



Business weekly

PARSHAS VAYISHLACH
FRIDAY, NOVEMBER 19 2010
ISSUE #33
under the auspices of
Harav Chaim Kohn, shlita

a project of the **Business Halacha Institute**

This community project was made possible by a generous grant from

The Irwin Saks Irrevocable Trust, Miami Beach, FL

ל"ג מר יצחק סאקס ב"ר אברהם ז"ל

STORYLINE

nonexistent sale

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Mr. Frei was an accountant. He also ran a separate small business, selling esrogim for Succos.

"Why do esrogim cost so much?" he asked his supplier from Esrogim Orchard one winter day.

"First, esrogim require tremendous care throughout the year to protect them from scratches and spots that might render them unusable," the supplier answered. "Second, only a select few esrogim from each tree can be sold. Most fruit never see the market!"

"I'd like to try something," Mr. Frei suggested. "Instead of buying just the good esrogim next year and paying per esrog, I would like to buy all of the esrogim that will grow in an acre of your orchard – good or bad – for a flat fee."

"That's fine with me," said the supplier,

"but I will request a 10% down payment of \$2,000."

"Deal," replied Mr. Frei.

The supplier received the money and declared: "All of the esrogim that will grow during the course of the coming year in a designated acre are hereby sold to Mr. Frei for the sum total of \$20,000."

The following May, however, Mr. Frei was relocated by his accounting firm. He realized that he would be unable to sell esrogim in his new location.

"I will be unable to sell esrogim next Succos," he wrote to Esrogim Orchard. "I request to cancel our arrangement."

Esrogim Orchard responded: "We do not accept this and insist upon upholding the sale."

Mr. Frei called the supplier and explained his circumstances. "I made the agreement

expecting that I would be able to sell next year, but due to my relocation I will be unable to."

The supplier wouldn't hear of it.

"A sale is a sale! You already bought the crop," he said. "It's no different from any other sale, and we expect full payment of the remaining \$18,000."

"I'm not convinced that it's the same as any other sale," responded Mr. Frei, "since you did not have the esrogim when we agreed in the winter."

"So what?" retorted the supplier. "We both knew that the esrogim would grow during the year."

Mr. Frei picked up the phone and called Rabbi Tzedek.

The rav listened to his question and said, "In principle, sale of fruit that has not yet started growing with the formulation, 'are hereby

continued on reverse side

FROM OUR HOTLINE

Submitted by
K. S.

breaking point

I have noticed that my old backyard tree is slowly dying. My neighbor pointed out that one large branch has been drooping lower and lower over his driveway. He's concerned that it may fall on his car – or worse, someone in his family. I called a tree pruner to my home. After confirming my neighbor's fear that the branch may fall, he gave an estimate of thousands of dollars to

cut it down. I really don't have that kind of money available.

Additionally, I recall learning once that if Reuven is disturbed by Shimon's branches that extend over his property, Reuven must pay to have those branches removed.

Q: Is it, in fact, my neighbor's responsibility to pay for the branch to be pruned?

A: Shulchan Aruch (155:27-28) discusses the issue of someone cutting branches from his neighbor's tree that crosses the property line and creates a nuisance. In that case, the neighbor must remove the nuisance on his own account. However, the question in your case is whether the halacha is any different if the concern is danger rather than a mere nuisance. Shulchan

continued on reverse side

Epicenter

WEB APPLICATION DESIGN & STRATEGY

+1 (877) 434-4038 epicenterconsulting.com



Auto Leasing & Sales Inc.

(800)223-5327

info@leaseland.com

Margaret Tietz

Nursing & Rehabilitation Center

Where Caring is Our Tradition

To place your logo here, email info@businesshalacha.com

STORYLINE CONTINUED

sold,' is not halachically binding on either party even when the fruits grow, unless the buyer already took them."

Rabbi Tzedek then explained: "There is a major dispute in the Gemara (B.M. 66b; Yevamos 93a) whether a person can sell something that does not yet exist, such as fruit that has not yet grown or calves that have not yet been born. This is referred to in halacha as 'davar shelo ba l'olam' – something that has not yet come into the world.

"The halacha is that the sale of such an item is not valid. Therefore, although often not morally proper, either party has the legal ability to retract, even after the fruits grew or the calves were born. However, if the buyer already took the fruit, the sale is legally upheld. Although the initial sale was legally invalid, the seller presumably wanted to honor his word and allowed the buyer to acquire ownership immediately by taking actual possession of the fruit (C.M. 209:4 and Shach 209:5)."

