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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

DONATION DETAILS

Mr. Meyer visited his son Yoni for the holidays. At the Yizkor appeal for the poor, the shul distributed pledge cards with each member's name. Guests received anonymous pledge cards.

Mr. Meyer vacillated how much to donate, and finally folded down one of the tabs. After Yom Kippur, he packed up quickly to get home at a reasonable hour, and forgot to leave a check for his donation.

Yoni came to visit for the first half of Sukkos. Mr. Meyer wanted to honor his pledge and send a check back with his son but no longer remembered exactly how much he had pledged. "What do you suggest?" Mr. Meyer asked.

"I'll call the gabbai of the shul and see if he has it on record," Yoni said.

"The pledge cards for members are named, but not for guests," said the gabbai. "The anonymous pledge cards have a wide range of sums, so I can't tell how much your father pledged."

Mr. Meyer tried again to remember how much he pledged, but was unable to. He often gave \$100, but sometimes \$200 or \$250, and on special occasions, even \$360. He remembered vacillating between these sums, but could not remember what he had finally decided.

Mr. Meyer raised the question at the dinner table on Chol Hamoed.

"You only have to give what you're sure of," said one family member.

"Assume what you most often give," suggested another.

"I think you should compromise and give the average, halfway between the minimum and maximum," said a third.

"It's going to tzedakah anyway," piped up a fourth. "Give the max."

Mr. Meyer decided to call Rabbi Dayan. "I don't remember how much I pledged at the Yizkor appeal but it was somewhere between \$100 and \$360," he said. "How much should I give?"

"There is a difference between a monetary claim and a pledge to charity," replied Rabbi Dayan. "Regarding a monetary claim, the burden of proof is on the plaintiff. If neither party remembers how much was owed, the defendant has to pay only the sum that is certain" (C.M. 75:18).

"However, a pledge to charity is



BHI HOTLINE

BLOCKING WINDOWS

My neighbor is planning to add on to his house. His plans include adding a room that will block my window.

Q: Can I prevent him from building so close to my house if it will block the light and airflow?

A: In your question you did not indicate whether you had your neighbor's permission to open a window that oversees his yard. If you did not have explicit permission, even though your neighbor was fully aware of the presence of the window, there is a debate whether you have a right to maintain the window. Rambam maintains that regarding "right to use" — *chezkas hishtamshus*, it is unnecessary for the user to claim that he purchased the right or even that he has been "using" it for at least three years in order to establish a "right to use." Those prerequisites are necessary only when asserting ownership.

However, *chezkas hishtamshus* is established once the neighbor takes note of the use, realized it is damaging to his interest and nevertheless remained silent and did not protest. Once the neighbor accepts the use, he cannot demand that the user cease to use the property, nor may he do something that is damaging to that "right of use." Therefore, if he wishes to build a structure in his property he must leave space for the user to continue his *chezkas tashmish* (C.M. 153:4). Other authorities contend that the neighbor's silence is not significant unless the *chezkas hishtamshus* is established over the course of three years in conjunction with the claim that the neighbor explicitly granted permission for this usage (C.M. 153:2, 6, 16, 154:7 and 155:35).

Many Poskim assert that Rema maintains that this debate was not definitively decided and thus one who has not used something for three years and does not claim that he purchased it may not be forcibly displaced (Levush, Taz and Gra

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STORY LINE

compared to a vow, which is a potential Torah prohibition," continued Rabbi Dayan. "Therefore, regarding a questionable vow or pledge we follow the stringent possibility, as any other safek d'Oraisa" (Y.D. 208:1; 258:3).

"If there were only two possibilities, I understand following the higher amount," said Mr. Meyer. "However, here the pledge could have been any amount from \$100 to \$360."

"You are required to give, out of doubt, the maximum that you might have reasonably pledged," replied Rabbi Dayan. "This is based on a mishnah (Menachos 106b) regarding one who forgets how much he consecrated to the Beis Hamikdash. He is required to give the amount regarding which you can comfortably say, 'I didn't pledge more than this.'

"Similarly, Chasam Sofer writes that if a person pledged to a specific cause but forgot which, he is required to donate to all the possible causes," added Rabbi Dayan. "This is his responsibility to fulfill his pledge, but none of the causes can demand the money, since his obligation to them is doubtful" (Pischei Teshuvah, Y.D. 258:5).

"Nonetheless, Aruch Hashulchan (Y.D. 258:10) writes that in our situation the person can do hataras nedarim (annul his vow)," concluded Rabbi Dayan. "He can say that had he known that he would forget the amount that he pledged, he would not have committed. He would then be freed from the original pledge and can give what he wants" (see Derech Emunah, Matnos Aniyim 8:5[21]).



MONEY MATTERS

DISPOSAL OF SHEMITTAH ESROGIM

By Rabbi Meir Orlian

Q: My esrog said on it "Otzar Beis Din." What does this mean? What should I do with it after Sukkos?

A: Esrogim that grew this past year in Eretz Yisrael are esrogim of Shemittah. The owner is not allowed to work the orchard normally, nor is he allowed to commercially sell the fruit, which is hekfer (ownerless).

One means of enabling an easily available supply of Shemittah fruit to the public is through Otzar Beis Din. A beis din takes responsibility for making the fruit available, and hires the orchard owner as its employee to handle the growth and distribution, according to their instructions. Thus, the fruit is not "sold" by the owner, but rather "distributed" by the beis din, and the owner is paid for his services in tending to the fruit.

It is prohibited to waste or ruin fruit with kedushas Sheviis, so that the esrog cannot be disposed of in the normal way. It should either be made into jelly and consumed, or held until dried out, or double-wrapped and then disposed of.



BHI HOTLINE

155:335). Others contend that since Rema did not definitively decide, the halachah is determined by the one who is stronger — kol d'alim gvar (Sema 153:2 and Shach 153:11).

Some maintain that when one's use takes place in his neighbor's property it is necessary to use the property for three years and claim that he acquired the right of usage (Nesivos 153:13). Included in this category is opening a window facing a neighbor's yard. According to this position, one cannot prevent a neighbor from exercising rights in his own yard (Maharsham 1:30). (Whether one may build on his own property when the allowance is subject to debate is itself a debated matter; see Mishkan Shalom, Miluim 3:25).

If you opened a window with your neighbor's explicit permission, it is assumed that his allowance is unqualified and he may not claim that the allowance was limited to when it does not impact his rights. Moreover, even if your neighbor denies granting you permission, your claim is stronger since you have exercised rights of usage for three years — chezkas gimmel shanim. However, the Rema rules (C.M. 154:16) that when there is a prevailing custom, the halachah will follow it. Nowadays, due to applicable legal property rights, a custom developed that permits building up to the property line, so the fact that your neighbor did not protest when you opened the window does not prove that he was forgoing his rights, since he could construct on his property without any interference from you. Consequently, if one wishes to ensure that a neighbor will not block his window, he must establish an easement with the municipality since, absent that, one does not have a chazakah.

In your circumstance, regardless of whether you granted him permission, he is permitted to build up to the property line, even if your window will be blocked.

For questions on monetary matters,
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