

THE Heichal Hora'ah DEVAR HAMISHPAT BULLETIN

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- Halacha Insights -

Neighbors Responsibilities #2

Noise Damage

So far we have discussed about someone who did an act inside his house and thus harmed his neighbor. Now we will discuss a more common source of dispute between neighbors: If somebody does an activity in his home or opens a shop, which increases the numbers of people entering and exiting his home, and increases the noise. Can the neighbor prevent it? Here, it is not his money or property that is being disturbed, but his sleep and rest.¹ The *Mechaber* brings in *siman* 156 two views if one has the right to protest against a neighbor's noise.

The source is the Mishnah in Bava Basra that differentiates between the "noise of hammering" in one's home which one may not protest and he has the right to hammer in his home even though it makes a noise, and one who opens a store in the courtyard, where the neighbors have the right to prevent him from doing so due to the "noise of those entering and leaving" the courtyard.

But the Mishnah doesn't explain the difference between the "noise of hammering" which is permitted and the "noise of those entering and leaving" which is prohibited.

How the Rishonim Understood the Mishnah

Ramban and Rashba explain, noise isn't an issue, since a person may

1) Sleep by night and rest by day, as the Chasam Sofer writes in a teshuvah, one has the right to sleep by day as by night.

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Advice Corner

Due to the many cases that have come before us of disputes between buyers and brokers, where buyers sue brokers for cheating them, or a buyer trusted the broker regarding a certain point and it later emerged that he was misled.

We are not relating to the *halachic* side of the matter, as there are circumstances where the broker will be found liable to pay for misleading the buyer, based on the Gemara (Bava Kama 89b), if a person shows a coin to a money changer and the money changer tells him that the coin is legal, and it is discovered to be forged, the money changer must pay for any loss caused. There are many details to this *halachah*.

But we would like to address a different side to this issue, and it is our duty to clarify an important point: It is common in business to consult experts, and the buyer trusts the expert who advised him how to act. Based on that information, he buys the object or asset. Similarly, the broker often reveals the potential profits in the deal, while the losses that could arise he doesn't mention at all. And only too often the buyer reveals the downside after the point of no return.

Sometimes the buyer consults with good-hearted businessmen, thinking he can rely on their opinions. But they do not take responsibility for their words and often they will answer casually without delving into the matter, and the buyer is the one who suffers. Therefore, the iron rule in these matters is: Make your own inspections and investigations, and don't rely on anybody else!

Even if you don't understand the issues involved, if you do your homework and make the best possible enquiries, you will understand the ins and outs yourself without having to rely on others.

Remember, don't trust the advice of just one or two advisers!

Even if they are your good friends and certainly

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Heichal Hora'ah Devar Hamispat

For shaalos and halachic clarifications Monetary Dinim and Hilchos Ribbis of Kollel Dayanus Mishpat Avraham, London

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do what he wants in his courtyard and nobody can protest it due to the noise. And the fact that he disturbs a neighbor from sleeping is neither an issue, since this isn't called "damage." Instead, when the Mishnah mentions the "noise of those entering and leaving," it doesn't mean the "noise," but the increase of people in the courtyard.

But the Rambam writes: A store in the courtyard, the neighbors can protest against him and say "we can't sleep because of the noise of those entering and leaving"... but they can't protest against his "noise of hammering" because he has a *chazakah* to do it."

According to the Rambam, the Mishnah isn't discussing whether or not one may protest against the hammering or against the store, because one may protest against both; instead, the question of the Mishnah is whether a *chazakah* helps. And the ruling is, that a *chazakah* doesn't help regarding the "noise of those entering and leaving," but a *chazakah* is applicable regarding "noise of hammering."²

The Pischei Teshuvah brings the view of the Maharalbach, who differentiates as follows: If the person can make his noise somewhere else, he is obliged to do so. If he can't, it is permitted. Therefore, since a person can open his store in the market and there is no reason to do so especially at home, he is not permitted to do so in the courtyard. But the "noise of hammering" is done at home, and he has no other place to do his hammering. Therefore, it is permitted.

The Chasam Sofer (*Choshen Mishpat* 92) seems to take this view into account.

The Ramah (*Bava Basra* 21) says the difference is, "noise of hammering" cannot be protested because a person may do in his home what he likes, even if it disturbs sleep. But "noise of those entering and leaving" is noise done in the courtyard that belongs to all neighbors, and they can argue that this was not the accepted usage of the courtyard when they bought it, and they didn't become partners in the courtyard with this in mind. The usage of the courtyard is to pass between the house and the street, and not to make noises.

