בס"ד

עולם ההלכה

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מכון סמיכה
עולם ההלכה
נגיש לכל אחד

עולם המורה

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כמה דברים אודות רב מורה הוראה בתורת רבותינו אדמורי חב"ד זי"ע

Part 17

דעת בעלי בתים היפך דעת תורה

ידועים דברי הסמ"ע[1] על מה שכתב המחבר ש"אסור לאדם חכם שישב בדין עד שידע עם מי ישב", וע"ז כתב הסמ"ע "לא תשב אצל הקהל בשום דין דידעת שפסקי הבעלי בתים ופסקי הלומדים הם שני הפכים".

וכע"ז הביא כ"ק אדמו"ר הצ"צ[2] "נקיי הדעת לא הי' חותמין על השטר אא"כ יודעים מי יחתום עמהן שלא יהיה פסול. ולא יושבין בדין אא"כ יודעים מי יושב עמהן (ש"ע סי' ז' ס"י) שלא יהא גזלן או רשע. ובפסקי מהרא"י כ' שפסקי הלומדים והבע"ב הם ב' הפכים א"כ אפשר הכוונה מי יושב שיהי' גמיר עכ"פ. ולא היו נכנסין בסעודה אא"כ יודעין מי ישב עמהם שלא יהיה ע"ה".

ובמכתב אחד[3] כתב רבינו, וז"ל "נבהלתי להשמועה לא טובה שמבכתבו: התערבות בעה"ב בפס"ד הרבנים ובלחץ יתר ובאיום וכו' — שאפילו באם הי' המדובר בערקתא דמסאנא כפשוטו — לא יעשה כזאת בישראל ובפרט בקהילא קדישא [ולהעיר שאפי' המוסמך לדון — באם הוא בעה"ב אין מקומו בב"ד אפילו בתור צירוף. ראה סמ"ע חו"מ ס"ג סקי"ג ובמשה"כ שם].

ומובן שהכניעה להלחץ — ה"ז חתירה ופגיעה ביסוד קיום הקהילה ואופי'".

ובכו"כ מקומות מבאר כ"ק אדמו"ר הפירוש ב"דעת בעלי בתים". ולדוגמא בשיחת ש"פ חוקת בלק י"ב תמוז תשמ"ו, וז"ל "האמור לעיל בענין "עשרה שיושבים ועוסקים בתורה", שכל מציאותו היא בתורה שייך במיוחד לרבנים ומורי הוראה בישראל:פסק דין בתורה - יכול לפסוק רק יהודי שכל מציאותו היא בתורה, כלומר, שאין לו עסק אחר מלבד לימוד התורה.

וכידוע מ"ש הסמ"ע שדעת בעה"ב היא היפך דעת תורה, והרי פשיטא שאין הכוונה לבעה"ב סתם, שאין לו סמיכה לרבנות - שאז, אין קס"ד מלכתחילה שיסמכו על דעתו, ומאי קמ"ל?! אלא המדובר הוא, איפוא, אודות בעה"ב שיש לו ידיעה רחבה בתורה, ועד שיש לו סמיכה לרבנות, ואעפ"כ, מכיון שעסקו בפועל ממש (לא בשטח הרבנות, כי אם) בעניני העולם, אזי מתערבים אצלו "הנחות העולם", ובמילא, דעתו היא היפך דעת תורה.

אמנם, גם בעה"ב צריך לעסוק בתורה, ועאכו"כ בעה"ב שקיבל בשעתו סמיכה לרבנות, הרי בודאי שלימוד התורה שלו צריך להיות מתוך הבנה והשגה עמוקה ורחבה כו', ולא עוד, אלא שיכול להתפלפל עם הרב בנוגע לפסקי דינים בתורה, לשאול אצלו מהו המקור לפס"ד שלו באופן כך, בה בשעה שיש לו (לבעה"ב) סברא באופן אחר כו' ("מהיכן דנתוני"[4]), אבל, הפס"ד בנוגע למעשה לפועל - נקבע אך ורק ע"י רב ומורה הוראה, שכל מציאותו, כאמור, היא בתורה".

