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**TALMUDIC METHODOLOGY**

**By Rav Moshe Taragin**

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**Shiur #23: R. Yossi’s “Residential” Restrictions (*Giri*)**

The second *perek* of *Bava Batra* lists various limitations that apply to residences. Certain activities that inconvenience or slightly damage a neighbor are proscribed. In some cases, the activity is forbidden; in others, certain measures must be taken to protect the interests of the neighbor (such as distancing damaging activities or insulating against noxious fumes). These laws –commonly referred to as *harchakat shekheinim* – may be Biblical (as Rabbenu Chananel concludes in his comments to *Sanhedrin* 7b) or Rabbinic (as the absence of concrete sources may indicate). Either way the “inconveniencing" of the neighbor is not direct enough or impactful enough to be considered a classic form of *mazik*. If it were, payments would be obligated and, more importantly, the *mishna* would not have enumerated these specific situations, as any activities that meet the parameters of *mazik* are forbidden and actionable.

These cases are not classic *mazik* situations in part because the damage is delayed, in part because it is indirect, and in part because the damages are not caused by something tangible owned by the damager; many of the damages are caused by fumes and smells. Despite the fact that no act of *mazik* has occurred, the unique laws of *shekheinim* (residential ordinances) mandate distance and isolation, and in some cases complete abstinence.

Although the Rabbanan adopt this stance, R. Yossi argues. The *mishna* in *Bava Batra* (25b) cites distance restrictions governing the planting of trees proximate to wells and cisterns, as the roots can potentially weaken the ground and collapse the walls of the well. R. Yossi argues that "each neighbor may independently act within his own property," effectively allowing the trees to be planted regardless of their potential harmful impact. As the *gemara* oftentimes comments, "*al ha-nizak le-harchik et atzmo*" – the potential victim has no legal recourse other than unilaterally distancing himself from the potential damage.

Despite R. Yossi's rejection, there is a scenario in which even R. Yossi forces the “damager” to change his behavior. The *mishna* in *Bava Batra* (22b) prohibits placing a ladder alongside the chicken coop of a neighbor, lest a cat climb the ladder, enter the coop, and damage a chicken. The *gemara* asserts that even R. Yossi, who rarely limits residential activities, would prohibit this ladder positioning, since R. Yossi concedes to the restrictions in “*giri*” cases. The word *giri* literally means “arrows” and evidently refers to damages that are direct and immediate.

What is unclear from the *gemara* is WHY R. Yossi agrees to limit and regulate *giri* cases. Did he adopt a *shekheinim* limitation but simply limit it to fewer cases – that is, only the ones which match the *giri* criteria? Or does R. Yossi entirely reject *shekheinim* laws (as is implicit in his very liberal policy allowing most activities) but still prohibit *giri* activities because those are actual cases of *MAZIK*? Shooting an actual arrow would constitute classic *adam ha-mazik*; similarly, *giri* cases of direct and immediate residential damage should be classified as *adam ha-mazik*. Thus, R. Yossi could theoretically completely reject *shekheinim* limitations but still prohibit a neighbor from activities that would be considered *mazik*.

Perhaps the scope of *giri* reflects whether *giri* limitations are driven by *shekheinim* laws or *mazik* laws according to R. Yossi. What does it take for a scenario to be considered *giri* and therefore enforceable even according to R. Yossi? The simple reading of the "ladder" *gemara* implies that damages that occur IMMEDIATELY are considered "*giri.*" Since a cat could potentially scale the ladder into the coop WHILE the ladder is being positioned, the damage is considered instantaneous, and even R. Yossi would demand protection. However, a different *gemara* suggests that immediacy does not generate *giri*, but rather DIRECT execution by the person. The *gemara* (26a) discusses a situation in which people who were processing flax caused breathing problems for those who inhaled the circulating chaff. The *gemara* allows this, as it does not conform to *giri* criteria; since the WIND carries the chaff and it isn’t projected DIRECTLY by the person, it isn’t *giri* and the behavior needn’t be changed. Immediate damage would not be considered *giri*; damages directly powered by the *mazik* (as arrows are) would be.

Interestingly, Rashi, in his comments to the ladder scenario (22b Bava Batra), defines *giri* based on the parameters of “*kocho*” (directly powered damage). Even though the ladder would not typically seem to be a *kocho* case, Rashi demands this condition.

Presumably, immediacy would be sufficient to create an instance of a residential violation that even R. Yossi would proscribe. Gradual fume-damage or slow, evolving deterioration of land would not entail sufficient residential infraction to create adjustment. Immediate damages, in contrast, are unallowable, and even R. Yossi would limit them. Therefore, if immediacy is sufficient to render a case as “*giri*,” it would be prohibited as an extreme form of *shekheinim* violation.

However, if R. Yossi completely rejects residential or *shekheinim* based concerns and only limits actual cases of *mazik*, immediacy would not be sufficient to render something an act of *hezek.* Only situations in which a person directly powered the damage (*kocho*) would be considered *adam ha-mazik* and enforceable according to R. Yossi. Ultimately, the criterion for inclusion within the category of *giri* should and does reflect the nature of this category.

Of course, the clearest indicator that *giri* may actually be considered real *mazik* would be the prospect of reimbursement. In the limited cases of *giri*, would a *mazik* who did not adjust/distance/insulate be obligated to pay? There is scant discussion about this issue, but comments of the Ritva in his explanation of 22b are suggestive that payment would be demanded. This would clearly reflect that the unique *giri* cases are problematic not because R. Yossi admits to severe *shekheinim* situations, but because these cases are considered actual *mazik*.

A final indicator as to R. Yossi's position may emerge from a debate as to whether PUBLIC damages are proscribed even WITHOUT *giri* characteristics. The *mishna* in *Bava Batra* (25b) discusses distancing a *goren* (grain collection and processing) sites from a city. Without question, damages from this grain processing do not constitute *giri* and should not be actionable according to R. Yossi. In fact, Tosafot (comments to 26a) concurs that R. Yossi would reject this rule and allow grain processing in close proximity to cities.

The Ra'avan, however (in the very first *siman* of his *sefer*), claims that public damages are to be limited according to R. Yossi EVEN if they are not classic *giri*. R. Yossi would force this grain processing to be monitored even though its damages are not direct or immediate because they affect the larger population. In effect, the Ra'avan establishes a companion limitation to *giri*. R. Yossi's limited set of restrictions includes cases of *giri* as well as cases of public damage. Does this indicate the *giri* restriction is based on *shekheinim* laws and not *mazik*? If *giri* were *mazik* and ONLY *mazik* circumstances are cause for restriction, the absence of *giri* would disqualify *mazik* identification regardless of the SCOPE of impact. An activity which is structurally not direct/immediate enough to be *mazik* (lacking *giri* qualities) cannot be considered *mazik* simply because it affects more people! However, if *giri* is restricted because it violated *shekheinim* laws, presumably the more broad the impact, the more likely the residential-based restrictions, even if the activity is STRUCTURALLY less assaulting of others.