The Ramah continues, saying that although a neighbor can protest against the "noise of those entering and leaving," that is only the case if he brings people who are not visitors due to the regular usage of the courtyard. But if the visitors come to reckon the money they owe him, or are his creditors, this is the regular use of a house and courtyard, and if so, the neighbors can't protest such visitors, no matter how many they are.

That being, a Rav, who people come with *shaalos*, or a Rebbe who people come to for advice, a *brachah* or *yeshuah*, since

this is their regular use of the house, the neighbors can't protest. Similarly would be the *din* regarding a therapist or the suchlike.

But if so, the Rebbe or Rav won't be permitted to open an official waiting room, or publicize his open hours,³ since this is beyond his regular house activities. If people come on their own accord, one can say it is similar to creditors or people coming to make financial reckonings with him, but if he publicizes open hours, it is as if he is inviting people to come, and that is prohibited. It would therefore also be prohibited to open a *beis hora'ah* in one's home, or open a clinic.

But it is possible that a Rav or Rebbe are considered a *devar mitzvah*, and a *devar mitzvah* is permitted as we see regarding a *melamed tinokos* that is permitted.

Similarly, a *mashpia* who sits with followers on Friday night singing *zemiros*, this may be regarded a regular activity, since the followers come on their own accord. But if so, it would be prohibited to publicize times for the singing.⁴

As explained in Gemara, the noise of Torah is a *mitzvah* and therefore one cannot protest it, but the Levush writes (156:3, cited in Pischei Teshuvah 2), the *takanah* of Rav Yehoshua ben Gamla that permits opening a Talmud Torah, is only if the Talmud Torah is in the same courtyard, but if they are living in the same home and one of the partners wants to open a Talmud Torah in the home, the other partner may protest it, since that is something most people won't be able to endure and this was not their included in their partnership.

But the fact that many people are entering the courtyard is no claim, since the more people come the greater the *mitzvah*.

Let us conclude with the worlds of the Avnei Nezer in a *teshuvah* (*Choshen Mishpat* 26), regarding a building that was allocated for *shechting* chickens, but the building burnt down and the partners are now protesting against the *shochtim's* use of the place due to its bad smell. After siding with the *shochtim*, the Avnei Nezer writes: Even if the partners would be halachically correct, they shouldn't stand on their rights in this case, which is a service for the public and saves Yisrael from eating *treif*, so if they listen to my advice they should give up on their claim and they will have the merit of the *rubim*, and this *zechus* will stand for them for many generations, and they will be signed in the book of *tzadikim*.

Detached Houses

All that is discussed till now, is regarding an apartment block, as the Pischei Choshen (chapter 15 end of footnote 56)

2) According to the Rambam, the reason why a *chazakah* helps regarding the "noise of hammering," because that is his work; a *chazakah* won't help regarding "noise of those entering and leaving," because that is not his actual job, but a side effect.

The Nesivos offers a different explanation: the "noise of hammering" is one noise, and if a person accepts it, then he cannot regret it. Therefore a *chazakah* helps, as it means that the neighbors accepted the noise, and the reason they are now protesting is because they are regretting it. But "noise of those entering and leaving" is always a different noise, and the neighbors can say that initially they accepted the noise but now the noise has changed, and they cannot endure it."

3) But Rav Vosner (volume 9) writes that having fixed times is not a problem of *nizkei shecheinim*, as the Rama writes that the problem of "noise of those entering and leaving" is because it is at all hours of the day. But if he writes open hours during the evening, this depends on the *machlokes Mechaber* and Rema.

4) Similarly a Rosh Yeshivah who delivers *shiurim* in his home, this is part of his regular living style to deliver *shiurim* and *talmidim* come to his home to hear the *shiurim*. This isn't comparable to a worker who works at home and people come to him, since the work is not part of his home, unlike the Torah of the Rosh Yeshivah this is his regular life.

writes that there is a claim of “increasing the numbers of people” in a joint staircase, but in detached houses the neighbors have no claim against what a person does in his own house. This is an argument between the *Mechaber* and Rema beginning of *siman* 156, according to the *Mechaber* a neighbor can protest even in a cul-de-sac, but the Rema writes that only those living in the same courtyard can protest.

An Ill Person

Although the *halachah* is that a neighbor cannot protest loud noise, a sick person can protest loud noise (Rema 156).

