

## ואי לא סמיך היכי משכחת לה –

### And if one cannot come close, how did it happen

#### Overview

The גמרא cited a משנה which stated that one must distance his mustard plants (חרדל) from the beehive (דבורים).<sup>1</sup> However יוסי ר' permits leaving the חרדל in its place, since the בעל החרדל can say to the בעל הדבורים, 'instead of me distancing myself from the דבורים, you should distance your דבורים from my חרדל, since they eat up סומך'. The גמרא asked according to רבא that one is not permitted to be סומך (even if the item to be damaged is not there yet), how is it possible that the חרדל and דבורים were in close proximity, since it is אסור לסמוך?<sup>2</sup>

פירש<sup>3</sup> רבינו יצחק בשלמא לאביי דאמר סמיך אתי שפיר דמיירי שסמך בעל דבורים תחילה -  
The ר"י explained; granted, according to אביי, who maintains that one may be סומך, the משנה is properly understood, for we are discussing a case where the beekeeper was סמיך first (his bees were near the property line where later his neighbor planted mustard) -

ואף על גב דהשתא קא סלקא דעתין דדבורים נמי מזקי לחרדל לכולי עלמא<sup>4</sup> -  
So even though that now (in this הו"א) we assume that all agree that the bees also damage the חרדל, so why can the beekeeper allow his bees to remain when the other is planting mustard<sup>5</sup> -

מכל מקום סברי רבנן דעל המזיק שני דהיינו בעל חרדל להרחיק את<sup>6</sup> כל ההרחקה -  
Nevertheless the רבנן maintain that the second damager, meaning the בעל החרדל is required to distance himself the entire amount of distancing that is required -

<sup>1</sup> See רש"י on the ואת החרדל ד"ה ואי תוס' א עמוד א ד"ה ואת החרדל רש"י that the bees eat the sharp mustard and it makes them consume their honey causing a loss to the beekeeper.

<sup>2</sup> Seemingly the 'real' question is that if it is אסור לסמוך then (even) if the בעל הדבורים was סומך first, but since it was באיסור, why are we obligating the בעל החרדל to do the complete distancing; the בעל הדבורים is also guilty.

<sup>3</sup> The need for this 'פירש' is that seemingly even according to אביי the מחלוקת between ר"י ורבנן is not understood. For ממ"נ, if the בעל החרדל was סומך first, בהיתר סומך, why do the חכמים require the בעל החרדל to distance himself, and if the בעל הדבורים was סומך first, בהיתר סומך, why does ר"י maintain that the בעל החרדל does not need to be מרחיק; he was באיסור!

<sup>4</sup> It is only later in the גמרא that רבינא states that according to the רבנן the bees are not מזיק the חרדל. However now where the רבנן states that the בעל החרדל complains to the בעל הדבורים that בעל החרדל אכלי לגלוגי חרדלאי and the רבנן did not respond to that, it would seem that all agree that the דבורים are מזיק the חרדל. See footnote # 25.

<sup>5</sup> Presumably תוספות means they should both distance themselves equally, since they are both מזיקים. At this point (when saying this אע"ג תוספות, אע"ג תוספות, תוספות thinks that this case may not be similar to the case of two בורות where the second מזיק is required to make the entire ההרחקה, for we can argue (perhaps) that החרדל ודבורים is different from שני בורות (see shortly in this תוספות, that this indeed is the סברא of יוסי רב). (רב יוסי סברא of this תוספות, that this indeed is the סברא of יוסי רב).

<sup>6</sup> The אמר רבא amends this to read את עצמו כל ההרחקות כמו (instead of את כל ההרחקה כמו).

