

## DAMAGING WITH EYES

### היזק ראייה

[בבא בתרא ב:, גט:-ס.]

Every person is entitled to privacy within his home. This right not only limits others from actually entering his home uninvited, but also entitles him to protect himself from having his neighbours *look* in to his property.

The Talmudic Sages prohibited us from looking in to a neighbour's home, since doing so will cause discomfort and impinge on his ability to use his personal space freely. Chazal even went so far as to say that one should not stand opposite someone's home, even if he has no intention of peering inside, so that others should not suspect that this is his purpose (unless he has a specific, valid reason to be there, such as if he's waiting to be picked up by a driver at a specific spot).<sup>1</sup>

Modesty and respect for another's privacy are some of the defining character-traits of the Jewish people, and a society which lives with these guidelines is truly fit for the Divine Presence to dwell amongst it.

In this learning session we'll explore the following issues:

- **Is one allowed to build a window or door which allows him to see in to a neighbouring property?**
- **Under what circumstances is one entitled to demand that his neighbour build a fence with him?**
- **What's so bad, exactly, with looking in to another's property??**
- **What is "Ayin Hara" ??**

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<sup>1</sup> שו"ע חו"מ רמ"א בסי' קנ"ד ס"ז וס"ג

## 1 – DIVINE DWELLINGS

### Source 1. Bava Basra 60a

<p><b>MISHNA:</b> A person may not open an entrance opposite another entrance, or a window opposite another window toward a courtyard belonging to partners, [so as to ensure that the residents will enjoy a measure of privacy]. If there was a small entrance he may not enlarge it. If there was one entrance he may not make it in to two.</p> <p><b>GEMARA:</b> The Gemara asks: From where are these matters [i.e., that one may not open an entrance opposite another entrance, or a window opposite another window] derived? Rabbi Yochanan says that the verse states: “<i>And Bilam lifted up his eyes, and he saw Israel dwelling tribe by tribe; and the spirit of God came upon him</i>” (Bamidbar 24:2). The Gemara explains: What was it that Bilam saw that so inspired him? He saw that the entrances of their tents were not aligned with each other [ensuring that each family enjoyed a measure of privacy], and he said: “If this is the case, these people are worthy of having the Divine Presence rest on them.”</p>	<p>מתני' לא יפתח אדם לחצר השותפין פתח כנגד פתח וחלון כנגד חלון היה קטן לא יעשנו גדול אחד לא יעשנו שנים</p> <p>גמ' מנהני מילי א"ר יוחנן דאמר קרא (במדבר כד, ב) וישא בלעם את עיניו וירא את ישראל שוכן לשבטיו מה ראה ראה שאין פתחי אהליהם מכוונין זה לזה אמר ראוין הללו שתשרה עליהם שכינה</p>
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Bilam was a non-Jewish prophet who was commissioned by the wicked king Balak to curse the Jewish people. As he stood upon the hill overlooking their encampment in the wilderness, he was immediately impressed by the care that was taken to protect each other's privacy, with the tents placed so that no opening was directly opposite another. Witnessing this, he simply could not bring himself to curse them, and actually gave them a hearty blessing instead!

From this, Chazal derive that residential homes should not be constructed with the doors and windows facing those of neighbouring homes.

If a person violates this rule, he is considered guilty of causing damage, and the neighbour can force him to close up the opening. This type of damage is referred to as “היזק ראייה” – “Damage caused by sight.”<sup>2</sup>

The rules of היזק ראייה have applications in other contexts as well:

<sup>2</sup> כ"ה פ' המשנה ע"פ הרשב"א, ולכאורה דלא כפרשב"ם דפ' דהוא ענין של צניעות

## 2 – WINDOW OPENINGS

Some residential homes are built around a common public ground, such as in the old-style courtyards of Jerusalem as well as in modern townhouse circles. The following Mishna discusses the parameters of היזק ראייה in such situations:

