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

STORYLINE

the ball over the wall

By Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

Mr. Marks was relaxing in his garden one Sunday afternoon, savoring the remaining days of sunshine. From over the wall of his garden came the steady "thump, thump" and shouting of the local teenage boys playing basketball in backyard next door.

Mr. Marks didn't mind their playing ball, although the noise was disrupting to his "quiet" relaxation. However, he very much minded the frequent balls that made their way over the wall into his garden.

Sometimes, the ball would land in Mr. Marks's lap while he sat reading in the sun. Occasionally, it would land on a flower pot or toy and break it.

At first, the boys would simply climb over the wall the retrieve their ball.

"Excuse me," they would say, as they popped over the wall and landed in his gar-

den, "I just have to get the ball..."

In the summer this had been occurring almost daily. Mr. Marks finally put his foot down, especially since he liked to sit in his garden undisturbed.

"If you need the ball, you come around the front and ask for it like a mentch," he insisted.

Mr. Marks tried talking to the neighbor. "Could you get your kids to play elsewhere?" he said. "It's annoying me." The neighbor apologized, but wasn't particularly cooperative about stopping the boys.

Today, as Mr. Marks lay there with his eyes closed, enjoying the warmth, another ball flew over and landed right next to his head. "I've had enough of this!" Mr. Marks leaped up.

"I'm warning those boys that the next time

their ball comes over the wall, they're not getting it back!" he said to his wife. "I've told them over and over again to stop playing like this. They just don't listen, and their parents don't do anything about it."

"I agree that the neighbors are not acting properly," said his wife, "but I'm not sure that you're allowed to keep their ball."

"Well, then what can I do?" asked Mr. Marks. "This is becoming crazy."

"I don't know," replied his wife. "How about speaking with Rabbi Dayan, though?" she suggested. "Ask him if you can keep their ball. Maybe you can even stop them from playing or require them to build a fence."

Mr. Marks met with Rabbi Dayan and explained his predicament.

"What can I do to alleviate this problem?" he asked. "Do I have a legal right to demand

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FROM THE BHI HOTLINE

Submitted by
R. S.

my lazy tenant

I leased office space to Shimon. When the lease expired, he left, leaving behind a number of boxes. I have contacted him about this, and despite his assurances that he will come and remove the boxes, they are still there.

Levi rented storage space from me for a year. He paid for the first month, but three months have passed for which he has yet to pay.

Q: In each of these cases, am I obligated to keep their things on my property, or

may I throw them away or sell them?

A: The Gemara (Bava Metzia 101b) recounts an incident in which a man betrothed a woman in order to be able to store wine on her property. After the wine was stored, he broke off the engagement. She, in response, sold some wine to hire workers to remove rest of it from her property and place it in the street. R' Huna, son of R' Yehoshua, declared that she was justified in removing

his wine. Even if her property was available for rent, she had the right to refuse to rent to him, since she did not trust him.

Shulchan Aruch (C.M. 319:1) addresses the case of one who places his possessions on a friend's property without permission or uses deception to obtain permission to store his things on his friend's property and then disappears. The owner may remove the goods from his property. He may even sell some of it to generate funds to hire workers to re-

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STORYLINE CONTINUED

that the boys stop playing ball?" "A person can restrain his neighbor from doing activities that damage, are a major nuisance, or to which he is particularly sensitive," explained Rabbi Dayan. "However, ball playing does not seem to fall into these categories, even if the ball makes its way over the wall numerous times (C.M. 155:35-41)."

"What about requiring the neighbor to construct a tall fence?" asked Mr. Marks.

"If the ball typically causes damage, it is possible to require them to do so, since a person has to take precautions not to damage another (155:34)," said Rabbi Dayan. "However, if the ball rarely damages and the issue is primarily the minor nuisance, it is not possible to require the neighbor to build a tall fence, but rather only one as customary in that place."

"Can I threaten to confiscate the boys' ball if it falls into my garden?" asked Mr. Marks.

"You do not have a right to unilaterally confiscate the ball," said Rabbi Dayan. "Although the ball is a nuisance to you, you

cannot take it from them. You have an obligation to let them have it back, just like any other lost item, even if it gets 'lost' numerous times. (267:2)."

"What if I warn the parents also?" asked Mr. Marks.

"If this is a recurrent issue, the parents could allow you, as an educational measure, not to return the ball," answered Rabbi Dayan. "You can also insist that you will return the ball only to the parents."

Mr. Marks still had one more question. "What if the ball caused damage in my yard?"

"In that case," replied Rabbi Dayan, "the teenage boys are required to pay for the monetary damage that they did to your property. This is true even nowadays that there are limitations on the beis din's ability to adjudicate certain other kinds of damage (1:1).

"In any case, the boys do need to be more careful," Rabbi Dayan concluded. "It is wrong to do something which disturbs a neighbor. Such behavior is a lack of v'ahavta l'reiacha kamocho - love your neighbor as yourself."

FROM THE BHI HOTLINE CONTINUED

move the merchandise from his property. It is virtuous, however, for the property owner to inform Bais Din to rent space for the merchandise to prevent the owner from suffering a loss even though he behaved improperly. Rema cites opinions who maintain that one must inform the owner before removing the merchandise, and only then if something happens to the merchandise, the property owner is exempt from liability. Some authorities distinguish between rental property and non-rental property. Regarding non-rental property, the halacha is the same whether the owner of the merchandise behaved deceptively or he merely put down the merchandise without permission. In contrast, with regards to rental property, the property owner may remove the merchandise only when the merchandise owner behaved deceptively (Bais Yosef, Sema 1 and Ketzos 2 in the name of Rabbeinu

Yerucham). When the property owner needs the space where the merchandise is located, he is permitted to remove the merchandise immediately. This is based on the Gemara Bava Kama (27b) that teaches that when someone fills a friend's yard with his merchandise, the property owner may "take the law into his own hands" and even break the merchandise, if necessary, in order to be able to enter and exit his property. Similarly, the property owner may remove any merchandise that is on his property (Taz).

You should contact your tenant and inform him of your intent to remove his things. If he still does not respond, you may remove the merchandise from your property. This is especially true when there is reason to believe that your tenant no longer cares about his merchandise or has abandoned hope of retrieving it - either out of laziness or because it is not worthwhile to come and remove it.

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MONEY MATTERS

borrowing and lending week #5

Q: I seem to recall laying out money to cover some shopping for my roommate and that he didn't repay me yet, but I don't remember clearly. Can I demand the money?

A: Since the lender is uncertain in his claim, if the roommate definitively denies the loan or claims that he definitely repaid, he is exempt and does not even have a moral obligation to

pay or a requirement to swear (C.M. 75:17). If the roommate acknowledges a certain amount, he must pay that amount and is exempt from the remainder (see 75:18). Even if the roommate also is unsure whether he borrowed, he remains exempt (SM"A 75:22). If the borrower admits to the loan, but is unsure whether he repaid, we learned last week that he must pay (75:10). In our case, though,

where the lender is also unsure about repayment, there is a major dispute amongst the authorities. Some say that the roommate is obligated like any other borrower who is unsure whether he repaid, while some say that he has only a moral obligation to pay (see Shach 75:18), and others say that he is exempt and does not even have a moral obligation (Taz 75:10).

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