כמו גבי בור דאם סמך הראשון<sup>7</sup> על המיצר השני מרחיק כל ששה טפחים<sup>8</sup> -

**Just as by a pit that if one was סומך by the boundary, the second one who wishes to dig a בור is required to distance the entire six טפחים.** This explains how we can understand the רבנן according to אב"י. Now תוספות will explain ר' יוסי according to אב"י -

ורבי יוסי סבר כיון דדבורים מזקי חרדל ועשה קצת שלא כהוגן -

**And ר"י maintains that since the bees damage the mustard and he acted somewhat improperly -**

סמך על המיצר שזה עתיד לסוף לזרוע חרדל<sup>9</sup> -

**For he was סומך at the boundary where his neighbor will eventually plant חרדל later, so -**

אף על פי שבדין אינו יכול למונעו שלא יסמוך מכל מקום קצת שלא כהוגן עושה -

**Even though legally the future בעל החרדל cannot prevent the הדבורים from being סומך (for we are now following the view of אב"י), nevertheless the בעל הדבורים acted somewhat improperly, therefore -**

וגם<sup>10</sup> בעל חרדל יכול לסמוך<sup>11</sup> -

**The בעל החרדל can also be סומך -**

ולא דמי לבור דהתם משום דמרפי ליה לארעיה ומזיק השני בידיים לכותל בורו של ראשון -

**And this case here is not similar to a בור (where the second מזיק [which here would be the בעל החרדל] needs to move the entire distance), for there the second בעל הבור is loosening the ground (by his digging) so that the second בור is directly damaging with his hands the wall of the first בור -**

לכך על השני להרחיק כל ההרחקה אבל הכא לא -

**Therefore (since there is direct damage from the שני) the second בעל הבור is required to move the entire distance, but here where the בעל החרדל is not damaging the bees directly,<sup>12</sup> the בעל החרדל is not required to move.** This is how we can understand the views of the רבנן ור"י according to אב"י.

In summation; according to אב"י the מחלוקת between ר"י ורבנן is where the בעל הדבורים was סומך first (and everyone agrees that the דבורים and the חרדל damage each other). The dispute hinges on

<sup>7</sup> According to אב"י by a שדה שאינה עשויה לבורות, one may certainly be סומך, and according to one version he may be סומך (according to אב"י) even by a שדה העשויה לבורות.

<sup>8</sup> See (הב') תוס' יז,ב ד"ה אב"י (הב'). We do not require the first one to fill up his בור and distance his (new) בור three טפחים from the boundary. Rather he remains in place and the second בור (which is also a מזיק [to the first בור]) must distance the entire six טפחים. The applies to the בעל הדבורים; since he was סומך בהיתר, the בעל החרדל must move the entire distance.

<sup>9</sup> We are somehow assuming that the בעל הדבורים was aware that his neighbor may be planning on planting חרדל.

<sup>10</sup> The רש"ש amends this to read גם (instead of וגם).

<sup>11</sup> He can tell the בעל הדבורים; you can distance from me if you so choose, however I am not moving from here.

<sup>12</sup> He is merely causing him damage indirectly (גרמא), since the bees eat the mustard and consume the honey.



**Even though he was permitted initially to be סומך** (since then it was all his field) –

anticipates a difficulty:

אף על גב דגבי אילן כשסמכו בהיתר אמרי דלא יקוץ -

**Even though that by the tree** (and the בור) when he was סומך the tree legally (before there was a בור), the משנה states that it is not chopped off, so why here is the בעל החרדל required to move his plants (he was סומך בהיתר)?!

replies:

הני מילי אילן שעשוי לעמוד שנים רבות ואיכא הפסד מרובה -

**When were these words** said (that if it was בהיתר the rule is ללא יקוץ) by a tree, which is planted to remain for many years and there is a great loss if we chop down the tree -

אבל משרה כרישין וחרדל לא -

**However** regarding a soaking pit, leeks or mustard, this rule does not apply, since there is not that much difficulty in removing them and there is no great loss, therefore we say that since he is the (only) מזיק, the בעל החרדל is required to move –

proves that אילן is different from other cases:

