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

STORYLINE

fire power

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Rabbi Dayan sat with his students around the bonfire on Lag Ba'omer.

"I've got a challenge for you," Rabbi Dayan said. "Can anyone think of something that ties together the time period of sefiras ha'omer, R' Shimon bar Yochai (Rashbi), bonfires and Choshen Mishpat?"

"We light fires on Lag Ba'omer to commemorate the passing of Rashbi," Moshe said. "Bonfires relate to Choshen Mishpat; if people are not careful with fire and it damages, they are obligated to pay."

"Good," said Rabbi Dayan. "But where does sefiras ha'omer tie in?"

"Wasn't Rashbi one of R' Akiva's students?" suggested Etan. "We limit joyful activities during the period of sefiras ha'omer because 12,000 pairs of R. Akiva's students died during this time period."

"OK," Rabbi Dayan responded. "But was R' Shimon bar Yochai one of those students?"

"No," chimed in Uri. "The Gemara (Yevamos 62b) relates that after R' Akiva's students died, the world was desolate until R' Akiva came to the Torah scholars in the south and taught them: R' Meir, R' Yehuda, R' Yosi, R' Shimon, and R' Elazar; they reestablished Torah. That R' Shimon is Rashbi."

"Excellent," exclaimed Rabbi Dayan. "Does anyone know another context in which these same five Torah giants are mentioned?"

"I remember something with R' Yehuda ben Bava and semicha," said Etan.

"Correct," replied Rabbi Dayan. "Do you know what exactly semicha is?"

"That's when they ordain someone as a Rabbi after he studies many years," said Uri.

"My father has semicha," he added proudly.

"That's wonderful," said Rabbi Dayan. "But our semicha nowadays is just permission to render halachic decisions, not the formal semicha mentioned in the Gemara."

"What was that semicha for?" asked Moshe. "In order to have full judicial authority, the Torah requires that the dayanim receive formal semicha," explained Rabbi Dayan. "This is an unbroken chain of authority linking directly back to Moshe Rabbeinu. In the times of R' Yehuda ben Bava, the Romans wanted to break this chain and issued decrees against granting semicha, under penalty of death. R' Yehuda ben Bava gave up his life to grant semicha to these same five Torah scholars, including Rashbi. They continued the chain for another 250 years, until it was broken almost 1,600 years ago."

"Rabbi Dayan, how can you then adjudicate

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FROM THE BHI HOTLINE

Submitted by
N. G.

the builder's blunder

I hired a builder to construct a garage in my backyard. As it turned out, I had to be out of town when they built it. I returned to find that the workers had built the new garage two feet onto my neighbor's property. My neighbor is demanding that I have the garage moved.

Q: I am trying to contact the builder to find out if he will accept responsibility for his error, but in the meantime I'm wonder-

ing, what is the halacha in this case?

A: If a person steals, the Torah obligates him to return that object. Consequently, if a person stole a beam and used it in the construction of his home, he is obligated to dismantle his house to be able to return the beam to the owner.

Chazal were concerned that the thief would not want to take responsibility for his theft since it would involve dismantling his house.

They therefore enacted that one who steals a beam and incorporates it into his house is only required to reimburse the owner for the value of the beam, but is not required to return the beam itself. This enactment is called takanas hashavim.

Rema (Choshen Mishpat 360:1) states that this enactment is limited to one who stole a movable object, but does not apply to one who stole land. In other words, if Reuven stole land from Shimon and built a house on

