

§ It is stated in the Mishna that one who conceals a thorn or a piece of glass, or one who puts up a fence of thorns, is liable to pay for damage resulting from them. Rabbi Yoḥanan says: They taught that he is liable only in a case where he projects these obstacles into the public domain, but if he restricts them to his own property, he is not liable.

What is the reason that he is exempt? Rav Aḥa, son of Rav Ika, says: It is because it is not the typical manner of people to rub against walls, but to keep a certain distance from them.

The Sages taught (Tosefta 2:6): With regard to one who conceals his thorns or his pieces of glass in another's wall, and the owner of the wall came and demolished his wall and it fell into the public domain, and the thorns or glass caused damage, the one who concealed them is liable.

Rabbi Yoḥanan says: They taught this only in the case of an unstable wall, since the one who concealed his items should have anticipated that the owner of the wall would soon demolish it, but in the case of a stable wall, the one who concealed his items is exempt, and the owner of the wall is liable.

Ravina says: That is to say that in the case of one who covers his pit with another's bucket, and the owner of the bucket came and took his bucket, and the pit causes damage, the owner of the pit is liable.

Isn't this obvious? What is the novel element in Ravina's statement?

It is necessary. Lest you say: It is only there, in the case of the thorns, that the owner of the wall is exempt, since he did not know who concealed the hazardous item in order to inform him that he should remove them, but here, since the owner of the bucket knew who dug the pit, he should have informed him that he was taking his bucket and is consequently liable to pay for damage caused by the pit,

The Sages taught: The early pious people would conceal their thorns and their pieces of glass in their fields, and would dig to the depth of at least three handbreadths in order to bury them, so that they would not obstruct the plow. The Gemara relates: Rav Sheshet would toss his thorns into fire, so they would not cause damage to others. Rava would toss them into the Tigris [Diglat] River. Rav Yehuda says: One who wants to be pious should observe the matters of tractate Nezikin, so as to avoid causing damage to others. Rava said he should observe the matters of tractate Avot. And some say he should observe the matters of tractate Berakhot.

המצניע את הקוץ [וכו']: א"ר יוחנן לא שנו אלא מפריח אבל מצמצם לא מ"ט פטור אמר רב אחא בריה דרב איקא לפי שאין דרכן של בני אדם להתחכך בכתלים ת"ר המצניע קוצותיו וזכוכיותיו לתוך כותל של חבירו ובא בעל כותל וסתר כותלו ונפל לרה"ר והזיקו חייב המצניע

א"ר יוחנן לא שנו אלא בכותל רעוע אבל בכותל בריא המצניע פטור וחייב בעל הכותל

אמר רבינא זאת אומרת המכסה בורו בדליו של חבירו ובא בעל דלי ונטל דליו חייב בעל הבור

פשיטא

מהו דתימא התם הוא דלא הוי ידע ליה דלודעיה אבל הכא דידע ליה הוה ליה לאודועיה קמ"ל

ת"ר חסידים הראשונים היו מצניעים קוצותיהם וזכוכיותיהם בתוך שדותיהן ומעמיקים להן ג' טפחים כדי שלא יעכב המחרשה רב ששת שדי להו בנורא רבא שדי להו בדגלת אמר רב יהודה האי מאן דבעי למהוי חסידא לקיים מיילי דנזיקין רבא אמר מיילי דאבות ואמרי לה מיילי דברכות

A discussion on Property Law based on Bava Kamma 30a

Some Textual Questions to ask Chanichim:

- What is a Mishna? What is a gemara? What is a Baraita? What kind of topic is being dealt with in this text? How would it filter down to practical halacha?
- How would you classify the *stages* of this gemara?
- Which statements concur with your moral intuition? Which seem unfair? What do you think was behind the Rabbi's thinking?
- What is Ravina adding with his statement? Does the person have permission to take the bucket?
- What is the point of the last paragraph of the gemara?
- Open the gemara and see what Rashi adds to your understanding.

