

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

# Damages between Neighbors Shiur Ten

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Mareh Makomos for this Shiur

Bava Basra 59b-60a

Tosafos (60a, dibur hamas'chil Lakach)

Rosh (Bava Basra Chezkas Habatim Siman 75)

Rambam (Laws of neighbors, 5:8)

Mordechai (Bava Basra, Chezkas Habatim Siman 557)

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*Making an entrance  
from a house to  
another yard, and  
laws of adding a  
room or story*



**Siman 154 A Chazaka on windows and openings and how much distance is required from them.**

*Siman 154 Seif One*

**1** (1) One of the joint-owners of a courtyard who acquires a house in another courtyard may not make an opening [from the new house] to his jointly owned courtyard *(because no resident of the courtyard has the right to implement changes there at all, rather as it was built or bought or inherited, this is how they should act) (Tur)*. **1** Even if one builds a second story onto his house, he may not make an opening that joins it to the courtyard, as this hampers movement there and it is as if they had one neighbor and now they have many neighbors. **2** But he can build another story to his house, provided it does not open onto the courtyard but rather onto his house. And it is unnecessary to say that if he wants **3** to divide (his existing house) into two he may do so, since he does not make a new opening to the courtyard. When does this apply that if he acquired a house in another courtyard that he may not make a new opening to his jointly owned courtyard — this applies when he makes the opening onto the courtyard itself. However, he can make the opening to his house (**2**), provided he seals the opening to the other courtyard. *(And there are those that differ; **4** holding that even [to make the opening] to his house he may not do so).*

## Making an opening to a common yard

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S I M A N 1 5 4 : 1

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The source of this *Halacha* is *Bava Basra* 59b. The *Gemara* brings a case of a person who owns a house that opens onto a courtyard that is used by residents of other homes that also open onto this courtyard. If he buys another house that opens onto an adjoining courtyard, he may not build a new entrance that connects his new house to the courtyard of his old house.

What is the reason for this *Halacha*?

On daf *Bava Basra* 60a, the *Gemara* explains this with the words “*marbeh aleichem es haderech*.” Literally, this “makes the way too lengthy.” The *Rashbam* explains that more people will now be using the first courtyard than before. This infringes on the usage and privacy of those whose homes adjoin the first courtyard.

The *Tur* rules: If one buys a home next to his [original] home, he is not allowed to make an opening to the common courtyard, as none of those who share in this yard have a right to change it in any way whatsoever. Rather, however it was built or purchased or inherited, this is how it should be used (and none may alter it in ways that disturb the others).

## When access to the old courtyard is indirect (via his old house)

May someone buy a house in an adjoining courtyard and, if the house adjoins his house, make an entrance to his old courtyard via his old house?

*Tosafos* (60a, *dibur hamas'chil lakach*) and the *Rosh* (*Bava Basra Chezkas Habatim Siman* 75) write that if one buys a house in an adjoining courtyard, he may not open the house onto his old courtyard. This means that he may not do so even if he does so via his old house, so that people don't enter the courtyard via his house (as brought in the *Beis Yosef*).

The *Tur* rules: One needn't even mention that one is not allowed to open a new house onto the courtyard, but even to open it onto his house and to go out via it through his house to the yard, is also forbidden.

The *Rambam* disagrees with the above ruling of the *Rosh*.

## Adding a room or upper floor to a house

The *Mishna* adds that one may add a new room or upper floor to his house, and that these extra rooms may open into his house.

On *daf* 60a, the *Gemara* asks that the above seems to contradict what was learned earlier.

**In the *Reisha* of the *Mishna*,**

We learned that if one buys a house in an adjoining yard, he may not open it onto the yard of his old house, as this is “*marbeh aleichem es Haderech* — it adds too many people to the courtyard and hinders the former residents’ access and usage.

**Now, in the *Seif* of the *Mishna*,**

However, we are learning that one is allowed to build another room to his house or a second floor and have this open into his own house. How can this be allowed? Now there will be more people using the courtyard and disturbing the privacy of the others who lived there before?

