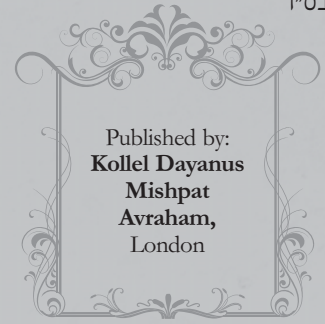


THE  
**Heichal Hora'ah**  
DEVAR HAMISHPAT BULLETIN



Clarifications in the Laws of Choshen Mishpat and Ribbis | #24 Shevat 5784

- Halacha Insights -

**Neighbors Responsibilities**

With Hashem's help, we will explain the laws of neighbors' responsibilities to each other: it should be noted that in the days of Chazal they lived in different circumstances than today, they had different issues, and that is how the *halachos* were determined by *Chazal* and the *poskim*. Today, the reality has changed, the issues have changed, and the *halachah* has changed. But the present day *halachah* is established according to the rules set by *Chazal*.

**Definition of 'Nizkei Shecheinim'**

What responsibility does a person living in a private house have towards his neighbors? We must also clarify, when *Chazal* required to distance from one's neighbor things that may harm him, on what halachic rules are these laws based? Why can't I do as I like in my own property?!

For example, if one's neighbor has a storeroom of grain or wine, *Chazal* forbade him to use anything that causes heat or has a bad smell, so as not to harm his neighbor's produce. But this law is different from any other *mazik*, because a regular *mazik* acts in the ground of the

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**Advice Corner**

**How to Really Win a Din Torah**

In order not to waste money on a din Torah, first discuss the issue with a Rav who is learned in Choshen Mishpat. Especially when you have a disagreement with another Jew, you should know that there is halachah, but there is also the factual part of the din Torah. Very often, the litigants would agree to a compromise, but the to'en Rabbani seeks to continue the case so as to gain a fat wage.

There was recently a din Torah in America regarding a partnership that split up, and each side paid its to'en over \$100,000. Had they thought this out beforehand, the sides would have found better to do with the money than to pay the to'en ...

First of all, write down on a paper, or clarify before a close friend, all the details. Make sure it is the exact truth, and make sure that all the details are clear. Very often litigants come to beis din without clarifying the details beforehand, and when the dayan asks them questions they say the wrong answers, and the dayan gets a false picture of the true story. Even a small change in the story can change the psak din. So the litigant should therefore clearly clarify all the details, without leaving out a single detail. Even things he thinks may be trivial, can make a big change in the final psak din.

Secondly, after carefully clarifying the facts, seek a to'en Rabbani who is a yerei Shamayim. Not one who will want to pull out the din Torah as long as possible in order to make a fat wage. And even more so, if he isn't a yerei Shamayim he might lie in order to win the din Torah, the money that the litigant wins isn't his. It is stolen money, and the litigant can't claim that he received the money legally according to beis din, because the beis din only rule according to what they hear. If the litigant lies, even if the beis din rules in his favor, the money he gains is stolen.

Thirdly, before clinching any partnership, business deal or debt that a person makes, he should first clarify the issue with a Rav fluent in Choshen Mishpat. Reality has proven that most din Torahs would have been averted had a Rav been involved from the start. Often there are problems of ribbis that arise after the partnership is clinched, and if they had gone to a Rav beforehand they would have saved many disputes.

And also, by going to a Rav, who doesn't have any personal considerations, will have a different view of the deal, and he may be able to give a good piece of advice. He may tell one of the partners that the deal isn't financially advisable, saving him from any loss.

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person who is harmed, while here a person is in his own home, and his actions on his own property harm his neighbor. Therefore, these *halachos* regarding neighbors' responsibilities are not based on the regular law of *mazik*.

There is also a large difference between a regular *mazik* and neighbors' responsibilities: Regarding the regular *mazik*, even if one only causes damage, the one causing the damage is obliged to remove his *mazik*, while regarding neighbors' responsibilities the *halachah* is in accordance with Rebbi Yossi that the one being damaged is obliged to distance himself. Only if the damage is a direct cause of his actions (*giri dilei* – his arrows), must the damager distance the cause of damage.

