

## And how was the first one close

וקמא היכי סמיך –

### OVERVIEW

The משנה stated, 'if a man had his wall close to his friend's wall, he should not place another wall near his friend's wall unless he distanced himself four אמות from it'. The גמרא asked, 'but how was the first wall close to his friend's wall'. רב יהודה answered, this is what the משנה means, if one wishes to build a wall near his friend's wall, he should distance himself four אמות. רבא asked, but the משנה stated, 'he who has a wall next to his friend's wall'. תוספות clarifies the discussion taking place in the גמרא.

סלקא דעתין דבנפל איירי שכן משמע הלשון דקתני מי שהיה<sup>1</sup> כותלו סמוך לכותל חבירו -

The questioner who asked, וקמא היכי סמיך, assumed that the case in the משנה is where the first wall collapsed (and now he wants to build a second wall in place of the first one), for the language of the משנה indicates so, for the משנה states, 'one who had his wall near his friend's wall' -

ומשני רב יהודה הכי קאמר הבא לסמוך כולי -

And ר"י answered this is what the משנה meant; one who comes to be near his neighbor's wall, etc. he should not come closer than ד' אמות תוספות clarifies -

ומתניתין הכי פירושה מי שהיה גבול כותלו<sup>2</sup> סמוך לכותל חבירו -

And this is the explanation of our משנה; when the boundary of someone's wall was close to his neighbor's wall, he should distance his (proposed) wall ד' אמות.

ורבא פריך דכותל קתני ולא גבול<sup>3</sup> -

And רבא challenged ר"י, but the משנה states כותל and not גבול.

תוספות asks:

ואם תאמר לרבא דאמר בריש פירקין דאסור לסמוך קמא היכי סמך -

<sup>1</sup> The words מי שהיה (in the past tense) indicate that in the past he had a wall לכותל חבירו (which collapsed) and now he wants to rebuild that collapsed wall; the משנה tells us that he cannot rebuild the wall in the same place as the first wall, but rather he must distance it ד' אמות from his friend's wall. The question then is obvious; how come the first wall was within ד' אמות from חבירו?!

<sup>2</sup> It would seem that 'גבול כותלו' here means that the boundary of his property, on which he could theoretically build a wall, was within ד' אמות of his neighbor's wall (which may have been slightly distanced from the border). רב יהודה agrees that the word היה indicates (something in) the past, but it does not mean that there was a wall there in the past (as the מקשן assumed), but rather גבול כותלו (his border) was near his neighbor's wall. We therefore tell him that even though your border is within ד' אמות of חבירו, nevertheless the wall you wish to build must be distanced at least ד' אמת מכותל חבירו.

<sup>3</sup> How can ר"י explain the משנה that there was no wall originally, when the משנה clearly states that there was a wall, therefore the question remains how was the first wall within ד' אמות from חבירו.

**And if you will say; according to רבא who said in the beginning<sup>4</sup> of our פרק that it is forbidden to be close to the boundary line; how did the first neighbor build his wall close to the boundary<sup>5</sup> –**

ויספות rejects a proposed answer:

**ואפילו לפירוש רבינו תם<sup>6</sup> דלמסקנא שרי רבא לכולהו לסמוך לבד מבור -**

**And even according to the explanation of the ר"ה who maintains that according to the conclusion of the גמרא, even רבא permits to be סומך in all cases except for בור, this would seemingly answer תוספות question -**

**מכל מקום אמאי לא פריך מהכא<sup>7</sup> דהוי רישא אלא ממשרה וירק דהוי סיפא -**

**Nevertheless there is still a difficulty, why did not רבא challenge גמרא from this משנה which is the first משנה, but rather it chose to challenge רבא from the משנה regarding soaking flax and vegetables which is the later משנה –**

ויספות answers:

**ויש לומר דלא אסר רבא לסמוך אלא מילתא דמגופיה אתי היזק<sup>8</sup> –**

**And one can say that רבא (even in the אמינא) only forbade סמיכה by objects which the damage comes from them -**

**אבל הכא הנותל אינו מזיק כלום אלא שגורם למעט<sup>9</sup> הדושה:**

<sup>4</sup> ז"ב, יז. The גמרא there cites the view of רבא, that one may not dig a pit next to the property line, even if the neighbor did not dig a pit near the property line. עיי"ש.

<sup>5</sup> The first assumption here is that when the משנה states that he must distance himself ד' אמות; this means that he must distance himself ד' אמות from the property line (regardless where the neighbor's wall is). The second assumption here is that the first neighbor (who has his wall up) built it within two אמות of the boundary, for if he recessed his wall two (complete) אמות on his property (or more), why should the second neighbor, who wishes to build a new wall, be required to distance himself ד' אמות from the property line; he should only be required to distance himself no more than two אמות, for then there will already be a distance of ד' אמות between the old wall and the prospective new wall! The question is that according to רבא the first neighbor was not permitted to build his wall unless he recessed it, which cannot be, for if he already recessed it why is the second neighbor required to distance the full ד' אמות?! See מהר"ם ומהרש"א.

<sup>6</sup> See י"ב, יח, ב. תוס' ד"ה וסבר, where the ר"ת ור"ה maintain that according to the conclusion of the גמרא, even רבא admits that one can be סומך; the only exception (and argument with אב"י) is concerning a בור. This would explain the משנה here. The first neighbor had the right to build his wall up to the property line (since there was no wall on the other field. The משנה rules that the second neighbor must distance the full ד' אמות from the first neighbor's wall. This would (seemingly) answer תוספות question.

<sup>7</sup> The גמרא (when it originally assumed that רבא prohibits סמיכה in all cases [not only בור]), challenged the view of רבא from various משניות (in our פרק). The question is why did not רבא challenge גמרא from our משנה which is the first (the first of a series of משניות), and instead challenged רבא from the סיפא (the later משניות)!

<sup>8</sup> The item which you are being סומך will cause your neighbor some type of damage; for instance משרה where the moisture on your property can seep into the other property. See 'Thinking it over'.

<sup>9</sup> When the first person built his wall on the property line there is no damage at all; however if the second person will want to build a wall he will need to recede ד' אמות so there will be traffic to solidify the walls. However even if there is no distancing of ד' אמות the first wall is not ruining the second wall (directly) it is only preventing us from

**However here, the wall** which the first neighbor is building **does not damage** anything at all; **rather it only causes to reduce the traffic.**

### SUMMARY

The מקשן assumed there was a wall which collapsed (since it states מי שהיה כותלו), ר"י suggested that כותלו means גבול כותלו, which רבא rejected. רבא even in the הו"א, only prohibited placing items which may cause damage near the boundary, but not in a case where it merely prevents improving a situation.

### THINKING IT OVER

What is the difference between our case of the wall, where תוספות claims that he is not causing damage,<sup>10</sup> to the case of the mustard and the bees,<sup>11</sup> where the mustard does not damage the bees (it merely causes them to eat up their honey) and nevertheless we require a הרחקה?!<sup>12</sup>

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having something which will strengthen the walls; that is not considered a damage even according to רבא (even in the הו"א).

<sup>10</sup> See footnote # 8.

<sup>11</sup> דף יח,א (וב').

<sup>12</sup> See גהלת משה.