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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

A TALE OF TWO MOHALIM

Mr. Abrams returned joyously from the hospital; his wife had given birth to another boy. He asked Rabbi Miller, the *mohel* who had circumcised his older boys, to perform the *bris*. "I would be honored," replied Rabbi Miller. "When and

where is the *bris* scheduled?"

"A week from today, 7:45 at Congregation Bris Avraham," replied Mr. Abrams.

"It's on my calendar," said Rabbi Miller. "There's a slight chance that I might have to fly out suddenly, though, so it would be wise to confirm the day before."

The day before the *bris*, Mr. Abrams called Rabbi Miller to confirm his availability. There was no answer. After a few unsuccessful tries, he left an urgent message to return his call.

Toward evening, Mr. Abrams was tense. "I can't reach Rabbi Miller," he said to his wife. "I don't know whether he'll be at the *bris* tomorrow."

"You can't risk not having a *mohel*," Mrs. Abrams responded. "You have to make alternate arrangements."

Mr. Abrams called Rabbi Pinchas. "I have a *bris* tomorrow morning, but the *mohel* said that he might have to fly somewhere," he said. "I can't reach him. Are you available?"

"I am," said Pinchas. "Give me the details and I'll be there."

"Tomorrow, 7:45 at Congregation Bris Avraham," said Mr. Abrams.

The following morning, at 7:30, Rabbi Miller and Rabbi Pinchas showed up simultaneously!

"What's going on?" Rabbi Miller asked Mr. Abrams.

"I tried reaching you yesterday, but there was no answer," Mr. Abrams replied. "I was concerned that you had gone away, so I arranged with Rabbi Pinchas to come."

"There was a problem with my phone yesterday," apologized Rabbi Miller. "But I'm here, as we arranged."

"I understood that you wanted *me* to do the *bris*," countered Rabbi Pinchas.

Mr. Abrams turned to Rabbi Dayan: "Whom should I ask to do the *bris*?" he asked.

"Maharam of Rottenberg ruled, in a similar case, that once the father awarded the privilege to a certain *mohel*, he may not retract," replied Rabbi Dayan. "He compares this to one who regularly gives his tithes to a certain *Kohen* or *Levi* (*makirei kehunah*). Since the *Kohen* is regularly awarded the tithes, they are automatically considered his upon tithing (*Gittin* 30a; *B.M.* 49a). Thus, once

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BHI HOTLINE

NEIGHBOR'S TREE EXACERBATES ALLERGIES

I planted some trees in my yard. When I was done my neighbor

informed me that the trees aggravate his allergies, making it difficult for him to breathe, and asked me to remove them.

Q: Am I obligated to get rid of the trees? They cost a lot of money and I am not interested in losing all that money.

A: There are two different scenarios that must be addressed. One is if your neighbor is affected when the trees are planted. The second is if your neighbor is affected only later when the trees blossom.

The first scenario is similar to the following *halachah*. If someone operates a mill on his property or other business that generates a significant amount of dust, he must distance himself from his neighbors so that the dust and/or smell does not impact them. Even if the dust reaches the neighbors only when the wind blows, the operator is nevertheless obligated to take the necessary measures to prevent the neighbors from being harmed by his activities (*C.M.* 155:34). The rationale is that the flying dust or odor is comparable to the operator shooting arrows into the neighbor's field. However, generally, when it comes to *nizkei shecheinim* (damage between neighbors), it is the *nizak* (the potentially damaged party) who must prevent his property from becoming damaged.

Nevertheless, when the *mazik* "shoots arrows" and thereby causes damage, he is obligated to refrain from shooting those arrows. Therefore, when someone plants a tree that negatively affects many people, he is responsible for preventing that damage. [Many people do not suffer from allergies, but one is obligated to prevent damage even to an *istanis*, one who is particularly sensitive (*C.M.* 155:39, 41).]



STORY LINE

the first *mohel* was awarded the privilege of performing the *bris* it is dishonest to retract. Nonetheless, if the father did retract from his commitment, the privilege is granted to the second *mohel*" (*Responsa*, Prague edition 4:949).