דהכי נמי אמרינן<sup>16</sup> גבי אילן אם הבור קדם קוצץ ונותן דמים אף על גב דסמך אילנו באיסור -

**For this is also what we say regarding a tree** that ‘if the בור preceded the tree (and he planted the tree within twenty-five אמות of the בור) the rule is that the בעל הבור may chop down the tree and pay the tree owner the value of the tree, even though the אילן was סומך the tree illegally (since there was a בור within twenty-five אמות of the tree) -

ובשאר דברים הנסמכים באיסור אינו נראה שיתנו דמים -

**However by other cases** where he was סומך illegally it does not seem that the neighbor (the potential ניזק) is required to pay money for the removal of the מזיק. Why is there this difference -

אלא טעמא דלהפסד מרובה חששו<sup>17</sup> -

**Rather the reason** for this distinction is that the רבנן were concerned for a large loss (by a tree), but not for a minor loss. This concludes the view of the רבנן (according to פפא) -

ורבי יוסי סבר דדבורים מזקי לחרדל וצריך בעל דבורים להרחיק כל ההרחקה -

**However ר"י maintains that the bees harm the mustard plant, so the beekeeper**

<sup>16</sup> משנה כה,ב.

<sup>17</sup> Therefore just as regarding the payment of money for the removal of a מזיק; it is only required by a tree but not for other מזיקים, the same applies for the requirement to remove the מזיק that we are lenient only by a tree, but not by other מזיקים (such as חרדל), and they need to be removed even though they were סומך בהיתר.

**must move away the entire distance -**

**כיון דבעל חרדל לא עשה כלל כהוגן<sup>18</sup> -**

**Since the בעל החרדל did not do anything improper;** only the דבורים acted improperly by placing his bees near the חרדל where they would damage the חרדל –

In summation; the answer of ר"פ is that initially the whole field belonged to the בעל החרדל and then he sold part of his field (which did not have חרדל) to the person that later placed דבורים there. The רבנן maintain that since the דבורים do not damage the חרדל (so there is no need for him to distance himself), it is incumbent upon the בעל החרדל to distance (even though he planted בהיתר), since there is no great loss nor much bother to distance the חרדל. However ר"י maintains that the דבורים damage the חרדל (and the חרדל was planted גמור בהיתר), therefore the דבורים need to make the entire הרחקה.<sup>19</sup>

reacts to an anticipated difficulty:<sup>20</sup>

**ומשום הכי<sup>21</sup> נמי לא בעי לאוקמי כשסמך בעל דבורים תחלה ובלוקח -**

**And because of this reason we can also understand why the גמרא did not want to establish the case of חרדל where the beekeeper was סומך first and another person bought part of his field and planted חרדל there –**

first explains what advantage there would be in this case:

**ולא היה צריך לדחוק ולומר דרבנן על המזיק להרחיק אף על פי שעשה בהיתר<sup>22</sup> -**

**For it would not have necessary to clumsily explain that according to the רבנן, the מזיק is required to distance himself even if he did it permissibly -**

**מה שאינו גבי אילן ובור<sup>23</sup> -**

**Which will be different from the case of a tree and a pit –**

An additional advantage in establishing the דבורים בעל as the initial owner:

<sup>18</sup> When he planted the חרדל the entire field was his and he could plant wherever he pleases. This is a much greater היתר than according to אב"י that one may be סומך to his neighbor's field, for here the entire field is his; there is no issue of סמיכה at all. See 'Thinking it over' # 1.

<sup>19</sup> The מחלוקת then is simply whether the דבורים are מזיק the חרדל or not, there seems to be no other issue here.

<sup>20</sup> It is evident (from the s' question גמרא מ"ט דרבנן) that the בעל החרדל owned the original field and he sold it to the (ultimate) בעל הדבורים, the question תוספות is anticipating is why did not the גמרא establish the case, where the בעל החרדל was the original owner and sold part of the field to the (ultimate) בעל הדבורים?

