



Business weekly

PARSHAS VAYICHI
FRIDAY, DECEMBER 17 2010
ISSUE #37
under the auspices of
Harav Chaim Kohn, shlita

a project of the **Business Halacha Institute**

Business Weekly has been dedicated לע"נ הרה"ח ר' נחמיה ב"ר שלמה אלימלך ז"ל by his son, R' Shlomo Werdiger

STORYLINE

noisy neighbors

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

The Berg family led a docile life in their semi-attached home. "Our neighbors are moving away next week," Mrs. Berg told her husband. "I hope the new neighbors are quiet." A week later, a moving truck pulled up, followed by a van. "Hi! We're the Kohlers," the father boisterously greeted the Bergs. Mr. Berg watched the movers unload the truck. "What's that?" he asked, pointing to an impressive looking machine. "That's a radial arm saw," replied Mr. Kohler. "My hobby is woodcraft. I do my own carpentry." "That saw must be noisy," said Mr. Berg. "It is," grinned Mr. Kohler. "I love the sound of the saw searing through the planks. As soon as I unpack, I'm going to build some bookcases." "Oh!", gulped Mr. Berg. That evening, loud music blared from the

Kohler home, punctured by trumpet blasts. In the morning, Mr. Berg met his new neighbor outside. "How's the unpacking going?" he asked politely. "Just fine," replied Mr. Kohler. "My son assembled his stereo system yesterday." "We noticed...", said Mr. Berg gingerly. "My son thrives on music," continued Mr. Kohler. "He plays trumpet in the school band; you can come to watch him perform." "Thank you," replied Mr. Berg with self-control, "but I'm not into loud music." "What do you listen to?" asked Mr. Kohler. "All kinds of music," said Mr. Berg. "But we keep the volume down to a minimum." "No wonder I don't hear any noise from your side," exclaimed Mr. Kohler. "Sounds like nobody lives there!" After a week of sawing and blaring music, though, a weary Mr. Berg confronted Mr.

Kohler. "Your sawing and loud music is bothering us," he began. "But we're doing it within our own home," argued Mr. Kohler. "It's a pity that the walls here are so thin and without proper insulation." "We must ask that you stop this noise making," demanded Mr. Berg. "That's not fair," responded Mr. Kohler. "Just because you're the 'quiet' type, it doesn't mean that we have to change our lifestyle. I love my woodwork and my son thrives on his music." "But you're disturbing your neighbors!" complained Mr. Berg. "We're all walking around exhausted from being kept up late." "I've asked my son to lower the volume late at night," said Mr. Kohler. "But I can't tell him to stop; night is when he's in his room."

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FROM OUR HOTLINE

Submitted by
T. A.

squatters' rights

My tenant's lease expired two weeks ago. Although he was paying me more than the market value for the apartment, he has been a difficult tenant and I want him to leave as soon as possible. I am anyway fed up with renting the place. In order to be sure that he would leave when the lease was up, I gave him a three months' oral and written notice informing him that he must leave, and if he

stays against my wishes, his rent will increase to three times his current rate until I successfully evict him. He just laughed, saying that he would never pay the increase.

Q: Now that the lease expired and he hasn't left, am I halachically allowed to charge him the 200% rent increase until I am able to evict him?

A: Although you have the right to evict him (C. M. 312:8), the issue of the renting fee is not so simple. Shulchan Aruch (C. M. 363:6) discusses a case in which Reuven occupied Shimon's property without permission. Shimon told Reuven to leave his property, but Reuven did not leave. The halacha is that Reuven is obligated to pay Shimon the market rate

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STORYLINE CONTINUED

"I'd like to meet with Rabbi Tzedek," insisted Mr. Berg. "This situation is becoming intolerable." Rabbi Tzedek met with the two and ruled: "The Kohlers should be more considerate of their neighbors. However, Mr. Berg cannot legally restrain them from using the saw and playing loud music, at levels within reason, during normal waking hours."

Rabbi Tzedek then explained: "The Mishna (B.B. 20b) teaches that neighbors can restrain a person from engaging in noisy activities in a shared area, but not in the privacy of his own home (See SM"A 156:10).

"The Rambam (Hil. Shechenim 6:12) understands that this Mishna refers to a case in which the person has already been doing these activities on a regular basis. The implication is that neighbors can stop a person from beginning such activities even within his own home. Most other Rishonim, however, explain that neighbors cannot restrain a person even from beginning these activities in his home. "Shulchan Aruch follows the

Rambam, whereas the Rama follows the other Rishonim (C.M. 156:2). Therefore, it might be possible amongst Sephardim to prevent a person from initiating noisy activities in his home, whereas amongst Ashkenazim it is not possible (Emek Hamishpat, Shechenim, 35:1).

"However, the Rama adds that if the neighbor is sickly and noise aggravates the illness [or if the neighbor is known to be particularly sensitive to the noise], he can restrain the person from noisy activities even within his home. Current poskim rule, based on this, that a neighbor can restrain a person from engaging in noisy activities during accepted sleeping hours, since the average person becomes dysfunctional if plagued with fatigue (Emek Hamishpat, Shechenim, 34:15-16).

"Nonetheless, the Kohlers should be more sensitive to the Bergs' desire for quiet as part of 've'ahavta lere'acha kamocha' ('Love your neighbor as yourself'), and try to engage in their noisy activities in the least disturbing manner possible."

FROM OUR HOTLINE CONTINUED

for renting that property even if it is not a rental property. Sema (363:14) explains that although when one discovers someone living on his property that is not used as rental property, he usually may not charge rent for the time that he was there, this case is different since he already told him to leave. Once Shimon explicitly tells Reuven to leave his property, if Reuven stays, he is obligated to pay rent for the time that he remains on the property. Erech Shai (363:6) extends the ruling of Shulchan Aruch to a case that is even more similar to yours. He writes that if an owner warns a squatter that he will charge him an inflated rent if he does not leave the property and the squatter says he will not pay, the squatter is obligated

to pay only the market rate for rental of this type of property. The rationale behind this ruling is that once the squatter makes the decision to stay against the wishes of the owner, he becomes a thief and is obligated to reimburse the owner according to its market value.

This principle applies in your circumstance as well. You informed your tenant that he must leave and he refused. He is there against your wishes. Although you warned him that after the lease expires you will charge him three times the value of his rent, you don't want him as a tenant.

As such, he is living there as a thief and is only obligated to pay the lower range of the market value for the stolen property.

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MONEY MATTERS

business competition week #6

Q: Can I post a fictitious "rate this seller" review on Amazon.com et al. that applauds my own company or discredits my competitor's company?

A: Posting a fictitious comment applauding your own company is deceitful, even if the information is correct. It might also involve geneivas da'as (misleading people), since readers expect such comments to

be unbiased reports from customers and decide to make purchases based on them (C.M. 228:6; Tzitz Eliezer XV:12). Instead, you should encourage customers who had positive experiences to post reviews.

Posting a fictitious comment discrediting your competitor is motzi shem ra, a severe form of lashon hara. In truth, any person has to be careful when posting a negative review. The reason to allow doing so is the

need (to'eles) to warn other potential customers about dealing with that company. The Chofetz Chaim (Rechilus 9:2) requires that the information be true, without exaggeration, and with proper intent to warn the consumer - not out of hatred or intent to disparage the seller's reputation. Therefore, a competitor should avoid posting even a true negative review, since it is almost impossible for him to have proper intent.

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