"Is arranging out of doubt considered implicitly retracting?" asked Mr. Abrams.

"Maharik (#76) writes that arranging out of doubt with a second *mohel* is *not* considered retracting from the first *mohel*, unless the father stated so clearly," answered Rabbi Dayan, "Thus, Rabbi Miller should perform the *bris*. Maharik further derives from the analogy to *makirei kehunah* that even if the father did not explicitly arrange with the first *mohel*, but regularly honors him with circumcising his children, he should not honor another" (*Rema*, Y.D. 264:1).

"Beyond honesty, does the first *mohel* have any legal claim to the privilege?" asked Mr. Abrams.

"The Mordechai (*Shabbos* #472) cites from Maharam that since the practice is to commit verbally, the commitment is legally binding based on the common practice (*situmta*)," replied Rabbi Dayan. "However, the Rosh (*Responsa* 12:3) questions whether there is such a commercial practice and further argues that words alone do not form a binding obligation, even if there is such a common practice" (C.M. 201:1-2).

"Nowadays, though, since the *mohel* is often paid for his services," concluded Rabbi Dayan, "if the *mohel* turned down another opportunity due to the arrangement, the father would have to compensate the *mohel* if he retracted and the *mohel* did not find a replacement *bris*" (C.M. 333:2).



MONEY MATTERS

RENTALS #5

Confirming the Rental Part III

(Adapted by Rabbi Meir Orlian from the writings of Harav Chaim Kohn, shlita)

Q: What other actions confirm real-estate rental? What about rental of movable items?

A: Bringing in furniture or unloading luggage is included in the *kinyan* of *chazakah* (taking possession) for rental. Although many maintain that usage cannot acquire ownership title, since rental is intended only for usage, it suffices to confirm rental (C.M. 192:11; *Ketzos* 189:1; *Nesivos* 192:6; *Machaneh Ephraim*, *Sechirus* #1).

Handing over the key is not considered a *kinyan*, even for rental, unless there is a common commercial practice to confirm in this manner (C.M. 192:2; 201:2; *Sma* 201:6).

Movable items are acquired for rental as with purchases, by picking them up or moving them. There is a dispute regarding a cash payment (C.M. 198:6; *Pischei Teshuvah* 198:8).

Many maintain that *kinyan sudar* confirms rental of both real estate and movable property. However, some maintain that *sudar* confirms only transfer of ownership, but not rental. Others maintain that it confirms rental of movable items, but not of real estate (C.M. 195:1, 9; *Nesivos* 195:4)



BHI HOTLINE

This applies when the damage occurs immediately, even though the wind assists in spreading the damaging material. When the damage does not occur immediately — for example, it affects others only when the tree blossoms — it cannot be considered like arrows, since the owner is not actively involved in the tree blossoming. Such a case is comparable to the roots of a tree that extend over the property line and cause damage to a neighbor. The *halachah* in that case is that the damaged neighbor may not demand that the owner remove his tree. This is true even when the tree was planted in close proximity to the neighbor's water pit. Since the owner planted the tree on his own property and did not immediately cause damage when it was planted, it is the *nizak's* responsibility to protect himself from later damage (C.M. 155:32). Accordingly, the tree owner cannot be forced to remove his tree or plants.

When the damage to the neighbor is so great that it is not possible to tolerate the damaging substance and there is no way to remain if the tree is there, the tree owner is obligated to remove it. This is based on the Rosh (see *Business Weekly Parashas Beshalach*/Jan. 20 2016) who rules that when 1) the *nizak* cannot easily prevent that damage, 2) the damage is ongoing and 3) the scope of the damage is great, the one who is causing the damaging material must prevent that damage even though the damage is not considered [like] his arrows (C.M. 155:20; *Nesivos* 3).

If the tree owner did not realize that planting the tree would harm his neighbor and he will suffer a loss by uprooting it, the neighbor with allergies must cover the costs of the tree and its removal. Once the neighbor is willing to bear the expense, it is logical that the owner becomes obligated to remove the tree (*Mishkan Shalom* p. 170).

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