<sup>21</sup> This is referring to תוספות explanation (of ר"י) that the בעל החרדל is not required to distance himself, since לא עשה כהוגן; he did not act improperly at all (see footnote # 18).

<sup>22</sup> The way ר"פ is explaining it that the field belonged initially to the בעל החרדל, it is difficult to understand why the חרדל (who planted בהיתר) is required to distance himself from the דבורים which came later; why is this different from אילן ובור (see footnote # 23).

<sup>23</sup> By אילן ובור, if the אילן was first, he is not required to distance himself; why is it different by חרדל ודבורים. The answer which תוספות gave that by אילן ובור there is a הפסד מרובה is considered to be (somewhat of) דוחק!

**וגם לא יצטרך לומר דלרבנן דבורים לא מזקי לחרדל ופליגי ארבי יוסי -**

**And it will also not be necessary to say that according to the רבנן the דבורים do not damage<sup>24</sup> the חרדל and argue with ר"י**, who maintains that they indeed damage the חרדל.<sup>25</sup> The question is why indeed did we not establish that the דבורים came first?!

תוספות replies:

**דאם כן כיון דבעל דבורים סמך בהיתר ולא עשה שלא כהוגן -**

**For if that would indeed be the case that the בעל הדבורים was first, so since the בעל הדבורים was סומך בהיתר and did nothing improper -**

**לא היה מתיר רבי יוסי לבעל חרדל לסמוך<sup>26</sup> -**

**י"י would not permit the בעל החרדל to be סומך**, since the הדבורים acted properly and the בעל החרדל did not.

In summation; we cannot say that the case of לוקה is where the בעל הדבורים owned the field first and then sold it to the (eventual) בעל החרדל for (even though we would gain in our understanding of the רבנן)<sup>27</sup> the position of ר"י would be not acceptable.

תוספות asks:

**ואם תאמר נוקי פלוגתייהו בלא לוקח<sup>28</sup> -**

**And if you will say, let us establish their argument without a buyer and the בעל הדבורים was סומך first (as in the case with a לוקח) -**

**דלרבנן דדבורים לא מזקי לחרדל צריך בעל חרדל להסיר ולהרחיק כל ההרחקה -**

**So according to the רבנן that the bees do not damage the mustard, the בעל החרדל is required to remove the חרדל and to distance the חרדל the entire distance**, so as not to damage the דבורים; he needs to do so

**אף על פי שסמך תחלה<sup>29</sup> -**

**Even if he was סומך first**, since his סמיכה was not בהיתר -

<sup>24</sup> If the דבורים (which came later) are מזיק the חרדל (which was planted ברשות), the רבנן would certainly agree with ר"י (see footnote # 19). Therefore the רבנן must maintain that the דבורים are not מזיק the חרדל. However if the דבורים would be the initial owner (and they were there ברשות) so even if the דבורים are מזיק the חרדל, it would be understood why the בעל החרדל has to distance (and not the דבורים), since the דבורים were there ברשות and the בעל החרדל (who is מזיק the דבורים) came later ברשות.

<sup>25</sup> It is generally accepted that we try to avoid a מחלוקת in a fact (whether the bees are or are not מזיק the חרדל); it is either one way or the other. If we would establish that the דבורים came first, this difficulty would be avoided.

<sup>26</sup> Therefore even though it would be advantageous, in order to better understand the view of the רבנן, if the case was that the בעל הדבורים was first, nevertheless since in that case the position of ר"י would be untenable, it was necessary to justify the view of ר"י (by saying the חרדל was first) even though there is some difficulty in understanding the view of the רבנן.

<sup>27</sup> We would not need to distinguish between אילן ובור and חרדל ודבורים and there would be no מחלוקת in מציאות.

<sup>28</sup> The מציאות makes no mention of a לוקח, so why complicate the case.

<sup>29</sup> We are discussing this case according to the view of רבא that it is לסמוך.



