



Trees Overhanging the Street

The *Mishnah* (2:14) records a debate regarding a tree whose branches grow out over the public domain. The first opinion is that the branches must be trimmed back so that it does not interfere with the transit of a camel and rider. *R' Yehuda* however maintains that it is cut back up to the height that does not interfere with a camel carrying a load. The *Bartenura* explains that *R' Yehuda* more lenient maintaining that it does not need accommodate a rider since they are able to duck under the branches.

R' Shimon however argues that all the overhanging branches must be cut so that nothing covers the public domain. This is out of concern for *tumah*. The *Bartunera* explains that there may be a source of *tumat ha'met* underneath the tree and the branches will act as an *ohel* to spread *tumah* to everything beneath it.

Why do the other opinion not address *R' Shimon's* concern? The *Tifferet Yisrael* provides two explanations. The first is that the owner is not considered as directly causing damage in the case of *tumat ohel*. He adds that it is also not common to find *tumat ha'met* in the public domain. Consequently, the possibility is remote about which we are not concerned.

A related issue is the question whether structural projections or balconies can extend over the public domain. The question is addressed directly in the *Mishnah* we will learn in the coming week. The *Mishnah* (3:8) teaches that one is simply not allowed.

The *Rambam* (*Hilchot Nizkei Mamon* 13:24) explains, based on our *Mishnah*, that one is allowed if the protrusion is above the height of camel along with its rider – the first opinion in our *Mishnah* – provided that it does not make the passageway too dark. In other words, there seems to be no difference between a balcony or branches. The limits are the same.

The *Rashba* (*Shut HaRashba* 3:156) however notes that the *Mishnah* does not provide any height restriction when

discussing structural projections. The only solution the *Mishnah* provides if one wants a balcony, is to ensure his building is inset so the balcony does not hang over the public domain. Consequently a overhanging balcony is not allowed, irrespective of the height.

How do we understand the debate between the *Rambam* and *Rashba*?

We noted above that the *Tifferet Yisrael* understood the debate, at least in his first explanation, whether causing impurity was an issue, is whether it was defined as causing damage. Accordingly, what underpins the restrictions in our *Mishnah* is whether one's tree would cause damage to travelers. Indeed, much of the *perek* has been addressing restrictions regarding what one can do in their property due to potential cross boundary damage. Considering that the *Rambam* discusses the balcony extension in the laws of monetary damage, the same consideration underlies that law also. Consequently, as long as the balcony is high enough, and does not project too far to cause other damage, then it would be permitted.

It is possible that according to the *Rashba* there is a different consideration. Note that the *Mishnah* that discusses the balcony is in a different *perek*. That being that case, perhaps the issue with the balcony is simply that it is occupying public space, which is not justified.

If that is the reason, we can understand a different ruling of the *Rashba*. The *Rashba* (*Shut* 4:111) explains that if the local practice allows the extension of projections, then it would be permitted. "If there is a local practice then everything goes according to it". Indeed, the *Shut HaRosh* explains that this would be true even below the height of a camel and rider. All this makes sense if the consideration behind the that *Mishnah* is permissible use of public space, for that would indeed be defined by that accepted local practice.

Revision Questions

בבא בתרא ב' ג' – ג' ב'

- Can the residents of a shared courtyard prevent another from: (ב' ג')
 - Opening a shop?
 - Producing pottery?
 - Opening a *cheder*?
- Are there any restrictions when building a wall near a neighbour's window? (ב' ד')
- What other case brought in the *Mishnah* has a similar ruling? (ב' ד')
- How far must one distance his ladder from his neighbour's dovecote? (ב' ה')
- Is there a restriction on the construction of a dovecote in one's property? What is *R' Yehuda's* opinion? (ב' ה')
- How does one determine the ownership of a stray *gozal*? (Include both scenarios.) (ב' ו')
- Is there a limit on where trees can be planted outside a city? (ב' ז')
- Which trees have a greater restriction? (ב' ז')
- Is the city required to pay the owners of the trees when clearing them from the outskirts of the city? (ב' ז')
- What are the restrictions on building a threshing floor? (ב' ח')
- What are the restrictions on the location of a cemetery? (ב' ט')
- To which side of the city must a tannery be built? (Include both opinions.) (ב' ט')
- If one wishes to plant leeks, what must he be careful that he does not plant it near? (ב' י')
- If someone wants to plant a tree, how far must he distance it from his neighbour's hole? (ב' י"א)
- What are the two opinions regarding a case where one dug a hole and his neighbour planted a tree near by? (ב' י"א)
- In what situation can one plant a tree in his property very close to his friend's field? (ב' י"ב)
- How deep can a person dig in his field in order to destroy the root's of his neighbour's tree that have entered his field? (Include two cases.) (ב' י"ב)
- Is one allowed to cut the branches of his neighbour's tree that hang over into his field? (Include three cases.) (ב' י"ג)
- If a person's tree hangs over into the public domain, to what height is it trimmed? (ב' י"ד)
- For which things is a *chazakah* three years "*mi'yom le'yom*" and for which things it three years "*ve'ainah mi'yom le'yom*"? (ב' י"א)
- What are the two opinions regarding a three-year *chazakah* that is not "*mi'yom le'yom*"? (ב' י"א)
- What are the three "lands" for *chazakah* and why is this important? (ב' י"ב)

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
17 November ט"ז חשוון	18 November י"ז חשוון	19 November י"ח חשוון	20 November י"ט חשוון	21 November כ' חשוון	22 November כ"א חשוון	23 November כ"ב חשוון
Bava Batra 3:3-4	Bava Batra 3:5-6	Bava Batra 3:7-8	Bava Batra 4:1-2	Bava Batra 4:3-4	Bava Batra 4:5-6	Bava Batra 4:7-8

