BUSINESS WEEKLY

under the auspices of
HaRav Chaim Kohn, shlita

BUSINESS HALACHA INSTITUTE
מכון לחושן משפט

Restoring the Primacy of Choshen Mishpat

ISSUE **#133** / PARSHAS **VAYEITZEI**
FRIDAY, **NOVEMBER 23**, 2012
9 KISLEV 5773

STORY LINE

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Hurricane Havoc

Hurricane Sandy plowed through the eastern seaboard, leaving devastation in its wake: mandated evacuation, flooded houses, power outages, uprooted trees, and smashed cars.

The storm also raised serious questions regarded rented properties: Does a tenant have to pay rent for the time that his rental house was affected by the storm?

Rabbi Dayan's yeshivah was forced to close for a few days following the storm. When it reopened, his students were bursting with questions. Some insisted that tenants should not have to pay for the time that they were unable to use the house - and should even get a refund if they prepaid. Others argued they should still have to pay.

Rabbi Dayan quieted the students. "It is impossible to provide a single, definitive ruling on this complex question," he said. "The issue depends on whether the premises were unusable because of evacuation guidelines, actual damage due to water, loss of electricity due to major shutdowns, or trees falling on individual wires. If the house was rendered completely unlivable, the tenant usually does not have to continue paying rent (C.M. 312:17). Even if the property was not completely ruined, it is important to introduce the concept of makkas medinah, a calamity of widespread damage."

"Where is this concept found?" asked Aryeh.

"The Mishnah (B.M. 105b) addresses the case of a person who leased a field and the grain was devoured by locusts or shriveled by an intense heat wave," answered Rabbi Dayan. "If the devastation was makkas medinah (widespread devastation) he is entitled to a deduction from the rent. However, if the plague was not widespread, he must pay the full amount."

"What constitutes a makkas medinah then?" asked David.

"Makkas medinah is when the majority of fields in that plain or city were damaged," replied Rabbi Dayan (C.M.322:1). "If the majority of the region was affected, we cannot attribute the loss to an individual's misfortune; if it was not, we attribute the loss to the misfortune of the renter. In our case, the 'city' does not necessarily mean the entire municipality, but rather those places faced with potential danger (see Kesef Kodashim 321:1; Aruch Hashulchan 312:36)."

"What percentage of the rent can be deducted?" asked Shlomo.

"The Mishnah does not specify," replied Rabbi Dayan. "Rema (312:17) indicates that the loss is borne completely by the landlord.

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FROM THE BHI HOTLINE

Uprooted

Submitted by A. P.

During the recent hurricane, one of my trees fell into my neighbor's yard. It will cost a few hundred dollars to have the tree removed.

Q: Who is responsible to pay for the tree removal?

A: It seems that an explicit source addresses your question. The Mishnah (B.M. 117) teaches that if one's wall collapses into a neighbor's yard, the owner of the wall must remove the stones. Even if the owner were to declare the stones ownerless and offer them to his neighbor, he does not free himself of his responsibility to remove them.

But Tosafos (B. M. 118a: amar) challenges this ruling with a contradictory halacha. If one accidentally drops an object on the street - a potential hazard to the public - and he decides not to pick up the pieces, he is no more responsible to remove them than anyone else, since he essentially declared those pieces hefker (ownerless) (C.M. 411:2).

Ostensibly, the same principle applies to the owner of the wall who declares the stones hefker. Why may one declare broken items ownerless but cannot declare stones of his wall ownerless?

Two resolutions are suggested. Tosafos writes that it depends whether we can assume that one truly intends to relinquish

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STORYLINE CONTINUED

Some suggest that it should be shared between landlord and tenant (see Sma 321:6)."

"What about the fact that the tenant didn't cancel his rental and continued to keep his possessions there?" asked Moshe.

"This is subject to a dispute between Maharam Padua and the Rema," said Rabbi Dayan. "Maharam Padua limits the application of makkas medinah to situations where the loss is already done, such as locusts. However, regarding future inability to use it, the renter has the right to retract; if he doesn't, he cannot demand a retroactive deduction from his rent.

"The Rema, however, disagrees. He maintains that in a makkas medinah, the tenant is entitled to a reduction retroactively, even if he did not retract (C.M. 321:1). A number of later authorities, though, side with Maharam Padua's opinion (see Pischei Choshen, Sechirus 6:[29] at length)."

"What about people who evacuated, but no actual damage occurred to the houses?" asked Ephraim.

"Ketzos (322:1) cites the case of people who fled from a city because of danger but the houses were left intact," said Rabbi Dayan. "Maharam rules that the landlord does not have to return the full amount, since the house is intact and another tenant may have chosen not to evacuate. Machaneh Ephraim also rules that in such a situation, if the rent was prepaid, the tenant is not entitled to a refund. Others dispute this point. Regarding Sandy, though, even the Maharam and Machaneh Ephraim might agree, since there was mandated evacuation in some places and also danger to the houses (see P.C., Sechirus 6:[30])."

"Just as it takes time to repair the effects of the storm," said Rabbi Dayan, "it will also take time to clarify the complex Choshen Mishpat issues involved."

FROM THE BHI HOTLINE CONTINUED

ownership of the fallen items. Stones of a wall are valuable; it is assumed that the owner is merely interested in having his neighbor gather the stones so that he, the owner, can then collect them for his own use.

Tosafos HaRosh (cited in Shitah Mekubetzes) answers that one could relinquish ownership as long as his object is not currently damaging someone else's property. If the object is damaging another's property, he is obligated to remove it, and cannot shirk that responsibility by relinquishing ownership of it. For this reason, when a wall collapses, damaging the ground, the owner of the stones cannot relinquish ownership of the stones. Conversely, when a fallen object did not damage the ground, the owner may relinquish ownership even though the broken pieces are a potential hazard to people.

Regarding our case, since it is evident that the owner has no need for the tree and his relinquishment is sincere, he is not obligated to pay for the tree removal according to Tosafos. Although Tosafos HaRosh would seemingly require the owner to remove his tree, there is a difference between stones that fall into a neighbor's field and a tree. In contrast to stones that actively damage the field and prevent any cultivation, trees typically do not damage the ground but are an impediment for using the ground. This damage is indirect (grama) and he is not responsible to remove it (see Shach C.M. 361:5).

Accordingly, there is not sufficient basis to obligate the tree owner to pay for the removal of the tree.

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Damages #3

MONEY MATTERS

Q: While getting up from my seat, I knocked someone's sefer off the table, ruining the binding completely. What do I owe him for the damage?

A: A person who damages an item is responsible to repair it if the repair is typical, or to pay the value of the damage if the repair is not typical. Thus, if the book can be sent to a professional binder who will repair it fully, you owe the cost of the repair (C.M. 387:1; Shach 387:1).

If the item is a total loss - not repairable and ruined completely - you owe the value of the item at the time of the damage, taking into account the age of the item and its condition. You are not liable, however, for the full cost of a brand-new item (see Mishpetei HaTorah I:24).

If the item is not repairable but still usable - even for parts - you owe the difference between the item's value before and after the damage. You are not required to take the broken item and replace it with an intact one (403:1). [Some people prefer to do this in any case as a gesture of good will, even though there is no halachic need.]