In order to understand the basics of neighbors' responsibilities, let us cite the Chazon Ish (*Bava Basra* 14:14): "Here, since he is on his own property performing routine activities, *Chazal* permitted some of these since it is natural for neighbors to be hurt one from the other in one way or another, and routine activities in one place can cause damage further away, and this is how he first attained the property. Therefore, the one being damaged is obliged to move, and even he doesn't it is considered as if he entered the *mazik's* property and he brought the damage upon himself." [Following this explanation, those damages that are permitted, like planting a tree whose roots damage in another person's property, is only permitted if planted in one's own property, but not if planted in the other person's property, in which case he will be responsible due to "fire."]

The Nesivos (155:18) asks: Why are there things that don't need to be distanced even though they harm one's neighbor? And he answers: There are things detailed in Gemara that don't need to be distanced, because if he would be responsible for their damages he won't be able to use his property for regular usage, and he won't be permitted to do these basic acts since he can't protect them from damaging, and the Torah doesn't oblige a person to nullify his property. Instead, Rebbi Yossi says that

the one being harmed is obliged to distance himself, because why should the *mazik* annul his property? The one being damaged should annul his property, and then he won't be harmed. (But as mentioned above, direct damage – *giri dilei* – isn't considered annulling one's property from its basic usage.)

However, even though neighbors aren't considered *mazikim*, since it is the norm to live together, *Chazal* put certain regulations and responsibilities on the neighbors [and according to some this distancing is *min haTorah*, see Gr"a 155:8, but the Chazon Ish implies that it is a Rabbinic regulation]. And according to some *rishonim*, where the one damaging is obliged to distance, if he doesn't do so he must pay for the damage done, and the two views on this are brought in Shulchan Aruch *siman* 155 *se'if* 33.

The Shulchan Aruch Harav writes: One must not harm his friend's money or cause him harm, even when he does a necessary act within his own property and it damages his nearby<sup>1</sup> neighbor. use that is necessary for him and from which harm is caused to his neighbor who is close to his house.

The Pischei Choshen gives a strong piece of advice in every issue of neighbors' disputes: Every side should fulfill the saying, "what you don't like, don't do to others!"<sup>2</sup> That way, many quibbles will be prevented.

### What Things Must Be Distanced?

According to the Rabanan in Gemara, if a person is damaging his neighbor, the one damaging must distance himself, while Rebbi Yossi holds that the one being damaged must distance himself, unless the damage is direct (*giri dilei*) in which case the one damaging must distance himself. The *halachah* is according to the view of Rebbi Yossi.

But what exactly is regarded direct damage, what isn't? The Chazon Ish answers (*Bava Basra* 14:14): "The definition of *giri dilei* relies on [the *dayan's*] judgment, who should distance himself. If a person plants a tree in his friend's yard and damages his well, this is certainly caused

1) The additional word "nearby" implies that all the laws of *nizkei shecheinim* only relate to a nearby neighbor, and not one who isn't nearby.

2) Even if he isn't obliged by *halachah*.

by him, while if a person does a regular activity in his own property he isn't called a damager! Therefore [the *dayan*] must carefully weigh up the sides, what are the rights of the damager, what are the rights of the one being damaged."

The Nesivos adds, although we find a *machlokes* between the *rishonim* whether a neighbor is obliged to pay if he didn't distance as necessary, that is only in a case where his object **caused** damage to the neighbor. But if it was direct damage, for example one who grinds with millstones that shook the wall and damaged his neighbor, according to all views the damager must pay. On the other hand, if he didn't remove his ladder from his neighbor's fence, and a mongoose climbed on it and ate the neighbor's chicks, he is exempt from paying, since the damage was caused by the ladder and the mongoose together.

Regarding dust, for example he worked at home and dust flew into his neighbor's property, the Nesivos says he is exempt from paying, since this is a *din* of *gerama*, while the Shach (155:14) holds that he must pay.

### Civil Law

Pituchei Choshen cites from *teshuvos* Beis Yitzchak (*Choshen Mishpat* 78), if civil law obliges the damager to distance himself, we follow that law.

### Renting an Apartment to One Who Harms His Neighbors

Another aspect in *nizkei shecheinim* is if it permissible to rent or sell an apartment to one who will harm the neighbors by opening a store or the suchlike. The Tur writes that even if the owner doesn't have anybody else willing to rent the apartment for the same amount of money, it is nevertheless prohibited to rent to him. But the Bach rules that if the owner doesn't have anybody else at all who is willing to rent the apartment, it is certainly permitted to rent it out to that person who will harm his neighbors, otherwise he will totally lose his apartment.