But the Chazon Ish (*Bava Basra* 13:11) writes, this is

only regarding irregular activities, but if the activities are regular ones that people do at home, even if they are sometimes noisy, the sick person has no right to protest. Any person is permitted to bring youngsters and children to his home, and the ill neighbor cannot protest that their noise is disturbing his sleep, since “a person doesn’t have to leave his home because of that ill person.”

Temporary Damage

Even when a neighbor has the right to protest, that is only if the damage is done on a permanent level. But if the noise is only temporary, for example he makes a *sheva brachos* in his home, he cannot protest it.

ע"י הרה"ג ר' ברוך אברהם עסטרייכער שליט"א
ראד"כ ומרבני היכל הוראה 'דבר המשפט'

- Halacha Insights -

תשובה מאת הגאון המפורסם רבי חיים יוסף דוד ווייס שליט"א בעמח"ס ויען דוד

Parashas Vayeshev, whose Haftarah writes 'a pauper for shoes' (Amos 2:6), see below

To Rav Borech Avraham Ostreicher,

Head of Heichal Hora'ah Devar Mishpat, London.

Regarding the distress of tenants who are struggling to pay their rent, in addition to their vital living costs that are inflating daily. While there are some costs that have risen due to acceptable reasons, in many cases there is no justification to raise the price, especially rental prices. Figures have shown that house prices and rental in the non-Jews is lower than in the Jewish market.

Teshuvah:

A) The Gemara (Baba Basra 90b) states: Our Rabbis have taught: Hoarders of produce and moneylenders for interest ... and those who raise market prices by selling for more than the standard price, regarding them the passuk states, 'Hashem has sworn by the pride of Yaakov, I will never forget any of their actions' (Amos 8:7)."

The Iyun Yaakov explains: "Because these people are generally stealing from the poor, and the passuk warns that 'he [the outdone pauper] will cry out to Hashem against you, and you will have a sin,' because the cries of the poor have a stronger power."

And the Rashbam writes (s.v. otzrei peiros, mafki'ei she'arim): "Those who buy produce in the market and hoard it ... causing financial loss to the poor. "Those, who drive up prices' – those who add to the standard price."

The Gemara continues there, saying: "One may not hoard produce that contains an element of basic sustenance, such as wines, oils and flour."

B) Shulchan Aruch (Choshen Mishpat 231:26) rules: "Whoever drives up the price by charging more than the accepted price, [Beis Din are] permitted to flog him and punish him accordingly."

The Levushim (ibid 85) adds: "Whoever drives up the price ... is punished the same as moneylenders charging interest, because they transgress the mitzvah of 'your brother shall be able to live with you,' since he takes away his living."

C) Regarding those who inflate house prices, one can derive from the teaching of the Rambam (Mechirah 14:5): "One may not hoard produce ... for this causes distress for a Jew," meaning that any price increase that causes distress to a Jew is prohibited, and especially for paupers, as the Torah warns "you may not cause distress to an orphan or widow," on which the Midrash comments: "I may have thought that it is only prohibited to cause distress to an orphan or widow, how do we know that the same is to other people? Therefore the Torah writes 'lo te'anun.' I may have thought that only extreme distress is prohibited, how do I know that slighter distress is forbidden? Therefore the Torah writes 'lo te'anun.'" (This Midrash is written regarding the Ten Martyrs who substituted for Yaakov's sons, which is the topic of the passuk "a pauper for shoes.")

A punishment is only inflicted if a warning is issued.

Chaim Yosef Dovid Weiss

won't want you to lose out, don't rely on them. Because no matter how caring they may be, a person is the closest to himself, and nobody will verify the facts as much as you yourself.

Likewise in all matters of buying and selling shares, make all the necessary homework yourself, without relying on others.

And if, after all your investigations, you still have a doubt, and you properly understand the two sides of the matter, you can then ask the experts for their opinion.

If you follow our advice, you will be saved from many heartaches and headaches.

(Needless to say, this is all within the scope of *bishtadlus*, while the main thing is to *daven* to Hashem for success in all your business dealings.)

By practicing our guidance, you will avoid conflicts or arguments, because if you made the necessary inquiries and relied on your own perception, even if a problem later transpires you won't blame anybody else.