ובשיחת י-י"ג שבט תשכ"ה[5] מבאר רבינו ביותר, וז"ל "כאשר צריך להושיב יהודי בבית-דין, יש צורך להזהיר שלא להושיב בעל-הבית, כמ"ש הסמ"ע בשו"ע חושן משפט ש"פסקי הבעלי-בתים ופסקי הלומדים הם שני הפכים": לכאורה אינו מובן טעם הדבר: אם הוא "עם הארץ" - הרי גם אם הוא (לא בעה"ב, אלא) "רב", אסור להושיבו בב"ד, וא"כ, החסרון אינו בכך שהוא בעה"ב, אלא שאינו יודע דין?!

ועכצ"ל, שהוא יודע דיני התורה שנאמרו בשו"ע חו"מ (דאל"כ לא צריך להזהיר שלא יושיבוהו בב"ד), ואעפ"כ, להיותו בעה"ב, שמתעסק בעניני העולם, יש לו השקפת העולם של בעה"ב ("זיין קוק אויף וועלט איז אַ בעה"ב'טישער קוק"), והיינו, שרגיל להסתכל על כל דבר כפי שהוא בעוה"ז הגשמי, בעולם המסחר, וכשיבוא לידי הכרעה, יהי' "משוחד" מהשקפת העולם שלו, שתסיר אותו מהשקפת העולם כפי שצריכה להיות ע"פ התורה.

כלומר: לא זו בלבד שלא ידע כיצד לפסוק את הדין, אלא - כדברי הסמ"ע - שדעת בעה"ב היא היפך דעת תורה!

לכאורה אינו מובן: מדובר אודות בעה"ב חרדי, בעה"ב שלמד שו"ע חו"מ ושאר חלקי השו"ע (דאל"כ, אין מקום לקס"ד שיושיבוהו בב"ד), וא"כ, איך יתכן שדעתו תהי' היפך דעת תורה?!

ומזה מוכח, שכיון שבאותם שעות שבהם נמצא חוץ לב"ד עסוק הוא בעסקי "דרך ארץ", אזי "המתאבק עם מנוול מתנוול ג"כ"; כיון שמתעסק עם עניני העולם, בהכרח שיתדבק בו משהו מהשקפת העולם, וישפיע עליו גם בנוגע לתורה, ולכן, כשיבוא לפסוק דין, הנה לא זו בלבד שאין זה דעת תורה, אלא עוד זאת, שיהי' היפך דעת תורה!

עולם התשובה

לקט שאלות ותשובות

What does it mean to be human LLC and corporations

Rabbi M.M Prescott Rosh Yeshiva Machon Smicha

In the previous article, we discussed the status of stock ownership and whether it affects the halachic standing of a company — such as a bank — with regard to depositing, borrowing, or chometz ownership. Here we address a more fundamental question: what exactly is a company?

Virtually every major company today is a corporation. This means that it is regarded as a standalone legal entity distinct from its owners. Technically, no individual human being owns a corporation's assets; the corporation itself is the owner. Shareholders own shares — contractual instruments that confer certain rights, such as voting and dividends — but the underlying assets belong to the corporation as a juridical person. How does halacha view this?

For background: the modern corporation traces its origins to the 1600's, though at that stage the structure and legal implications of the corporate form had not yet fully crystallized. Over time, it evolved into what is known today as the "corporate veil" — the principle that a company and its owners are treated as entirely separate legal personalities.

One of the landmark rulings that firmly established this notion came about through a maneuver of a sharp Yiddishe kop, who proved to be a step ahead of his creditors in applying the newly developing legal structure.

Aron Salomon, a Jewish British boot manufacturer in the 1890s, operated his business as a sole proprietorship. At a certain point, he decided to incorporate his business as a legal corporation under the name "Salomon & Co. Ltd." After that, the company took on significant loans in order to expand operations. But Mr. Salomon had structured the incorporation in a clever way. After he had formed the corporation, he "sold" his business, which had been his personal property till then, to the newly created corporate entity. The sale was on credit, and he, acting on the corporation's behalf, assigned business assets as security for the payment owed to him by the corporation. At the time, this move was a strange one: how could one owe money to oneself?