### Source 2. Bava Basra 59b

<p><b>MISHNA:</b> A person may not open his windows [i.e., build an opening in a wall to use as a window] into a courtyard belonging to partners [i.e., a courtyard in which he is a partner].</p> <p><b>GEMARA:</b> [With regard to the Mishna’s ruling that one may not open a window into a courtyard that he co-owns, the Gemara asks]: Why did the Mishna specifically render it prohibited for one to open a window into a courtyard belonging to partners? One may not open a window into <i>anyone’s</i> courtyard either [as it will lead to damage caused by sight]?!</p> <p>[The Gemara replies that] the Mishna is speaking utilizing the Talmudic-style of: “It goes without saying”, as follows: It goes without saying that it is not permitted for one to open a window into another’s courtyard, [where he is certainly not allowed to look]; but where one wants to open a window into a courtyard belonging to partners, where the owner of the window can say to the other partner: Ultimately, since you need to conceal yourself from me and conduct yourself modestly in the courtyard where I too am a partner and have the right to be present, why does it bother you if I open a window into there? Therefore, the Mishna teaches us that the partner may say to him: “Until now I needed to conceal myself from you only when we were both in the courtyard. Now I will need to conceal myself from you even when you’re in your house!”</p>	<p style="text-align: center;">מתני' לא יפתח אדם חלונותיו לחצר השותפין</p> <p style="text-align: center;">גמ' מאי איריא לחצר השותפין אפילו לחצר חברו נמי לא</p> <p style="text-align: center;">לא מיבעיא קאמר לא מיבעיא לחצר חברו דלא אבל לחצר השותפין דא"ל סוף סוף הא קא בעית אצטנועי מינאי בחצר קא משמע לן דאמר ליה עד האידנא בחצר הוה בעינא אצטנועי מינך השתא אפילו בבית נמי בעינא אצטנועי מינך [עד האידנא כי הוית בחצר בעינא לאיצטנועי מינך כי הוית בבית לא בעינא לאיצטנועי מינך השתא אפילו כשאתה בבית בעינא לאיצטנועי מינך]</p>
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The rule of היזק ראייה applies *even* in a yard (private or shared), where one is entitled to a certain degree of privacy, albeit not as much as one is entitled to in his home. To summarize:

<b>In What Situations does the Rule of היזק ראייה Apply?</b>	
(In other words, in what scenarios can one neighbour legally force the other to close up his opening [i.e. door or window] and/or prevent him from building it in the first place?)	
Scenario	Does היזק ראייה apply?
1) Door/window-to-door/window	YES
2) Door/window-to-courtyard	YES

Let’s take this one step further...

### 3 – JOINT COURTYARD

What about in the courtyard itself??

For example: two neighbours who have adjacent backyards: does היזק ראייה apply in this context?

- In other words, *can one neighbour demand of the other to build a fence [together] in order to prevent him from being able to look in to his yard??*

*What do you think??*

In truth, this scenario is a matter of epic debate among no less than the great Sages of the Talmud itself, at the beginning of Bava Basra [2b].

In the context of a shared courtyard there are those that hold:

היזק ראייה שמייה היזק  
**Damage caused by sight is considered “damage”**  
(Therefore, one can legally force his neighbour to build a wall)

And there are those that hold:

היזק ראייה לאו שמייה היזק  
**Damage caused by sight is *not* considered “damage”**  
(Therefore, one cannot legally force his neighbour to build a wall)

To summarize:

<b>In What Situations does the Rule of היזק ראייה Apply?</b> (In other words, in what scenarios can one neighbour legally force the other to close up his opening and/or force him to make a partition?)	
<b>Scenario</b>	<b>Does היזק ראייה apply?</b>
1) Door/window-to-door/window	YES
2) Door/window-to-courtyard	YES
3) Yard-to-yard	DISAGREEMENT

## Let's Clarify!!

Why is this scenario different than the ones previously discussed? Why should היזק ראייה **not** apply in this context (according to one opinion)??

The Ramban (Rabbi Moshe ben Nachman, 13<sup>th</sup>-century) explains:

### Source 3. Ramban, Bava Basra 2b

<p><b>“Damage caused by sight is not considered damage”</b> – We should challenge from that which it says later in Bava Basra (59b) “ONE IS NOT ALLOWED TO OPEN A WINDOW IN TO A SHARED COURTYARD”, from where we see that damage caused by sight <i>is</i> considered damage!!</p> <p>We can answer as follows: that case (i.e. source 2) is discussing specifically from one house to another, or from a house in to a courtyard, where, since one is firmly established in his home, the other will not be able to use his courtyard <b>at all</b>. However, from one courtyard to another, this may not be considered “damage”.</p>	<p>היזק ראייה לא שמיה היזק. איכא למידק והא תנן (לקמן נט, ב) לא יפתח אדם חלונותיו לחצר השותפין, אלמא היזק ראייה שמיה היזק ואפילו ראייה דחצר.</p> <p>איכא למימר קס"ד הני מילי מבית לבית ומבית לחצר, דכיון דקביע' בבית לא מצי האיך לאשתמושי כלל בחצר, אבל מחצר לחצר קא סלקא דעתין דלא שמיה היזק.</p>
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The היזק ראייה – i.e. the lack of privacy due to the neighbours’ on-looking eyes – which is generated from ones home in to a courtyard is **greater** than that generated from the backyard itself. Since one lives in his home, his “peepage-rating” (“P.R.”) is extremely high,<sup>3</sup> as opposed to his courtyard and/or backyard where, although he may spend a significant amount of time there, he doesn’t live there, and the P.R. is therefore slightly lower.