It is worth quoting what the Satmar Rebbe wrote (to Rabbi Chananiah Yom Tov Lipa Lefkowitz) regarding his efforts to attain immigration permits to the USA after the Holocaust, as these words of wisdom are as relevant to us now, as it was then:

"Efforts that others make for you cannot be compared to the efforts one does for oneself. If I speak with some people [to help you], even those who will listen to me will do so because of the mitzvah, and even the lightest job that people do for a mitzvah is for them a great effort, and they consider it to be real *mesirus nefesh*. All the more so, something that requires much effort and toil like this, **millions of other people won't be able to do what a person does for himself.** I cannot elaborate in writing, but I expect you to understand.

"It would be beneficial if you first come here yourself, to see for yourself this country's virtues and all its shortcomings, both in spiritual and physical issues. You know your situation and the situation of your family, both in *ruchniyus* and *gashmiyus*, and you will be able to decide for yourself if it is worthwhile to bring your family here.

"Because one who seeks the truth can decide far better than by what others tell him."

This is a fundamental principle that is also relevant in business: Don't trust others, especially those who have an interest in the matter.

That's why a person must verify all the details himself, to the best of his ability.

On the agenda – Shaalos that recently reached the Heichal Hora'ah

The Rabbanim have raised the issue of **metro bank**, that there is a prohibition of *ribis* if a Jew is involved.

הבנק הם שליחו, ואם כן יש לצרף סברת [המרדכי בשם] רש"י שמתיר לקחת ריבית ע"י שליח משום שאין שליח לדבר עבירה. [אלא שהפוסקים פקפקו הרבה בזה, כי אם ההלואה על שמו אינו מועיל שליחות, ועייני].

ואולי יש מקום להתיר על פי דברי המהרש"ג (הובא בבית יהודה פרק ל אות נ"ד) שאם הפקידים עכו"ם יש להקל. אולם לכאורה לא שייך היתר זה בניד"ד, כי דרך התשלומים בבנק בזמנינו אינו כמו בזמנם שנותן ונטל מעות בידו, אלא שמשלמים בהעברה בנקאית (bank transfer), וא"כ ההעברה נעשה ישר לחשבון הישראל ואין יד פקיד עכו"ם באמצע.

אלא שיש לעיין אם מה שהכסף עובר בחשבון עובר משום "מיחזי כריבית".

וג"כ דנו להתיר ע"פ שו"ת הריב"ש [הובא רמ"א קסח כ] שאם אין ביד הלואה לסלק העובד כוכבים ולהחזיר לו מעותיו, מותר לישראל אחר לקנותו ממנו. ועפ"ז יש שדנו להתיר, שכיון שלוח על הרבה שנים לא יוכל באמצע הזמן לסלק את כל החוב, וא"כ נחשב כאילו לא מצו לסלק החוב וא"כ נחשב כמו חוב של גוי. ולפי זה, אם היתה הלואה בתנאי *fix* שאינו יכול לסלק החוב אם לא שמשלם קנס, ייתכן שזה נקרא "לא יוכל לסלק החוב" וא"כ יש מקום אולי לדמותו להיתרו של הריב"ש.

כל זה נכתב לא להלכה, רק להעיר ולפלפל כדרכו של תורה.

וכך, [וראה גם בשו"ת אבני גזר יו"ד סי' ר"ב אם מועיל זקיפה במלוה אפ"י על הריבית שעלה אח"כ], ואם כן אין זה שייך לנידון דידן.

אלא שיש לדון מסימן קס"ח ס"י ברמ"א בהלכה של ישראל שקנה חוב מגוי, מבאר הרמ"א שיש בזה איסור דרבנן שלוקח ישראל מישראל ריבית, ומבאר הט"ז שזה רק באופן שלא קנה בקנין גמור, ומשו"ה אסרה רק מדרבנן, אבל אם קנאה בקנין גמור הוי ריבית גמור, [אלא שבח"ד סק"כ מבואר שזה ריבית דרבנן כי מכירת שטרות הוי רק קנין דרבנן], וכן הש"ך בנקודות שם סובר שכאן מיירי שקנה רק בדיניהם ולא בדיניהם וע"כ הוי רק מיחזי כריבית, אבל בקנה בקנין גמור הוי ריבית גמור.

ובמקרה שלפנינו, יש שדנו [מכתב של דיין ענגלענדר דומ"ץ בב"ד לונדון כ"א טבת תשפ"ד] שלמרות שהקנין נעשה רק בדיניהם ולא בדיניהם, יש לאסור, כי מועיל הקנין אפ"י בדיניהם מדין קנין סטימותא (פירוש, מנהג הסוחרים לבצע קנין והעברת בעלות באמצעות רישום על חביות או תקיעת כף וכדומה), ש"ל שהוא קנין דאורייתא. ואפילו אם לא קנה בדיניהם, יש לאסור מדין הרמ"א שהוא ריבית דרבנן.