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STORYLINE CONTINUED

in beis din," asked Uri, "since the chain of semicha was broken?" "Dayanim without formal semicha are able to judge as long as reaching agents of the fully empowered dayanim of old," replied Rabbi Dayan. "The Gemara (B.K. 84b) limits the authority of current dayanim to cases that are considered common and also entail financial loss. This includes most monetary cases: obligations, debts, kesubos (marriage obligations), inheritance, gifts, damage to property, certain aspects of personal injury, theft, and damage caused by animals through eating or trampling. It does not include cases that are uncommon, such as an animal that gored, or cases that do not entail financial loss, such as the double-payment penalty (kefel) of a thief (C.M. 1:1-3)." "This brings us back to bonfires," continued Rabbi Dayan. "There is a dispute whether fire damage is considered common, in which case dayanim nowadays have authority to judge. Shach (1:2) cites the Maharshah that fire is not considered common. However, most other authorities consider fire as something common that dayanim nowadays have author-

ity to judge (Pischei Teshuva 1:2; Aruch Hashulchan 1:3)." "Does this mean that in cases that are not considered common there is no legal recourse nowadays?" asked Etan. "Even in these cases, the accepted practice is that beis din can review the case and estimate the amount owed," answered Rabbi Dayan. "Although they do not have legal authority to extract payment, they can apply sanctions until the guilty party appeases his litigant with an appropriate amount. Similarly, if the litigant is able to seize what is owed him, he can keep it (C.M. 1:5; Shach 1:17)." "On a pragmatic level," concluded Rabbi Dayan, "I should note that beis din is not able to enforce its verdict in the secular legal system nowadays without a prior binding arbitration agreement. Therefore, the practice of almost all batei din is to require a binding arbitration agreement. By doing so, the litigants accept the authority of the dayanim to adjudicate the case. This acceptance also gives them halachic authority to adjudicate even cases that are considered uncommon (C.M. 22:1)."

FROM THE BHI HOTLINE CONTINUED

Shimon's property, Reuven is obligated to remove the house and vacate Shimon's property. We don't allow Reuven's structure to remain and have him pay Shimon for the land that he took. If we apply this principle to your case, it would mean that you are obligated to remove the garage from your neighbor's property and you do not have the option to pay him for the land that you took by constructing the garage on it. Pischei Teshuva (Choshen Mishpat 360:1), however, cites Teshuvos Mabit (3:143) who rules that if Reuven's builders encroached on Shimon's property without Reuven's knowledge, takanas hashavim applies. As such, Reuven must pay Shimon for the land but is not obligated to vacate the land or destroy his struc-

ture. Similarly, in your case, since it was the builder who constructed the garage over the property line, you would be obligated to pay your neighbor for the land but would not be obligated to remove the garage. However, most other Poskim disagree (see Bais Yosef 376:1 in the name of Rashba and Erech Shai ibid) and contend that it is illogical that Shimon should be forced to forgo some of his property against his will. If the issue were to be brought to a din Torah, it is likely that Bais Din would demand that you remove the garage from your neighbor's property. At any rate, it is advisable that you try to negotiate with your neighbor and find a mutually acceptable compromise.

Please contact our confidential hotline with your questions & comments

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MONEY MATTERS

payment of wages week #13

Q: I brought my car to a mechanic for repairs. He called in the afternoon to say that it was ready. Do I have to pay him that day if I will not pick up the car until morning?

A: When you give an item to a worker for repairs, you may delay payment as long as the item is in his hands. When he returns the item to you, you must pay that day (Choshen Mishpat 339:6). There are a number of expla-

nations for this halacha. Some explain that as long as the car is in the mechanic's hand, it serves as collateral to ensure payment (SM"A 339:10). Others explain that the job is not considered complete until the item is returned (Aruch Hashulchan 339:8; Ketzos 72:23). A third explanation is that by not returning the car, the mechanic indicates his willingness to wait for payment (Meiri B.M. 112a). If the mechanic explicitly asks you to pick up the car

and pay that day, there is a dispute whether you can delay payment if you do not pick it up. The Chafetz Chaim maintains that you do not violate by waiting, whereas Aruch Hashulchan is of the opinion that you do violate. Everyone agrees that there is an obligation not to delay payment without reasonable cause (see Pischei Teshuva 339:2; Ahavas Chesed 10(2) and Biur Halacha O.C. 242 s.v. l'chabed; Aruch Hashulchan 339:8; C.M. 339:8).

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