**Rav Huna answers:**

When the *Mishna* states that one can add a new room, the intent is that one can split an existing room into two rooms. Likewise, when the *Mishna* states that one can add an upper story to his house, the intent is that he may build an “*afta*,” meaning a balcony or gallery to an existing room, but not an additional story. This is Rav Huna’s explanation of the *Mishna* according to the **Rashbam**.

**However, the question can still be asked:**

Ultimately, this as well will add new residents to the number of those passing from his house to the courtyard, and this will disturb the privacy of those that live there?

**The Rashbam explains,**

This does not require permission, because a person is allowed to fill his own house with people (so long as he does not enlarge it).

### The Tur rules:

One can build a back room or an attic onto his house and open it onto his house but not to his yard at all. The **Rashbam** explained that one must not even make an extra room or story unless it is a case where he builds a ceiling at half of the height of his house and [in so doing] adds an attic.

### Alternatively,

He splits his house into two and puts a dividing wall in the middle, but to add onto the building such as to add an extra room onto the back of his house or to raise the walls of his house so as to make another story — he is not allowed. Nevertheless, when he does not add onto the building, this is fine, as he may fill his entire house with guests and permanent residents. This is just as long as he does not add to it new building neither in height nor in length.

## Adding residents to an existing home

Is a person therefore allowed to add to the number of people living in his house, provided he does not expand the house's size?

The *Rishonim* differ on this question.

1. As brought earlier, the **Rashbam** holds that one may fill his house with residents (as he explained in the *Mishna*).
2. The **Ramah** (*Siman* 279, brought by the **Tur**) holds that one may not add residents to a private home (as this causes disruption to other residents to the courtyard) even though he does not add new construction to his house.

## The Shitah of the Ramah

How can the **Ramah** explain our *Mishna* and *Genara*, which do allow one to add a room or story to one's house?

**According to the Ramah,**

One may add an extra room or story only if one's intention is to use these additional rooms for storage, but not that people should live there.

**The Ramah goes on to say,**

Adding a room is outright prohibited even if only for storage, as this as well causes crowding to the courtyard. However, when he does not add residents (and does not add new building, but merely splits an existing room into two), the other residents of the courtyard cannot prevent him from doing this.

**The Ramah adds further,**

As is brought by the **Tur** and explained by the **Prisha**) that one can add people to his home who live with his family and do not have separate living quarters (the **Beis Yosef** explains that the intent here is his family and servants),

**This is because,**

The courtyard is designated to serve the homeowner by allowing him to reach his house via it, and there is no fixed number of people in his household that have this right. Rather, this right is divided among the homes that open onto this courtyard, whether there are many inhabitants or few. (It is only forbidden to add residents who live by themselves in their own room).

The **Tur** adds that the **Rabbeinu Yonah** explained this *Mishna* and *Genara* the same as the **Ramah**.

**The Beis Yosef** sums up the rulings of the **Ramah**:

- I. If a person adds to his number of family and servants, the other residents of the courtyard cannot prevent him from doing so, but to add strangers to his home, the other residents of the courtyard can always prevent this.

- II. To divide his house into two in width and in so doing to add a new room or to divide it by height and in so doing to add another floor, if the new room or floor is to be used for storage, this is allowed.
- III. However, to add construction, meaning to add an additional story onto an existing house or to open a new room in back of his house, even though this is only for storage, the other residents of the courtyard may nevertheless prevent him from doing so. This is because his right in the courtyard was only for the use of his home and not a new room or story that he builds onto this home.

The **Beis Yosef** adds that it seems to him that according to the **Ramah** as well, if one wants to split his home into two and convert it to two stories or two rooms for the use of his household, the other residents of the courtyard cannot prevent him from doing so.

## Opening a new house into his home

A man bought a house adjacent to his home but in another courtyard, is he allowed to make an entrance from the new house to the former one?