Some General Questions to ask Chanichim:

- How do you think cases like this are/were adjudicated in real life?
- Do you think these laws only apply to physical property? How could Halacha like this be applied to intellectual property?
- How does the idea of "loopholes" relate to Jewish property law and this gemara in particular (especially the end bit!)
- Can you think of other examples in Judaism where we are required to "Go beyond" the letter of the law?
- What is the difference between a right and an obligation? Which one exists in Judaism?

Some Personal Questions to ask Chanichim:

- Do you feel Halacha is restrictive? Enticing?
- How do you find this area of Jewish learning? Intellectually stimulating? Confusing?
- What do you think would happen if Jewish property law didn't exist?

Other sources and quotes to bring into discussion:

Rambam Mishneh Torah Monetary Damage 12:9:

When a person covers his cistern with buckets belonging to a colleague and then the owner of the buckets comes and takes them, the owner [of the cistern] is liable.

Maharal Derech Chaim, Introduction:

Rav Yehuda holds that 'chassidut' is dependent on matters of *Nezikin*. Rava holds it is dependent on matters of *Avot*. And there is an opinion that says it is dependent on matters of *Brachot*. The explanation is that the completion of man has three sides to it, one is not like the other, for man needs to be complete in relation to other humans, in relation to himself and in relation to his creator. And these three completions encompass everything.

Tosafot Bava Kamma 30a:

Even if it is a rickety wall, one should have taken into account that one may have hidden the things there when the wall was sound? Nevertheless, the Matzni'a deserves to be Chayav seeing as he was negligent. And it is not necessary to establish the case by a wall that was rickety to begin with.

Rabbi Norman Lamn: "Privacy is an implicit right in Jewish Law, probably going back to the second or third century when it was elaborated in a legal way.

Some Interactive Resources:

Article – "A Path and a Choice" - Chabad

Debate – Bring some other interesting moral cases from Jewish property law for chanichim to discuss.



Art – What imagery is used here and how does it relate to this type of halacha?

Youtube - Why are Religious Jews So Meticulous about Jewish Law? - Rabbi Akiva Fox

Drawing – Physically draw out or re-enact some of the cases from Jewish damages law. What modern day applications can you think of?

A Related Story:

The story is told of a poor man who came to the Brisker Rav on Erev Pesach (the day before Passover) with a question. Could he use milk instead of wine for the four Cups instead of wine for the four Cups at the Seder?

The Brisker Rav didn't reply. Instead he took five rubles from his pocket and gave them to the man. The Rav's wife wondered why he had given the man so much money. "Wouldn't one ruble have been enough for wine?" she asked.

"True," the Brisker Rav answered, "but if he was planning on drinking milk throughout the seder, that means he had no money for meat either. I gave him enough for both wine and meat."

The Brisker Rav combined keen perception with adherence to the spirit of the law, for though he could have answered the poor man's question, he went the extra mile to ensure that the poor man would fulfill the mitzvot (commandments) of Pesach as well as enjoy its festive spirit.

A similar precept is encapsulated in the verse, "You shall be holy, for I the Lord your God am holy." It is possible, the Ramban comments, for a person to keep the letter of the law while violating its spirit, thus becoming a naval birshut hatorah—a degenerate within the confines of the Torah. The Torah commands us to be holy, to sanctify ourselves even in those circumstances that are permitted according to the strict interpretation of the law.

These two verses complement each other. "You shall be holy" tells us to take a step back in order to uphold the spirit of the law. It tells us that even though a certain act seems permitted, we must nevertheless demonstrate self-restraint to prevent the spirit of the law from being violated. In doing so we become holy.

At the same time, "You shall do that which is right and good" tells us to take a step forward in order to promote the spirit of the law. Though we may find ourselves in situations where we feel we can sit back and not get involved, the spirit of the Torah demands that we take initiative and get involved.

The Talmud states that Jerusalem was destroyed because her inhabitants failed to raise their standard of behavior above the letter of the law.