where it has a door, etc., it is referring to the door of the חצר and not to the door of the בית שער; this would seemingly remove misgivings. However תוספות negates this interpretation -

¹ פותחת is a lock.

² The פתח החצר has a door (as the משנה states ודלת לחצר [see later תוספות]), thus preventing the עני from being heard in the חצר (see מגוואי ד"ה מגוואי).

³ The בית שער is מגוואי, however if there is no דלת on the חצר (not the בית שער) then there is no problem. For the עני can approach the בית שער directly. However when the חצר has a דלת then a בית שער מגוואי is undesirable.

דהא במתניתין בהדיא קתני כופין אותו לבנות דלת לחצר –

For the משנה states explicitly that we force each member of the חצר to build a door for the חצר, therefore presumably every חצר has a דלת, so we cannot say that one case is where the חצר has no דלת. We must conclude that the differentiation of whether it has a דלת or not is referring to the בית שער and not to the חצר.

anticipates a difficulty:

ולמאי דגרסינן מבראי קצת קשה דלא הוי כשאר שינויי דנקט צד דלא מעלי⁴ –

And according to our גירסא of מבראי הא והא there is a slight difficulty, for this answer of מבראי הא והא is not like the other answers where the גמרא mentions (that both cases are discussing) the negative side and nevertheless it can be reconciled; for instance the גמרא states -

הא והא דאית ליה דלת והא והא דאית ליה פותחת –

Both cases are where there is a door (which is a negative factor), or **both cases are where there is a פותחת** (which is also a negative factor) -

והכא נקיט ההוא דמעלי:

However, here the גמרא mentions the positive factor (that the בית שער is outside).⁵

SUMMARY

A מגוואי בית שער is never desirable. Every חצר has a דלת. The flow of the answers is not symmetrical (first assuming the desirable option and later the undesirable).

THINKING IT OVER

is disturbed that the answer of מאבראי הא והא does not follow the syntax of the last two answers.⁶ However תוספות stated that it is impossible to state otherwise! Why therefore is it troublesome?!⁷

⁴ See 'Overview'. In answers 3 and 4 we assume the undesirable status of the previous answer and nevertheless we can still reconcile the two cases. For instance in answer 2 (where the בית שער was outside the חצר), the undesirable case was where the בית שער had a door. In answer 3 we say that even if we assume the undesirable state of a door, nevertheless we can still reconcile by saying it is desirable if there is no lock. Similarly in answer 4 we state that even if there is a lock (the undesirable case of answer 3), nevertheless there is a desirable situation if the lock can be opened from the outside. In both answers (3&4) we assumed the undesirable cases of 2&3. However in answer 2 (הא) we are assuming the desirable case of answer 1 (that it is מאבראי), but we do not assume the undesirable case of answer 1 (that it was מגוואי) as we do in answers 3&4.

⁵ תוספות does not attempt to resolve this קשה. See 'Thinking it over'. [Perhaps תוספות is alluding that it would be better to interpret מאבראי והא מגוואי as the רשב"א does, where מגוואי is desirable and מאבראי is undesirable.]

⁶ See footnote # 4&5.

⁷ See רש"ש.