אלא שאם באנו לאסור רק משום דינו של הרמ"א, יש לחלק, כי סברת הרמ"א לאסור הוא משום מיחזי כריבית, פירוש כיון שבא הריבית ליד ישראל. וא"כ היה מקום לומר שבזה מועיל סברת אחרונים [שואל ומשיב ועוד] שכל בנק הוי רק כשליח, שהפקידים של

בענין חשבון בבנק בו מקבל ריבית על פקדונותיו, וכעת עברה בעלות הבנק ליהודי מומר.

נביא כאן מקצת מראה מקומות בנושא זה מה שדנו בזה הרבנים שליט"א.

יש לעיין אם יש מקום להתיר מדין מומר אשר נחלקו הפוסקים אם מותר להלוות למומר בריבית, אלא שהרמ"א כותב (קנט ב) שטוב להחמיר אם אפשר להשטמ ממנו. [ובניד"ד לגופו של הענין צריכים לברר המציאות היטב מה שנוגע בניד"ד].

ובגדר מומר, דעת הבי"י (יו"ד ב) שמומר להכעיס לדבר אחד הוי מומר, אבל רוב פוסקים (ראה גם בשו"ע הרב קנט עח) סוברים שאפילו עובר עבירה להכעיס לא הוי מומר, רק אם אדוק לע"ז, ואם כן אין כאן דין מומר [וע"י בשו"ת בלבושי מרדכי ח"א יו"ד סי' צ"א בענין אם כבר הלווה למומר אם יש לצדד להתיר].

ואם לוח מהבנק (mortgage) כשהבנק עוד היה בבעלות הגוי, ואח"כ קנה ישראל כל הבנק כולל כל החובות והזכויות שבו, האם נחשב כמי שלוח בריבית מישראל מעכשיו? הנה, בסימן קע"א מבואר שישראל שלוח מעות מעו"ג בריבית ונתגייר, אם זקפן עליו במלוה (פירוש שהחשיב הכל כקרו) עד שלא נתגייר, גובה קרן וריבית. הרי מבואר שאם זקפן עליו במלוה נחשב לכל כחוב של העכו"ם, וא"כ יל"ע בנידון דידן האם נחשב ההלואה כ"זקפן עליו במלוה", אשר לפ"ז יהיה מותר להמשיך בתשלום החוב. אלא שבדין זקפן עליו במלוה מבואר שצריך שיהיה נכלל בהקדן שחייב כך

• פרנס היום •

הרבני הנגיד ר' שלום צבי בערגער שליט"א
לרגל שמחת נשואי בתו למזל טוב

• פרנס היום •

הרבני הנגיד ר' נעציל בערגער שליט"א
לרגל שמחת נשואי בנו למזל טוב

• פרנס היום •

הרבני הנגיד ר' יואל סופר שליט"א
לרגל שמחת נשואי בתו למזל טוב

• ברכת מזל טוב •

שלוחה בזה ליריבו הרבני הנכבד חזקיה, שמו השוכן ותיק לפנינו
הר"ר יעקב יוסף גליק הי"ו
לרגל שמחתו הגדולה
שמחת הולדת בתו
למזל טוב ובשעה טובה ומוצלחת
יחד שיוחה מננו ריבת נחת הקדושה ויחה להמשך בפתולתו והימים

• ברכת מזל טוב •

שלוחה בזה ליריבו הרבני הנכבד חזקיה, שמו השוכן ותיק לפנינו
הר"ר יוסף בן ציון האפמאן הי"ו
לרגל שמחתו הגדולה
שמחת אירוסיו בנו
למזל טוב ובשעה טובה ומוצלחת
יחד שיוחה מננו ריבת נחת האמן מישראל ויחה בנן עדי עדי

הגליון נתגרב ע"י הטפסר המרומם רודף צדקה וחסד מרים כבוד התורה וכפרט לכולליו

הרה"ח ר' יעקב מאיר דרייפוס שליט"א לע"נ אביו הרה"ח ר' מיכאל בן ר' ירמיהו ז"ל גלב"ע כ"ב אדר תשפ"א ת.ג.צ.ב.ה