Before long, the business failed, and the creditors came to collect. But Salomon came as well, claiming that he too was a creditor of the business, and stood in a senior position because his claim was secured by collateral. The creditors were incensed and argued that the entire arrangement was a sham. "Salomon & Co.", they contended, was merely Aron Salomon under another name.

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לכאורה יכולים להתווכח ולשאול מהו טעם הדבר, אבל, כך הוא הדין, ובעוונותינו הרבים רואים זאת בפועל ממש:ישנו בעה"ב חרדי, שמקפיד על דקדוק קל של דברי סופרים, אבל, כאשר מתערב ענין של העולם, וצריך לצאת ידי חובתו כלפי עורך-דין, או כלפי בעה"ב שעומד עמו בקשרי מסחר ואח"כ צריך להתעסק עם ה"מפלגה" באותו מחוז ("דיסטריקט") שבו רוצה להיות חבר הקונגרס, או חבר בית המחוקקים ("סענאַטאָר") - הנה למרות שראשי-ישיבות אומרים שזהו דבר האסור, הרי לא זו בלבד שאינו מקבל דעת תורה, אלא עוד זאת, שנעשה אצלו היפך דעת תורה, באמרו, שגם הוא דתי, ובעבר קיבל סמיכה לרבנות, ובמילא יכול לישב בב"ד, והוא פוסק היפך דעת תורה.

וכאשר טוענים אליו: הרי זה ענין שנוגע לרבבות ילדים מישראל שיוכלו להתחנך בחינוך הכשר - עונה, שיש לו סמיכה לרבנות... אלא מאי, ישנו רב שהורה דעת תורה באופן אחר - אזי מחפש על זה תירוץ...

וכאמור, מדובר אודות בעה"ב דתי, שיודע שכיבוד אב ואם הו"ע שנאמר בעשרת הדברות, ואעפ"כ מעיז פניו נגד אביו - שעל זה בודאי אין שום תירוץ!

ובכן: זה מה שקורה כאשר בעה"ב רוצה לפסוק דין, למרות שיודע שהוא שייך למסחר! - במסחר, אתה הוא הבעה"ב ואתה הוא הפוסק; אבל כשמדובר אודות חושן משפט, יורה דעה, אבן העזר ואורח חיים - אסור להושיב בעלי-בתים בב"ד! ואף שיודע גם אודות דין זה - טוען הוא: דין זה - כתב רבי...

וזהו ענין שנעשה ברבים, ואעפ"כ, לא נגע ולא פגע!...", ע"ש עוד.[6]

וכעין זה כתב הנו"ב,[7] וז"ל "הנה שאלתך היא שאלת חכם שהיא חצי התשובה אבל זה הלמדן שכתבת שאמר ששמע שגדולי זמננו מקילים בזה יפה קרא אותם גדולי זמננו אשר בעו"ה נגדע לעפר קרן התורה וכל הגדולה בזמננו אינה מצד חכמת התורה אבל מתגדלים בנימוסיות ובטבעיות ובידיעות ספרים חיצונים ואלה מתגדלים בריקוד ואלה בזמר ואינם יגעים בתורה כלל ומספחת הזה פשתה בדור. ולכן לא תשים לב למה שאומרים בשמם איזה הוראה".

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[1] חו"מ סי' ג ס"ק יג, הובא ג"כ בנתיבות שם ס"ק ח.
[2] חידושים דף רמג עמ' ג.
[3] לקו"ש חל"ט עמ' 303.
[4] אבל להעיר מתו"מ ... מ"ש שעיקר פסק דין הוא בלי הפלפול.
[5] תו"ה חמ"ב עמ' 233 ואילך.
[6] ראה גם תו"מ חע"ח שיחת י"ט כסלו תשל"ה אות נא, חל"ז עמ' 198, ח"נ עמ' 203, ח"ס עמ' 462, חפ"ב עמ' 342, ועוד. וראה עוד בשיחת שבת פרשת מטו"מ תשמ"ו (צדי"ק למלך ח"ד עמ' 42-41) ע"ד בחירת הרבנים. ולהעיר עוד מתו"מ חמ"ז עמ' 58.
[7] שו"ת יו"ד תנינא סי' קיט.