"Why can't you sell a davar shelo ba l'olam?" asked Mr. Frei.

"A transaction simply cannot take effect on something not in existence," explained Rabbi Tzedek. "Another reason is that a person usually does not have sufficient intent (gemirus da'as) regarding something that does not exist (Kovetz Shiurim B.B. #276)."

"What if the cow was already pregnant or the fruit already began growing when the sale was made?" asked Mr. Frei.

"There is a difference between the two," replied Rabbi Tzedek. "Even if the cow is pregnant, the calf is considered a davar shelo ba l'olam. However, with fruit, if it already began growing, it is considered to be something that is already in existence and simply gets bigger, so the sale is legally binding (Rama 209:4 and SM"A 209:9).

"Nowadays, however, when much commerce deals with items that do not yet exist and with the formulation, 'I agree to sell,' many poskim validate such transactions based on situmta, hischayvus and/or dina d'malchusa (to be addressed in future issues, IY"H).

FROM OUR HOTLINE CONTINUED

Aruch (C. M. 416) discusses the case of a wall or tree that may fall into the public domain. Bais Yosef (C. M. 416) cites the Rashba, who rules that Bais Din is authorized to force people to take responsibility for their property that threatens the safety of others, even when the potential threat is to a neighbor rather than to the public. Accordingly, the Rema (ibid) rules that Bais Din can give the owner notice to remove the dangerous tree or wall.

The remaining question here is that you noticed the frailty of the tree on your own. It would seem logical that you are thus obligated to remove the potential hazard without Bais Din's notice. However, many halachic authorities maintain that only Bais Din's order can demand that the owner of the wall/tree take

steps to prevent a potential accident, or the owner could assume that it isn't his responsibility to remove this hazard. On the other hand, others argue that the necessity for Bais Din's order is only if the hazard requires expert opinion (Prisha 416, Halacha l'Moshe Niskei Mammon 13/19, Toras Chaim Bava Kama 6b).

In summary, if branches from your tree are a threat to the safety of your neighbor and he approaches a Bais Din, you will have to pay to have that branch removed. Your obligation to remove the branches on your own is subject to debate, but because this question involves potential danger, it is advisable that you negotiate with your neighbor so that the hazard can be removed as quickly as possible.

Please contact our confidential hotline with your questions & comments

877.845.8455 ask@businesshalacha.com

MONEY MATTERS

business competition week #2

Q: I obtained access to the customer base of my competitor. Can I run a telemarketing campaign aimed directly at his clients?

A: We mentioned last week that it is usually not possible to restrain someone from opening a competing store, since each store operates independently. However, it is problematic to target another person's cli-

ent base. Since the person invested effort and resources to establish this client base and has specific expectations to maintain their business, such marketing encroaches on his rights (Tosfos Kiddushin 59a).

Established clients are known in halacha as "ma'arufya." The Rama cites two opinions and practices as to whether a person can restrict others from encroaching upon his established clients and dealing with them

(C.M. 156:5). This restriction applies both to non-Jewish clients and, in a more significant way, to Jewish clients.

However, if you open a competing store and advertise publicly, you can serve your competitor's clients who come of their own accord (Chasam Sofer C.M. #175). It is also permitted for you to provide promotional incentives, discounts and bonuses, since the other store can do the same (C.M. 228:18).

HASHOVAS AVEIDA

*I found a used Bic pen.
May I keep it?*

Miami Choshen Mishpat Kollel

Yeshiva Bais Moshe Chaim, 4000 Alton Rd, Miami Beach

Sunday Mornings

Chavrusos with the kollel members: 9:30 - 10:10 am, Shiur: 10:10 - 10:40 am

For more information, email info@CMKollel.com,
or visit the kollel's website at CMKollel.com

YAHRTZEIT

Unique Opportunity

**Sponsor a newsletter
in memory of a loved one**

Email info@businesshalacha.com
to reserve your week

TO RECEIVE THIS NEWSLETTER FREE OF CHARGE, EMAIL SUBSCRIBE@BUSINESSHALACHA.COM
All new subscribers will receive a free copy of our popular publication, Money - The Bottom Line, in pdf form

WWW.BUSINESSHALACHA.COM