



Vegetables Growing out of a Wall

The final *Mishnah* (10:6) discusses a case where two neighbouring garden patches, with different owners, are on different levels, one a step above the other. As a result of the layout, a natural wall or incline divides the two. The *Mishnah* records a debate regarding the ownership of the vegetables that grow out of that wall. While the vegetables are rooted in the soil of the upper field, they grow in the airspace of the lower one. *R' Meir* argues the owner of the upper field has the stronger claim, while *R' Yehuda* disagrees. *R' Shimon* presents a third opinion that the owner of the upper patch has a claim to any of the vegetables he can reach, while everything else belongs to the owner of the lower one.

The *Rashi* explains that *R' Shimon* agrees with *R' Meir*. In other words, since each party provide an essential component for the vegetable's growth, where it draws its nutrients from is the deciding factor. Nevertheless, he forgoes any of the produce he cannot reach; it is otherwise degrading to enter his neighbour's field to collect the vegetables.

The *Gemara* (119a) however asks a further question. What is the law regarding the vegetables where the upper owner can reach their branches or leaves but not the roots, or roots but not the branches? The *Gemara* leaves the matter unresolved.

The *Tur* (167) rules that in such a case they would divide those vegetables in question. This is based on the fact we divide money whose ownership is unclear. The *Tur* however continues that if the upper owner takes the vegetables, he may keep them. The *Bach* suggests that this is since the *Rosh* found the *Gemara's* conclusion difficult. By grasping the leaves the root will follow, so they should clearly belong to the upper owner. Consequently the *Tur* maintains the *Gemara's* conclusion that ideally we must divide the vegetables. Nevertheless, if the upper owner takes the vegetables he may keep them, since logic stands by his position.

The *Beit Yosef* however cites the *Rambam* (*Shcheinim* 4:9), that the upper owner should not touch them. Furthermore he makes no reference to splitting these vegetables. If however

the upper owner takes them, we do not forcibly retrieve them. The *Beit Yosef* rules accordingly and explains that the *Rambam* understand that the lower owner has the *chazaka* (presumption of ownership) which we fall back on in the case of doubt. Why?

To understand the *Rambam* we will revisit the question of the *Rosh*. The *Perisha* explains that this question is only difficult according to *Rashi's* reasoning. In other words, the owner of the upper patch can take everything he can reach, and forgoes the rest. If he can reach the leaves, and pull out the vegetable, why would he forgo them? This is indeed the *Ramban's* difficulty with *Rashi's* explanation. He adds that according to *Rashi*, the limitation of *R' Yanai* that excludes those vegetables that the upper owner could only reach at a stretch, also does not make sense. Why would the upper owner forgo them if he can still reach them?

The *Perisha* however explains that the *Rambam* understands *R' Shimon* differently. Each of the parties have an equal claim. *R' Shimon* simply resolves it based on how much the upper owner can reach. The remainder is considered as being in the lower field's domain. Furthermore, the *Rambam* understands that the question is where the upper owner can reach the leaves but grasping at them would not uproot the vegetables. The question then is how we treat the leaves – do they follow the roots? Since the matter is unresolved, yet the ownership of the roots is clear, the *Rambam* maintains that the *chazaka* is with the lower owner.

The *Bi'ur HaGra* however explains that the *Rambam* understands that the *R' Shimon* agrees with *R' Yehuda*, yet grants the owner of the upper field anything he can reach. The *Ramban* also maintains this position and explains that the owner of the bottom field forgoes those vegetables in reach of the upper field out of concern that a dispute will result in the owner of the upper field removing the soil holding the vegetables. Consequently, as the *Beit Yosef* explained above, the owner of the lower patch has the *chazaka*. The ownership of the upper owner is a function of his reach – his action. Since the doubt is in this action, the *Rambam* defaults to the lower owner who has the first claim.¹

Yisrael Bankier

¹ When explaining the opinion of the *Rambam* we have leaned on a *chazaka* as a means of resolving the issue. One question we have

not addressed, is why the *Tur* does not do the same, but instead splits the vegetables. See the *Sridei Esh* (I, 141:2) for more details.

Revision Questions

בבא מציעא ט"ו – י"ז

- When can a *choker* reduce the produce that he must pay the field owner if the field was devastated by locust? (ט"ו: י')
- Regarding the previous question, according to *R' Yehuda*, who cannot renegotiate the terms despite the devastation? (י"ז: י')
- What is the law regarding a *choker* who produced prime quality produce? (י"ז: ט')
- If a person rents a field, can he deviate from the agreed use? (י"ח: ט')
- What is one not allowed plant in a field if it was rented for a "small number of years"? (ט"ט: ט')
- Regarding the previous question, what is a "small number of years"? (י"ט: ט')
- If someone rents a field for seven years, when is the *shmittah* years included and when is it not included? (י"ז: ט')
- When should a contract worker be paid if he was employed for a: (י"א: ט')
 - Day?
 - Night?
 - Year?
- What are the two *p'sukim* that are the basis for the requirement to pay wages on time? (י"ב: ט')
- Other than wages, to what two other payments do these *p'sukim* apply? (י"ב: ט')
- What are the two circumstances when one does not transgress the prohibition despite delaying the payment? (י"ב: ט')
- When can a worker make a *shevuah* and collect his wages? (י"ב: ט')
- To whom does only one of the *p'sukim* apply? (י"ב: ט')
- How must a lender go about retrieving a collateral? (י"ג: ט')
- What would he have transgressed if he forced his way into the borrower's house to retrieve it? (י"ג: ט')
- From who is one not allowed to take a collateral? (י"ג: ט')
- What objects are not allowed to be taken as a collateral? (י"ג: ט')
- What is done with the rubble from a collapsed building with two owners, one of which lived on the second floor? (י"ד: י')
- Regarding the dwelling arrangement described in the previous question what is the law if the second floor collapses? (י"ד: י')
- What is the law if the building collapses and the ground floor owner does not want to rebuild? (Include both opinions.) (י"ד: י')
- What other case is similar to the one just described? (י"ד: י')
- If a tree in a private property collapses in to the public domain, when is the owner liable for the damage it causes? (י"ד: י')
- If someone's fence collapses into another's property, can he tell his neighbour to keep the stones instead of removing them? (י"ה: י')
- If the neighbour accepts, can the original owner pay him the removal costs and demand the stones? (י"ה: י')
- What other case brought has the same ruling as the previous two questions? (י"ה: י')
- Can one use the public domain when engaged in construction? (י"ה: י')
- What are the three opinions regarding the ownership of vegetables that grow out of a steep incline in between two properties? (י"ז: י')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
10 February ה' אדר	11 February ו' אדר	12 February ז' אדר	13 February ח' אדר	14 February ט' אדר	15 February י' אדר	16 February יא' אדר
Bava Batra 1:1-2	Bava Batra 1:3-4	Bava Batra 1:5-6	Bava Batra 2:1-2	Bava Batra 2:3-4	Bava Batra 2:5-6	Bava Batra 2:7-8