May One Make a Window in His House That Overlooks His Neighbor's Yard?

Rav Shmuel Honigwachs

Question: Reuven is making an extension to his house. After the extension is complete, the house will have a window that overlooks his neighbor's backyard. Is that permitted?

Answer: The Mishnah and Gemara in Bava Basra discuss the concept of "hezek riya" (infringing on someone's privacy). It is stated that it is forbidden to open up a window that faces somebody else's yard. The question that contemporary Poskim discuss is whether the backyards of today are comparable to the a "chatzer" of the times of the Gemara. In those times, a chatzer was used for private matters. Accordingly, since it is likely that someone is doing something private in his chatzer, one may not open a window facing that place. Some Poskim, theorize that today's yards are not used for such private things and, therefore, are not subject to the laws of hezek riya. There does not seem to be a strong basis for that opinion; however, the Poskim say that if one has another consideration that would permit him to open a window, he can combine that with this opinion in order to permit it. In the situation in question, however, it seems that making this window would not be allowed.

May One Open a Window Into a Neighbor's Yard That Is Anyway Visible from The Street?

Rav Shmuel Honigwachs

Question: We previously said that in typical circumstances one should not open a window that allows him to see into a neighbor's yard. What if the yard is already visible to a public area? For example, what if someone lives on a corner and his backyard faces the street? In such a case, if I live next door would I be permitted to open a new window that faces his yard since it is visible from the street anyway?

Answer: I haven't seen this specific case discussed by Poskim, but the Gemara discusses a case where there is a street between two properties and says that it would be permitted to open a window overlooking the yards. One would assume that the same would be true in the situation in question. Since the yard is open to the street regardless and anyone walking on the street can see into the yard, the same consideration would apply and it would be permitted to open a window that faces the yard.
We can also take into consideration the opinion that the yards of today are not like the courtyards of the past which were used for more private matters, and therefore, one can be lenient in this case.

If someone Buys a House That Has a Window Facing a Neighbor's Yard, Is He Obligated to Close It Off?

Rav Shmuel Honigwachs

Question: Reuven bought a house in a development. When he moved in, he noticed that the house he bought already has a window that overlooks his neighbor's backyard. Does he have to close off the window or is he allowed to leave it the way it is?

Answer: In the halachos of *hezek riya,* the Halacha will often differ depending upon whom the house was acquired from and the sequence of how it was built.

The Gemara discusses a case where two brothers inherited a property from their father. After dividing it, they are left with windows overlooking each other's yards. The Gemara states that they have no legal right to these windows. The Rishonim debate what this means on a practical level. Some say that the brothers

can force each other to close off the windows. Others say that they cannot go that far, rather, they are permitted to build a wall on their own property that blocks the window, even though by doing so they are limiting sunlight to the other property.

The Shulchan Aruch rules that they cannot force each other to seal the windows. Rema cites the other opinion that they can be forced to block the windows. Rema indicates that the same *machlokes* would apply in a case where someone purchases a house that has a window facing a neighbor's yard. Which would mean that according to the Rema, the purchaser can be forced to close off such a window, which is a rather unusual conclusion.

As we've said previously, whenever there is another consideration at play, one can rely on the opinion that our yards are not comparable to the old courtyards because we do not use them for such private matters. Accordingly, perhaps the buyer could be lenient and rely on the Mechaber's opinion that he does not have to close off his window in this case.

The lower courts ruled in favor of the creditors, reflecting what seemed to be the straightforward common-sense view. But the matter ultimately reached the House of Lords (the UK's highest court) and they ruled decisively in Salomon's favor. He was paid ahead of the other creditors, leaving them with little or nothing. In doing so, the court gave enduring legal force to the principle that a corporation is indeed a separate entity.[1]

Before turning to the halachic side, it is important to pause and appreciate how radical the concept of a corporation truly is. When a corporation is formed, the law declares that a new "person" has come into existence. That legal person can own property, enter contracts, sue and be sued, incur debts, and even commit crimes, entirely independently of the human beings who formed it or who own its shares. The corporation is not the shareholders, not the directors, and not the employees, but a separate legal being.

