

Business weekly

STORYLINE

windfall part II

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under the auspices of Harav Chaim Kohn, shlita

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Mr. Bernstein hung up the phone and turned to his wife. "I just verified that the neighbor's tree that fell down in the storm last week and damaged our car and fence was declared dangerous by the municipality. They instructed him to cut it down months ago."

"It's a shame he didn't listen," said Mrs. Bernstein. "He could have prevented all this. Now what?"

"He should be responsible for the damage," said Mr. Bernstein. "If a person ignores authorities' warnings that his tree is unstable, he is liable for damage it causes (C.M. 416:1). I don't know if our neighbor's homeowner's insurance will pay for this third-party damage, since the tree was blown down by the storm. If they don't, he's going to have to pay us out-of-pocket."

"But we have comprehensive coverage on the car," said Mrs. Bernstein, "and our homeowner's insurance should cover the damage to the fence. So what should he pay? He didn't cause any loss!"

"First of all, there's a deductible on both policies," replied her husband. "Also, when we file a claim, our premium goes up. So he certainly caused us some damage. To be honest, I don't see why he shouldn't have to pay everything. His carelessness caused the damage. Why should our insurance have to pay for his negligence?"

"Well, isn't that what you have insurance for?"

"Not necessarily," countered Mr. Bernstein.

"It's primarily for circumstances where no one else is liable."

"But it covers this also," replied his wife.

"We should speak with Rabbi Dayan," said Mr. Bernstein. "I asked him last time if we could meet after talking with the insurance company."

He called Rabbi Dayan and arranged to come over the next evening.

When they arrived, Mr. Bernstein summarized the case for Rabbi Dayan.

"This is a good question," said Rabbi Dayan. "The issue of insurance has been debated by the poskim during the last hundred years, beginning with such Torah giants as the Ohr Sameach (Hil. Sechirus 7:1) and Maharsham (Responsa IV:7). Both authorities viewed insurance coverage as an independent risk-

payment contract between the insurer and the client unrelated to the personal liability of the one who caused the damage."

"Does that mean that we could possibly collect double, from both the insurance company and the neighbor?" asked Mr. Bernstein.

"According to them, yes," answered Rabbi Dayan. "Chelkas Yoav (Responsa II:91) indicates that it was even possible to collect from multiple insurers for the same loss."

"Why should this be so?" asked Mrs. Bernstein.

"They considered insurance simply a 'business deal' in which the insurer promises payment in return for the premiums if the item is lost," explained Rabbi Dayan. "For this reason, the fact that the insurer pays coverage is no reason to exempt the one who caused

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FROM OUR HOTLINE

Submitted by
Shlomo F.

tenant tension

I have been renting a house for some time while doing renovations on the home I own. Due to various circumstances, the construction has been proceeding significantly slower than originally planned. While my landlord has been accommodating, recently he casually mentioned that he needs us to vacate the rental as he wishes to renovate and subsequently occupy this home. I have been doing everything in my power to enable my family to move into our own house as soon

as possible. In March, my landlord gave us a deadline of May 1 to vacate – this being the first clearly delineated time frame he has ever expressed to us. I have explained that our house will simply not be ready at this time and have assured him that we will be out by June 30. He is not satisfied, as he asserts that if he waits until after June 30 to begin work on the house, the work will be held up by the nine days and the Yomim Noraim. He claims this will cause him a mon-

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STORYLINE CONTINUED

the damage.”

“But if the damage is covered,” said Mr. Bernstein, “then the neighbor didn’t cause any loss.”

“Some argue this way,” answered Rabbi Dayan. “Similarly, R’ Elchanan Wasserman maintains that you can collect from either the insurer or the one who damaged, but not from both (Kovetz Shiurim Kesubos 217-8). However, most authorities maintain that since damage occurred, an external payment does not negate the damage liability. Imagine, for example, if a rich uncle decided to buy you a new car in place of the damaged one. Would that exempt your neighbor?”

“Clearly not,” acknowledged Mrs. Bernstein.

“Nonetheless,” continued the rabbi, “the halacha is somewhat different nowadays. Most insurance contracts stipulate that if the damage is caused by a third party and your insurance company covers the loss, the rights to sue the responsible party are transferred to the insurer. When you accept pay-

ment from your insurance company, it’s with this understanding, so that subsequent payments by him or his insurance company will go to them. They typically limit their liability in the case of overlapping coverage.”

“What about the deductible and increases in premium?” asked Mr. Bernstein.

“You are entitled to ask for that,” answered Rabbi Dayan, “since the insurance policy usually states that the right to collect is transferred to the insurer in accordance with the amount they paid. The remainder of the damage remains yours.”

FROM OUR HOTLINE CONTINUED

etary loss, since he is paying rent for the apartment that he currently lives in until he can renovate this home. He wants to take me to a Rav to get me to compensate him for the losses that he will be incurring as a result of my leaving after May 1.

Q: We do not currently have a written lease. What are my halachic rights and/or obligations?

A: In general, when two people enter a landlord/tenant relationship their respective rights and obligations are spelled out in the lease. If the lease expires and a new lease is not signed, it is assumed that the relationship continues under the same terms and

conditions of the original lease on a month-by-month basis. (It is possible that in different places, real estate law has different parameters for the continuation of the original lease without signing a new lease. Halacha would follow those regulations.) As such, once your lease has expired, the landlord has the right to demand that you vacate the property. How much notice he must give you may change from state to state, but once that notice is given, the tenant must vacate the property. If the landlord is willing to allow you to stay beyond that time, it is within his right to demand additional payment for the loss and inconvenience he will suffer as a result of your extended stay.

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MONEY MATTERS

completing the transaction week #1

Q: I over-ordered some merchandise, and told my neighbor he could take the extra for free. I later realized that the surplus is useful for me. Can I retract my gift offer?

A: The transaction of movable items is finalized through hagbaha, picking up. Thus, if the neighbor picked the merchandise up with the

intent to acquire ownership, it is his, even if it remains meanwhile in your store or warehouse. Large or heavy items that are hard to pick up can be acquired through meshicha, dragging into your neighbor’s property or a semi-public area such as an alleyway (C.M. 198:1-5).

If the neighbor has not yet picked up or dragged the item, it is legally possible to retract the offer. Nonetheless, one who retracts from a small gift offer is deemed lacking trustworthiness (mechusar amana), since the re-

cipient certainly expects the gift. However, if the recipient was offered a large gift, he entertains the possibility that the giver might retract before the gift is finalized (204:8). If the gift was promised to a poor person, a charity, or a Torah institution, it is considered a vow and must be upheld in any case (243:2).

WEEKLY STUDY GROUP

I have several creditors and I cannot afford to pay them all. Who must I pay first?

Monsey Night Seder Bais Medrash 29 Parker Boulevard **Sunday Mornings**
Chavrusos/Prep Shiur: 9:30 - 10:45 am Shiur: 10:45 - 11:15 am

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