Shulchan Aruch (175:40) writes: One who

sells or rents his house to a non-Jew, we excommunicate him until he accepts to pay any financial losses caused by the gentile. According to the *Mechaber*, even if they didn't yet excommunicate him, the seller must pay for all financial losses, while the Rema is of the opinion that if he wasn't yet excommunicated, the seller doesn't have to pay.

Explains the Gr"a, the argument between them is, what *din* does selling or renting to a gentile have? If it merely causes damage, then it is prohibited, but the seller or owner doesn't have to pay. This is the view of the Rema. But if it is direct damage, *giri dilei*, the Jewish seller or renter must pay all financial losses caused to the neighbors.

But one can ask: Why is selling to a gentile considered direct damage? One can understand that renting to a gentile is the same as bringing a wild animal into one's house, as is ruled in Sema in *siman* 175, that one who buys a field from a gentile, the other neighbor can't argue that he had the right to buy it because he was a closer neighbor and had the right of a *bar metzra* (the bordering neighbor), because the one who bought the field can claim "I chased away a lion from your border," the lion being the gentile. But if somebody sells his house to a gentile and then the non-Jew causes financial losses to the Jewish neighbors, how can we oblige the seller to pay? The house is no longer his! The answer must be, that this is another *din* in the responsibilities of one neighbor to the other, not to bring a neighbor who damages others, and therefore he is responsible due to it being direct damage.

### What is the Din of Karaites?

Teshuvos Maharach discusses the *din* of Karaites: Regarding gentiles, the Gemara uses the claim "I chased away a lion from your border," the lion being the gentile. But what is the comparison of the gentile to a lion? There are two ways of understanding this comparison: 1) A regular gentile is a strong person and can harm in any situation

or circumstance, and the Jew will certainly lose because nobody will save him from the gentile. If that is the reasoning behind the *din* of the gentile, the Karaites are not in the same definition, since they don't have control and there is no reason to fear lest they cause any damage to their neighbor.

But the reason why it is prohibited to sell or rent to a gentile could be for another reason: 2) because the gentile won't accept *Beis Din's* rulings, and if any issue arouses he won't agree to the Jewish rulings, and if so the same is regarding a Karaite who doesn't accept Torah rules, and everything he does is according to the non-Jewish rules and courts, he could harm the Jew if there is a dispute between them and he won't agree to the Torah's ruling.

The same *nafka minah* would be regarding a house that belongs to a gentile but is rented out to a Jew. If the reason why the gentile is considered "I chased away a lion from your border" is because he is a strong person and can harm in any situation or circumstance, if he has rented out the house to a Jew, this argument is no longer relevant. But if the reason is because gentile won't accept *Beis Din's* rulings, and if any issue arouses he won't agree to the Jewish rulings, the same applies

even when he rents out to a Jew, because if there is an issue of *nizkei shebeinim*, since they will be arguing with the non-Jew, this *din* does apply.

The Shach (175:33) seems to understand that the Ranach holds of the second explanation, and therefore a field that belonged to a Karaite doesn't have the *dinim* of *bar metzra*.

And the Mishpat Shalom there adds: "Even a wicked Jew who doesn't comply with *Beis Din's* rulings, and he is strong and is an evildoer, his fields have the same *din* as one who buys from a gentile."

But regarding selling to a gentile, the *Mechaber* writes in 175:41 that if one doesn't find a Jewish renter or buyer for the price offered by the gentile, it is permitted to sell or rent to the gentile.<sup>3</sup>

### **Damaging Another Person's Honor**

The *Teshuvos* Chasam Sofer, cited in *Pischei Teshuvah* beginning of 171, holds that the *dinim* of neighbors' responsibilities relate to the neighbor's body or possessions, but there is no limitation for a person to do something in his property that will tarnish his neighbor's honor.

3) Unlike the *din* mentioned above, that one may not rent a house to a person who will make it into a store, which is prohibited even if one doesn't find another person to rent it for the same price. This can be explained according to the views that selling to a gentile is considered *gerama* and not direct damage, while renting one's house to somebody who will open a store is considered direct damage.

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