If one were to fully accept the existence of a corporate entity in halachic terms, many business-related halachic issues would become far simpler. Chametz, Shabbos, ribbis, and issurei hana'ah—among the common halachic barriers —would be less of an issue. It would be like a non-Jew—or, more precisely, a non-human legal being—owned and operated the business, while Jews held only residual claims or financial stakes.

Yet when viewed through halachic lens, the matter is far less simple. In halacha, an item not owned by any person is hefker. Accordingly, most poskim maintain that a corporation – the way law defines it – does not exist.[2] And since its assets are certainly not hefker, the corporation is the property of its shareholders. "Corporation," in halachic terms, is simply a legal name assigned to a collection of assets and business activities that are owned by people.

There is, yet, a shittah that even halacha can recognize the existence of a self-standing entity. The Rogatchover Gaon,[3] in his distinctive approach, maintains this position. One of his examples is the property of the tzibbur, which is not hefker; it is owned, yet not personally owned by individuals. It belongs to a distinct entity called tzibbur, with the individual members serving as beneficiaries.

According to this, the members of a corporation—even where there is only a sole member—would not be the direct owners, and many halachic problems would be significantly reduced. This doesn't mean that everything would automatically be permitted l'maaseh, since issurei derabbanan may still apply.[4] It would, however, open the door to some level of leniency.

Even according to the conventional view — that a corporation constitutes regular ownership — its legal structure nonetheless has halachic ramifications for ribbis. One of the defining features of a corporation is that the liability of its owners is limited, as demonstrated in the Salomon & Co story where the debts were imposed on the corporation and not upon Aron Salomon personally.

The poskim explain that this feature has halachic grounds through the principle of apoteki. The Gemara[5] discusses cases in which a borrower designates a particular asset as collateral, similar to a mortgaged property, giving the lender exclusive rights in that asset. A more specific form is apoteki mefurash, where the borrower stipulates, "You may collect only from this asset," in which case the lender may collect only from the designated asset; and if that asset is lost or damaged, the lender has no further recourse. According to these poskim, corporate debt may be understood in these terms: the debt is real, but it is subject to an apoteki mefurash, namely, the assets of the company alone.

This creates a kulah for ribbis, as many poskim maintain that a loan secured only by an apoteki mefurash is not subject to ribbis de'oraysa. The reason is that the essence of a loan is the existence of personal indebtedness—shibud haguf. A non-recourse loan holds no shibud haguf, only shibud nechasim, and is therefore not classified as a genuine halva'ah. There are numerous examples throughout Perek Eizehu Neshech where ribbis is permitted when the principal itself remains at risk, such as in cases of mashkanta[6] and pardeisa.[7]

Rav Shimon Greenfeld[8] follows this approach and strongly maintains that lending to a corporation. He goes further and suggests that it may even be permitted miderabbanan as well—not because the shareholders do not own the company, but because they bear no personal liability.[9] He adds that the wording of the passuk supports this: "Lo sashich l'achicha"—to your brother —implying a personal loan to your brother, rather than a claim limited solely to his assets. Rav Moshe Feinstein[10] follows this line of reasoning and seems to permit lending to a corporation even miderabbanan.

The most prominent approach appears to be the middle-ground shittah: there is no ribbis de'oraysa, but there does remain an issur ribbis derabbanan. The Minchas Yitzchak[11] to assume this position, along with many other poskim.

Rav Yaakov Blau, in Bris Yehuda,[12] takes the opposite extreme. In his view, even though the loan is backed only by company assets, ribbis de'oraysa still applies. It remains a full-fledged loan to the members of the corporation, who are considered to owe the money, and the fact that the loan is tied to an apoteki mefurash does not alter its status. Nevertheless, he concludes that since many great poskim hold that there is no ribbis de'oraysa, one may rely on that view.