Therefore, there’s room to argue that היזק ראייה does not apply in this yard-to-yard scenario.

<sup>3</sup> Like the classic “yenta” window ☺

## 4 – UNDERSTANDING THE DISAGREEMENT

In light of this distinction provided by the Ramban, how shall we understand the underlying dispute of whether or not damage caused by sight, in a courtyard, is considered damage or not? What are they arguing about exactly?

### A Great Principle:

#### ***Talmud is not for Toddlers!***

Every disagreement throughout the Talmud has tremendous depth and understanding to it.

It's never a matter of “Well, that’s what **I** hold, and I don’t really care what **you** think!” G-d forbid!!

Rather, each opinion is rich with legitimacy, understanding, and solid foundations.

Given this, what is the underlying point of contention in this dispute of היזק ראייה שמיה היזק – “Damaged caused by sight *is* considered damage, or *is not*”?<sup>4</sup>

In order to understand this, let’s take a step back (or deeper, really) and address an over-arching issue: *what, exactly, is the “damage” of looking in to another person’s property?*

### A TALMUDIC INQUIRY

#### *יש לחקור*

***Is the damage, that you are causing him embarrassment and/or anguish?***

*(ie he will not refrain from using his yard, but, rather bear the embarrassment)*

*or,*

***Is the damage, that he cannot use his property in a normal fashion?***

*(i.e. because of the peeping, he will refrain from using his yard)*

In other words,

***Is the halacha of היזק ראייה a matter of personal-damage?***

*(היזקא דגופא)*

*or,*

***Is the halacha of היזק ראייה a matter of property-damage?***

*(היזקא דממונא)*

In short,

***Are you damaging him, or are you damaging his stuff??***

<sup>4</sup> המשך הדברים דהכא מיוסדים על דברי הקהלות יעקב ב"ב ס"ה

The great Steipler Gaon, R' Yaakov Yisroel Kanievsky זצ"ל, explains that this<sup>5</sup> is the point of contention:

- ➔ According to the 1<sup>st</sup> approach (that the underlying principle of היזק ראייה is causing the other to be embarrassed), in this yard-to-yard scenario one neighbour can claim to the other *“Who told you to use your yard and be embarrassed?! Just don't do your private matters while I'm looking in to the yard while you're there!”*
  - Given this, in a yard-to-yard scenario, there is **no** היזק ראייה
  
- ➔ According to the 2<sup>nd</sup> approach, however (that the underlying principle of היזק ראייה is that the person is unable to use his property in the normal manner), this claim of *“Well, who told you to use your yard?!”* is a mute point – it is precisely for this reason that damage caused by onlooking *is* considered damage! The very fact that the second neighbour cannot use his property in its normal manner is considered “damage”!!
  - Given this, in a yard-to-yard scenario, there **is** still היזק ראייה

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<sup>5</sup> ע"ש דמסביר בב' אופנים אחרים. נקטנו מהלך זה להראות את החילוק שבין היזקא דגופא להיזקא דמונא.

## A Golden Nugget

("נפקא מינה")

We can 'bring out' these two perspectives (that is, regarding what the underlying nature of היזק ראייה is: damage to the person, or damage to the usage of his yard) by illustrating another practical difference:

Scenario: The rule of היזק ראייה dictates that one neighbour can force the other to build a fence, but what if he let it slide, and did not object or claim this right for some significant period of time<sup>6</sup>? Can he come back later and change his mind??