Since the bees **also damage** the mustard, for the one who asked this question **assumed<sup>34</sup> that all agree** (even the רבנן) **that the bees also damage the mustard –**

תוספות continues to explain the s'גמרא next question:

**ועוד מאי טעמא דרבי יוסי דלא פליג אלא בחרדל משום דדבורים נמי מזקי לחרדל -**  
**‘And additionally, what is the reasoning of ר"י’ that he argues with the רבנן**  
(who maintain that the בעל החרדל needs to distance himself) **only by חרדל, since**  
**the bees damage the חרדל; he should argue with the רבנן -**

**אפילו משרה וירק כיון שנעשה המשרה בהיתר לא יצטרך להרחיקה כמו גבי אילן ובור<sup>35</sup> -**  
**‘Even by משרה וירק’** (where only the משרה damages the ירק but not the other way),  
for **since the משרה was done בהיתר, it should not be necessary to distance it, just**  
as the ruling is **by a tree and a pit** (that if the tree was planted בהיתר all agree even the רבנן  
that it is not chopped down, so the same should apply to משרה וירק [especially according to ר"י]) –

תוספות continues with explaining the following answer of רבינא:

**ומשני רבינא לעולם בלוקח וקא סברי רבנן על המזיק להרחיק את עצמו -**  
**And רבינא answered that we are really discussing a buyer, but the רבנן**  
**maintain that the מזיק must always distance himself -**

**אף על פי שעשה בהיתר ולהכי על בעל החרדל להרחיק שהוא הזיק -**  
**Even though he did it בהיתר, so therefore the בעל החרדל must distance himself**  
(even though the he was בהיתר), **since he is damaging** the דבורים, and the דבורים  
are not damaging the חרדל (as the גמרא will shortly state explicitly) –

תוספות continues with the explanation of the challenge to רבינא:

**ופריך כיון דשמעינן ממילתא דרבינא שהדבורים אינם מזיקים לחרדל -**  
**And the גמרא asked, since we can infer from the answer of רבינא that the bees**  
**do not damage the mustard; we can infer it -**

**דלכך<sup>36</sup> נתנו רבנן הרחקה על בעל החרדל -**  
**For that explains why the רבנן required the בעל החרדל to distance himself -**  
**מכלל דרבי יוסי סבר על הניזק להרחיק עצמו -**

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<sup>34</sup> תוספות taught previously (see footnote # 15) that according to the answer of ר"פ the רבנן maintain that the bees do not damage the mustard (as רבינא concluded). However ר"פ did not say so explicitly. Therefore this מקשן assumed that the רבנן also agree with ר"י that the bees do damage the mustard.

<sup>35</sup> תוספות here assumes that this מקשן rejects what תוספות previously said (see footnote # 17) that we can distinguish between אילן ובור (where there is a הרובה) and משרה וירק (where there is no הפסד and no great טרהה). See ‘Thinking it over’ # 2.

<sup>36</sup> If the דבורים are also מזיק the חרדל it would be untenable to require the בעל החרדל to distance since he was סומך בהיתר.



**We can therefore infer that ר"י maintains that the ניזק must distance himself;**  
we infer this since ר"י -

**מדשרי סמיכת חרדל אף על פי שהוא מזיק ולא ניזק<sup>37</sup> -**

**Permits the חרדל to remain even though he is the מזיק and not the ניזק -**

**אם כן אפילו משרה וירק נמי<sup>38</sup> -**

**Therefore even by משרה וירק the rule should also be that the ניזק (בעל הירק) should**  
distance himself, not the מזיק (בעל המשרה), as it is by חרדל ודבורים -

תוספות comments:

**והוא הדין דהוי מצי לאקשווי דברייתא<sup>39</sup> בהדיא משמע שהדבורים מזיקי נמי לחרדל -**

**And the truth is that the גמרא could have asked (רבינא), that in the ברייתא it**  
**is explicitly implied that the bees damage the mustard -**

**דקתני ואוכלות לגלוגי<sup>40</sup> חרדלי -**

**For it states, and they eat לגלוגי חרדלי,** so how can רבינא maintain that the דבורים do not  
damage the חרדל. The גמרא could have asked this -

**אלא ניחא ליה למינקט קושיא דאפילו משרה וירק נמי משום דהתחיל כבר להקשות<sup>41</sup> :**

**However the גמרא preferred to mention the challenge that even וירק**  
**should also not require הרחקה, since the גמרא initially asked this** question on the  
answer of ר"פ.