The practical difference between treating the matter as de'oraysa or derabbanan emerges in situations where there are additional tzeirufim l'kulah (e.g., when the majority shareholders are non-Jews). For an issur de'oraysa it would be far more difficult to rely on such leniencies, whereas for a derabbanan, the basis for leniency is stronger.

It should be emphasized that the kulah of apotaki applies only to depositing money in an interest-bearing account. Borrowing from a Jewish-owned bank remains prohibited, since the borrower bears personal liability toward the corporation, which is the property of its members.[13]

Likewise, other halachic concerns — such as chametz, issurei hana'ah, or Shabbos — are not resolved through this approach, since it maintains that a corporation remains an ordinary partnership. The only distinction is the lack of personally liability - which only helps for ribbis. Other kulos may apply – but the "corporate veil" itself is of no avail.

Rav Moshe Sternbuch[14] offers an interesting twist which can work for other halachic issues as well. Like the other poskim, he holds that a separate entity cannot exist, but he derives a kulah from that. He suggests that when one purchases stock in a corporation, since the company itself has no halachic existence, one has not truly purchased anything tangible at all; in a sense, one has purchased only air. Accordingly, the money paid remains a loan to the members of the company. Thus, for example, if the company deals in chametz, there would be no issue of bal yeira'eh, since the shareholders never truly acquired ownership of shares in a halachically operative sense. This would hold true regarding ribbis issues as well. But he concludes that this sevara alone, while good for limud zchus, is not strong grounds for real hetter. (In the previous article, we discussed some leniencies regarding the ownership status of small share-holders.)

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[1] מעשה זו מובא בכל ספרי החוקים של דיניהם. גם הרב משה שטרנבוך (מועדים וזמנים חלק ג סימן רסט בהגה) מביא את כל המעשה בתוך אריכות דיונו בהגדרת חברת בע"מ.
[2] לדוגמה, ראה לשונו של הג"ר אלחנן וסרמן (בקובץ נועם ג'): "יועל הרוצים לחדש דחברה בע"מ הוא מעין בעלות חדשה, בעלות ולא בעלות, עליהם הראיה מהש"ס לגדר כזה, ועצם אי-מציאות הדברים בש"ס אינו נותן מקום כל דהו להסתפק,"
[3] בשו"ת צפנת פענח חלק ב (סימן קפד). וכדאי להעתיק לשונו: "והנה גדר באנק לא נקרא דבר מסויים, רק דבר של צורה לא חומר, כי גם מי שיש להם באנק הם אינם משועבדים לעצמם..."
[4] שכך מסיים הצפנת פענח: "לכן אין זה רבית בבאנק על פי דין תורה." משמע שלא בא להתיר לגמרי.
[5] מסכת גיטין (מא, א)
[6] מסכת בבא מציעא (סז, ב)
[7] שם (עג, א)
[8] שו"ת מהרש"ג חלק יורה דעה חלק א (סימן ג, וסימן ה)
[9] בשו"ת מנחת יצחק חלק ג (סימן א, אות ג) מפקפק אם אכן היתה כוונת המהרש"ג לפרסם זה ההיתר למעשה. וטען שחלק זה של התשובה נשאר רק בכת"י, עיין דבריו.
[10] אגרות משה יורה דעה חלק ב (סימן סג)
[11] חלק ג (סימן א)
[12] סוף פרק ז (ראה באריכות בהערות שם)
[13] כ"כ כל הפוסקים שדיברו בענין זה. גם באגרות משה (שם ד"ה "אבל טעם זה") מבאר זה בפשיטות.
[14] מועדים וזמנים חלק ג (סימן רסט, בהגה)

The Laws of Neighbors

Harmful Practices and Easements

Rabbi Baruch Fried, Dayan Bais Havaad

Harmful Practices and Easements

A person is generally entitled to the full use of his own property, even if this will have a negative effect on the neighbors. However, if the usage of his property can be viewed as crossing the boundary line and causing harm, then he must refrain from doing so and he can be compelled to remove the source of the damage. If his actions cause direct damage to the neighbors, he may be liable for the damage.[1]