- Well, according to the 2<sup>nd</sup> approach, where the right to demand of his neighbour to build a fence is due to property damage (caused by not being able to use his yard in a normal manner because of the onlooker), then if the neighbour does not object, he's basically **consenting** to bear the loss, and he would **not** be entitled to object thereafter.
- But, according to the 1<sup>st</sup> approach, where the right to demand of his neighbour to build a fence is due to the personal damage (caused by the embarrassment of having an onlooker), then, the implied consent of not having objected thus far is **irrelevant**: one is not allowed to damage himself or allow someone else to damage him.<sup>7</sup>

In other words, in Halacha, you can let someone damage your stuff, but you cannot let him damage you.

What's the difference? Very simple:

Your possessions → belong to you.

But, your body → does *not* belong to you.<sup>8</sup>

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<sup>6</sup> Throughout Halacha, there is a concept of "חזקה", where one person does not object or employ his rights, thereby giving a clear implication of consent and the relinquishment of his rights.

<sup>7</sup> שו"ת הריב"ש סי' תפ"ד, ושו"ע סי' תכ"א

<sup>8</sup> This point may come as a bit of a surprise to many, but from a Torah perspective it's a very basic principle: one's physical body does not 'belong' to him – it's not something that he's done anything to acquire. Rather, it's a gift, on loan as it were from the Almighty, that one is given permission to use during his brief stay here in this world, but one that he's responsible to care for and return in good shape. [See Hebrew note below for sources]

כן הסכים איתי מו"ר הגרש"מ שליט"א להסבר זו בדברי הרמב"ן המובא בקהלות יעקב, והוסיף שיסוד זה של אי בעלת הגוף והנפש אמת ונכון הוא, וצ"ע לי למש"כ האג"מ יו"ד ח"ב סי' קע"ד ענף ג ד"ה מש"כ שס"ל הכי בפירושו, וכ"כ בפי' הרדב"ז הל' סנהדרין פי"ח ה"ז, כ"כ השו"ע הרב הל' נזקי הגוף ה"ד



Exception #3

**Source 6. Bava Basra 2b – Courtyard-Entrance Gate**

<p>Come and hear (an additional proof that damage caused by sight in between yards is called damage), from what is taught in a Mishna (7b): “THE RESIDENTS OF A COURTYARD CAN COMPEL EACH INHABITANT OF THAT COURTYARD TO FINANCIALLY PARTICIPATE IN THE BUILDING OF A GATEHOUSE AND A DOOR TO THE JOINTLY OWNED COURTYARD, (so that the courtyard not be open to the eyes of those standing in the public domain)” [Learn from this that damage caused by sight is called damage even between 2 yards]</p>	<p>ת"ש כופין אותו לבנות בית שער ודלת לחצר ש"מ היזק ראייה שמיה היזק</p>
<p>(The Gemara answers): The damage of being exposed to the gaze of the general public, [which has unimpeded sight of what is happening in the courtyard], is different and certainly called damage.</p>	<p>הזיקא דרבים שאני</p>

It’s one thing to have your neighbour looking in to your yard, but it’s another thing altogether to have the whole community passing by and starring in! The damage caused by the on-looking eye of the public is much more severe than that generated by an individual, and, therefore, *everyone* agrees that one can force his neighbour to share in the costs of building a fence.

### EXAMPLES:

1. Arnold and his family have just moved in to their newly purchased house. As they're scoping out the new dig, they realize that their backyard is actually missing one small detail: a fence, between their property and their neighbours', Zack. As much as they don't want to rustle the feathers with the neighbours, Arnold and his wife were really looking forward to hanging out in their own private backyard, but the whole "no fence" thing is beginning to bother them. *Is Arnold entitled to demand from Zack that they split in the costs of building some sort of partition??*
2. Mrs. Botanic has an exquisitely lovely flower garden in her backyard. Each spring, she anxiously anticipates the gardens re-birth. *Is it a problem to stare in to Mrs. Botanic's garden in order to enjoy the beautiful sights?*
3. The Polka family is busy preparing for their upcoming renovations. They're meeting with the architect next week to discuss the layout for the main and upper-floors of the house. Still reeling with excitement from his most recent Torah learning session on the topic of "Damaging with Eyes", *what new consideration(s) should Mr. Polka take in to account?*
4. Jordan has just moved in to his new apartment, and after only a few days he notices an interesting phenomenon: the wall between him and his neighbour is so thin, he can hear practically all of his neighbours' conversations! Although initially slightly entertaining for him, Jordan soon realizes that this paper-thin wall is actually inhibiting his own ability to have private conversations in his own dwelling. *Is Jordan allowed to demand from his neighbour that they build a sound-proof wall together?*