In summation; רבינא answers that we discussing a לוקה and the bees do not damage the חרדל, and  
even though the בעל החרדל was סומך בהיתר he must distance himself, for the רבנן maintain that the  
ניזק must always distance himself. The גמרא asked that this implies that according to ר"י the  
ניזק must distance himself (by חרדל), so why by משרה וירק the בעל הירק (the ניזק) is not required to  
distance? תוספות will continue to explain the rest of the סוגיא in the following תוספות.

## Summary

explained why the question is not on אביי<sup>42</sup> (only on רבא),<sup>43</sup> the answer of תוספות

<sup>37</sup> is now assuming that this מקשן maintains that ר"י agrees to the רבנן that the דבורים do not damage the חרדל  
(see footnote # 25).

<sup>38</sup> According to this מקשן the case of חרדל ודבורים is the same a משרה וירק there is only one מזיק (the חרדל or the משרה),  
but not the דבורים, so the same rule that applies by חרדל ודבורים should apply by משרה וירק. Why does ר"י agree that  
משרה וירק has to move?!

<sup>39</sup> The דברייתא (instead of דברייתא) amends this to read דברייתא הגהות הב"ה.

<sup>40</sup> See לגלוגי תוס' ד"ה לגלוגי עמוד for various translations of לגלוגי.

<sup>41</sup> See תוס' ד"ה וסבר and then by תוס' ד"ה וסבר and these תוספות are really one תוספות and it should be followed by תוס' לגלוגי.

<sup>42</sup> Footnotes 3 -13.

<sup>43</sup> Between footnotes 13-14.

ר"פ,<sup>44</sup> the questions on ר"פ,<sup>45</sup> the answer of רבינא and the question on רבינא.<sup>46</sup>

### **Thinking it over**

1. תוספות writes (in explaining ר"י according to ר"פ) that since the מזיק are דבורים בעל the חרדל and the חרדל did nothing wrong therefore only the בעל הדבורים is required to distance.<sup>47</sup> However by משרה וירק (even though the משרה was סומך בהיתר), only the בעל המשרה distances since the ירק is not מזיק the משרה. Seemingly if the בעל החרדל would not be סומך בהיתר, the rule would be that they both need to distance equally,<sup>48</sup> but since he was סומך בהיתר he need not distance at all. Why therefore does the משרה make the entire הרחקה, since he was סומך בהיתר (so he and the ירק are equal), at most they should both make הרחקה?!

2. תוספות<sup>49</sup> writes in explaining the question on רב פפא that ר' יוסי should argue even by משרה וירק since they were נסמך בהיתר, just as we say by אילן ובור. Seemingly by אילן ובור there is no יקוץ of the אילן according to ר' יוסי even if the בור was there first and the אילן was not נסמך בהיתר, so why does תוספות write, 'כיון שנעשה המשרה בהיתר, וכו' כמו באילן ובור'?

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<sup>44</sup> Footnotes 14-31.

<sup>45</sup> Footnotes 32-35.

<sup>46</sup> See footnotes 36-38.

<sup>47</sup> See footnote # 18.

<sup>48</sup> See תוספות (between footnote 13-14 who writes, הרחקה חצי ההרחקה, דכיון דתרוייהו מזקי אהדדי על כל אחד ואחד להרחיק חצי ההרחקה).

<sup>49</sup> See footnote # 35.