On the other hand, one who has already established usage rights on or toward his neighbor's property cannot be evicted or restricted even if his usage is interfering with the owner's usage. This form of chazakah (chazakah is defined as obtaining presumptive ownership or usage rights) does not require three years like one who is establishing ownership; rather, he only needs to prove that the owner saw him using it in this way and did not object. However, if his usage appeared to be temporary, in a way which people normally would not mind, such as one who leans his sukkah on his neighbor's wall for the days of Sukkos, a chazakah would not be established at all.[2]

A chazakah of this sort cannot be established to allow an insufferable form of damage that the victim cannot live with – either because most people cannot live with it, or because he is particularly sensitive to it. [Such a claim of sensitivity must be verified by independent experts.] For example, if the harmful practice involves smoke or sewage odors that spread into the neighbor's property, he may object even after many years. If the neighbors performed a kinyan to allow this practice, or the offending party paid for the rights to do so, the other party may not retract later.[3]

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Preemptive Objections

If a homeowner wishes to do something that has no immediate negative effect but may cause harm to the neighbor in the future, the Shulchan Aruch[4] rules that the neighbor may object immediately and force him to desist. Still, even if the neighbor does not object, a chazakah cannot be established as long as there is no current harm. Some Poskim disagree and rule that the neighbor may not object until the harm begins.[5] Other Poskim suggest that it depends on the following: if it is something that will be difficult to remove in the future or if it involves using some element of the neighbor's property, for example, for light or air, the neighbor may object immediately. On the other hand, if the homeowner's usage can easily be undone and does not utilize the property of the neighbor at all, the neighbor may not object until there is actual harm.[6]

If one buys a property from a Jew that includes a source of harm to a neighbor, he may continue to use the property in that way, under the assumption that the seller had the halachic right to do so.[7] According to some Poskim,[8] this is true even for usages for which a regular chazakah would not suffice, such as smoke or sewage. Others argue and limit this rule to usages that only a chazakah would allow.[9] If the seller was non-Jewish, it cannot be assumed that he had the halachic right to this usage, and the buyer would have to reestablish that right.[10] However, if it can be established that the seller had legal rights to a specific usage of the property, the Rema rules that the Jewish buyer may exercise the same rights.[11]

Acquiring Rights from Previous Owners

As a rule, unless specified otherwise, one who sells something to another does not retain any usage rights. By extension of this rule, when partners or brothers divide up an estate, neither of them has usage rights over the other, including those that had been in practice until then, because they are effectively selling their portion to each other. For example, each can build up their property even if this will block the existing windows of the other. For the same reason, the Shulchan Aruch rules that neither of them is required to block their existing windows that overlook the neighbor's property. However, the Rema argues and rules that they can be required to block their windows, because he considers having such a window to be a form of active damage that requires a chazakah.[12]

The same rules apply to two people who buy adjoining properties at the same time from a single seller. Neither has any rights or claims on the other, with the possible exception of requiring them to block windows that overlook the neighbor, as above. However, if the seller sold a section of his property and retained the adjoining section for himself, the Poskim argue whether the buyer may build upward and block the seller's windows.[13]

This would also apply to one who sold a property to one buyer and subsequently sold the adjoining property to another.[14] [Note that this discussion is particularly relevant in housing developments with multiple buyers.]

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[1] Bava Basra 25b-26a; Nimukei Yosef Bava Basra 22b
[2] C.M. 155:35
[3] C.M. 155:36, see Aruch Hashulchan ad loc. 29, 33
[4] C.M. 154:16
[5] Ketzos Hachoshen 154:5 See Sh"ut Toras Emes 87 that the homeowner can say kim li like this opinion against the neighbor's objections.
[6] Nesivos Hamishpat 154:15,17
[7] C.M. 155:24
[8] Sema ad loc. 55
[9] Taz ad loc.
[10] Rema C.M. 155:44
[11] C.M. 154:18
[12] C.M. 154:27
[13] C.M 154:28
[14] Sema ad loc. 65

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