We brought above that the **Rosh** wrote that one should not do so, but the **Tur** brings a differing opinion:

1. The **Tur** first brings the **Rambam** (Laws of neighbors, 5:8) [and some say that the intent is the **Ramban**, as brought by the **Bedek Habayis**, to be quoted later on], who holds that even if he bought a house next to his old home, he may make an opening from the new house to the old one. This is because as long as he joins the house to the old house and not to the courtyard, this is not a case of adding new residents, as they simply pass directly into his house.
2. The **Rosh**, however, does not allow opening even into one's old home, even if this does not directly affect the courtyard.

Did the **Rambam** say this ruling explicitly?

The **Bedek Habayis** (written by the **Beis Yosef**) emphasizes that this is not an explicit ruling of the **Rambam**, but there are two reasons offered as to why the **Tur** brings the above in the **Rambam's** name:

1. The **Rambam** writes: One of the residents of the courtyard, who acquired a home in another courtyard, may not make an opening to the collective courtyard, even if he built a second story onto his house he may not make an opening [from it] to the courtyard because it adds more people to this pathway, etc.” Since the **Rambam** writes “he may not make an opening [from it] to the courtyard,” the implication is that within his own house he can make an entrance, as the **Bedek Habayis** inferred.
2. The **Beis Yosef** writes in the **Bedek Habayis** that it seems more logical to him that there is an error in the text of the **Tur**, and instead of stating that the “**Rambam** writes,” it should state that the “**Ramban** writes,” as the **Ramban** did, in fact, state this ruling explicitly.

What is the *Halacha* concerning the above *Machlokes* between the **Rosh** and the **Rambam** (or **Ramban**)?

The **Bedek Habayis** writes that since the **Rif**, **Rambam**, **Rashba** and **Ritva** all agree that one is allowed to make an entrance to his house, and the *Tosefta* supports this view, this is the *Halacha*.

## Causing crowdedness in the courtyard

The **Beis Yosef** brings two rulings that are brought by the **Mordechai**, both of which state the same principle:

A PERSON MAY NOT CAUSE CROWDEDNESS TO A COURTYARD, AS THIS IS LIKELY TO INFRINGE ON THE OTHER RESIDENTS' USE OF THE SPACE.

The **Beis Yosef** first brings the ruling of the **Mordechai** from *Bava Basra*, **Chetzkas Habatim Siman 557**. The case there is of Reuven, who wants to split his house into two so as to rent one of the units out to others. Shimon, his neighbor, claims he may not do this. Shimon claims that if there are more people living in homes that open onto their courtyard, the outhouse of the courtyard will fill up too quickly. The **Mordechai** rejected Shimon's claim and ruled that Reuven has the right to carry out his plan.

The **Mordechai** writes in **Chetzkas Habatim**, *Siman 558* about partners in a house or courtyard, one of whom allows many people to pass through his area. THE MORDECHAI WRITES THAT THE OTHER PARTNER MAY PREVENT HIM FROM ALLOWING THIS.

The **Shulchan Aruch** rules in this *Seif* the ruling of the *Mishna*,

One of the joint-owners of a courtyard who acquires a house in another courtyard may not make an opening [from the new house] to his jointly owned courtyard. The **Rama** adds parenthetically the reason for this, based on the **Tur**, that no resident of the courtyard has the right to implement changes there at all, rather as it was built or bought or inherited, this is how they should act without changing, unless it is with the others' consent.

The **Shulchan Aruch** adds,

Even if one builds a second story onto his house, he may not make an opening that joins it to the courtyard, as this hampers movement there, and as for the neighbors it is as if they had one neighbor and now they have many neighbors.

**However,**

He can build another story to his house, provided it does not open onto the courtyard. He adds the statement from the *Gemara*, that if he wants to divide his existing house into two he may do so, since he does not make a new opening to the courtyard.

The **Shulchan Aruch** concludes:

All that we learned concerning his acquiring a house in another courtyard, that he may not make a new opening to his jointly-owned courtyard, this applies when he makes the opening onto the courtyard itself. However, he can make the opening onto his [old] house (the *shitah* of the **Rambam**, and not of the **Rosh**), and this is when he seals the opening to the other courtyard (so that people cannot pass from the first courtyard to the second one).

The **Rama** adds the opposing *shitah* of the **Rosh**, who holds that he may not even make the opening to his house.

## Questions and Answers

1. **If a person buys a house in another courtyard, may he make an opening that connects his new house with his old courtyard?**

The *Gemara* states in *Bava Basra* 59b that if a person who owns a house that opens onto a courtyard buys another house that opens onto an adjoining courtyard, he may not build a new entrance that connects his new house to the courtyard of his old house.

2. **What is the reason for this *Halacha*?**

The *Gemara's* reason is that this is “*marbeh aleichem es haderech*.” Literally, this “makes the way too lengthy.” The **Rashbam** explains that more people will now be using the first courtyard than before. This infringes on the usage and privacy of those whose homes adjoin the first courtyard.

3. **May someone buy a house in an adjoining courtyard and, if the house adjoins his house, make an entrance to his old courtyard via his old house?**

**Tosafos** and the **Rosh** write that if one buys a house in an adjoining courtyard, he may not open the house onto his old courtyard. The **Rambam** disagrees.

4. **Can a person add a new room or upper floor to his house?**

The *Mishna* adds that one may add a new room or upper floor to his house, and that these extra rooms may open onto his house.

5. **What question does the *Gemara* ask on the above ruling?**

The *Gemara* asks that the above seems to contradict what was learned earlier. In the *Reisha* of the *Mishna*, we learned that if one buys a house in an adjoining yard, he may not open it onto the yard of his old house, as this is “*marbeh aleichem es Haderech*— it adds too many people to the courtyard and hinders the former residents’ access and usage.

The *seifa* of the *Mishna*, however, says that one is allowed to build another room to his house or a second floor and have this open onto his courtyard. How can this be allowed? Now there will be more people using the courtyard and disturbing the privacy of the others who lived there before?

**6. What is Rav Huna's answer to the above question?**

**Rav Huna** answers (according to the **Rashbam**): When the *Mishna* states that one can add a new room, the intent is that one can split an existing room into two rooms. Likewise, when the *Mishna* states that one can add an upper story to his house, the intent is that he may build an "*afta*," meaning one adds a balcony or gallery to an existing room, but not an additional story.

**7. Ultimately, this as well will add new residents to the number of those passing from his house to the courtyard, and this will disturb the privacy of those that live there?**

The **Rashbam** explains that this does not require permission, because a person is allowed to fill his own house with people (so long as he does not enlarge it).

**8. Is a person therefore allowed to add to the number of people living in his house, provided he does not expand the house's size?**

The *Rishonim* differ on this question. The **Rashbam** holds that one may fill his house with residents (as he explained in the *Mishna*). The **Ramah** holds that one may not add residents to a private home (as this causes disruption to other residents to the courtyard) even though he does not add new construction to his house.

**9. What is the summary of rulings of the Ramah brought by the Beis Yosef?**

If a person adds to his number of family and servants, the other residents of the courtyard cannot prevent him from doing so, but to add strangers to his home, the other residents of the courtyard can always prevent this. To divide his house into two in width and in so doing to add a new room or to divide it by height and in so doing to add another floor, if the new room or floor is to be used for storage, this is allowed.

However, to add construction, meaning to add an additional story onto an existing house or to open a new room in back of his house, even though this is only for storage, the other residents of the courtyard may nevertheless prevent him from doing so. This is because his right in the courtyard was only for the use of his home and not a new room or story that he builds onto this home.

**10. A man bought a house adjacent to his home but in another courtyard, is he allowed to make an entrance from the new house to the former one?**

The **Rosh**, however, does not allow an opening even into one's old home, even if this does not directly affect the courtyard. The **Rambam** holds that if he bought a house next to his old home, he may make an opening from the new house to the old one. This is because as long as he joins the house to the old house and not to the courtyard, this is not a case of adding new residents, as they pass directly into his house.