



# BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### DELAYED PAYMENT

Mr. Fine had granted a \$20,000 interest-free loan to Mr. Schnur for the period of a year. At the end of the year, he turned to Mr. Schnur to collect the loan.

"It's a little difficult for me to repay now," said Mr. Schnur. "Could you give me another month?"

"A month is OK," said Mr. Fine, "but after that I'll need the money without further delay."

A month later, Mr. Fine asked Mr. Schnur to repay the loan. Again Mr. Schnur weaseled out of payment. "I'm getting the money together," he said. "Come back next week."

"I can't wait the week," said Mr. Fine. "There's a stock I've been watching carefully, STARS Inc., which I expect to begin climbing in the coming days. If you don't repay immediately, I will have to take a loan from my broker to purchase the stock."

"I'd pay you if I could," said Mr. Schnur, "but I don't have the money available." Mr. Fine turned away empty-handed. As he left, he said: "If STARS goes up, I'm going to hold you liable for the potential gain that I lost and/or the interest I will have to pay my broker for the loan."

Sure enough, by the end of that week, STARS rose 6 percent. Mr. Fine again asked Mr. Schnur for the loan, but the request was again rejected. Mr. Fine took out a loan from his investment broker to purchase the stock, at a 3-percent rate of interest.

Mr. Schnur finally repaid the loan six months later. Mr. Fine demanded that he also pay the 6-percent gain he had missed out on, plus the interest he paid to his investment broker.

"I'm willing to compensate you for the interest that you paid," agreed Mr. Schnur, "but not the 6 percent." "What's the difference?" argued Mr. Fine. "You caused me a loss in both ways!"

The two came to Rabbi Dayan.

"A borrower is not allowed to delay payment against the lender's will, if he is able to pay," replied Rabbi Dayan (C.M. 97:3; Pischei Choshen, Halvaah 2:7).

### DID YOU KNOW?

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## BHI HOTLINE

### TREE CAUSING DAMAGE TO A NEIGHBOR

Reuven and Shimon are neighbors. Shimon built a stone wall on

the property line. Reuven's tree's roots crossed under the property line and are damaging Shimon's wall. Shimon asked Reuven to remove the roots. Reuven refused and told Shimon that if the roots are bothering him, he should take care of it himself.

**Q: Who is responsible to make arrangements and pay to have the damaging roots removed?**

**A:** Shulchan Aruch (155: 32, 26) rules that one may plant a tree on his own property even though it is close to his neighbor's water pit. Even if the neighbor protests out of concern that the tree's roots will eventually damage his water pit, it is permitted. The reason is that he planted on his own property and at that time the tree was not damaging the neighbor's water pit. The damage occurred later when the tree grew and expanded. It is therefore the neighbor who must protect himself from damage, and he may, at his own expense, trim the roots that are damaging his water pit. For this reason, if the branches of one person's tree extend over the property line and prevent his neighbor from building his sukkah (O.C. 626:1), the neighbor may not demand that the tree owner trim his tree. Since the tree is located on the owner's property and the damage is the result of the tree's growth, he is not liable. The neighbor, however, may trim those branches that cross the property line and prevent him from building his sukkah.

What requires consideration in your case is the Rosh's opinion that when the following three factors are present, the tree owner is obligated



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"Nonetheless, if the borrower delayed payment, he is not liable for the lender's loss of potential gain," continued Rabbi Dayan. "The Yerushalmi (B.M. 5:3) writes that mevatal kiso shel chaveiro — a person who restrained his friend's money and prevented him from earning profit — has only a complaint against him. Many authorities consider mevatal kiso shel chaveiro a form of grama, though, so that a chiyuv b'dinei Shamayim remains (Shach C.M. 292:15; Pischei Choshen, Nezikin 3:29; see, however, Shach 61:10; Responsa Imrei Binah #1). "But I warned Mr. Schnur that I would hold him responsible," Mr. Fine said.

"The Rashba (Responsa 3:227) rules that even if the lender stipulated that the borrower would be responsible for any loss or expenditure due to delayed payment, loss of potential gain is not considered a loss, based on the aforementioned Yerushalmi and other sources," replied Rabbi Dayan. "Furthermore, he writes that in the case of a loan we cannot allow the borrower to pay the potential gain, since it would be ribbis (interest), as the lender always has potential gain with his money.

"In addition, if the lender chose to take an interest-bearing loan from a non-Jew, that is not considered a direct loss, and the borrower cannot cover the interest payment," concluded Rabbi Dayan.

"However, some allow compensating the lender if the delay caused him a loss of capital, not just potential profit. Furthermore, some suggest that it is permissible to give compensation as a gift after repaying, without mentioning that it is due to the loan" (Taz, Y.D. 170:3; Pischei Choshen, Halvaah 2:10; Bris Yehudah 2:14-15[35]).



## MONEY MATTERS

### PARTNERSHIP # 15

#### Dividing Profits Prematurely

**Q: I formed a partnership with a classmate to sell snacks during the school year. I would like to divide the profits now, while my friend wants to reinvest them and expand the "business" until the end of the school year. Who is right?**

**A:** In a business partnership with a defined time frame, just as each partner cannot unilaterally disband the partnership prematurely, so, too, he cannot unilaterally demand to divide the profits prematurely. This is because the partners committed financially to each other, and the profits may be needed to offset future losses. Furthermore, greater assets can allow greater business profits (C.M. 176:15; Sma 176:45; Pischei Choshen, Shutfim 3:3).

If the partnership had no time frame, each partner can disband the partnership at any point. Nonetheless, as long as the partnership remains intact, the profits should remain reinvested, unless the clear understanding was that profits would be distributed on a regular basis.

This, of course, is in the absence of an agreed-upon arrangement beforehand or a clear commercial practice.



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to stop his tree from damaging a neighbor's property: 1) The damaged party cannot easily remove the damaging tree; 2) The impact on the damaged party's use of his property will be continuous, and 3) The damage is significant (C.M. 155:20; see also Nesivos 3). Accordingly, if the roots of Reuven's tree will cause significant damage to Shimon's house, Reuven is obligated to stop his tree from doing so. The general ruling that exempts the tree owner of responsibility is limited to damage that is minimal (Chazon Ish, B.B. 14:13).

If roots from a person's tree penetrate a neighbor's sewer system, and the only way to prevent further damage is to remove the tree altogether, the tree owner must remove his tree. When the damage is not that extensive and could be prevented by trimming the roots from time to time rather than cutting down the entire tree, the tree owner cannot be forced to remove his tree or even trim the damaging roots (Mishkan Shalom, p. 166).

The above relates to whoever is actually responsible to trim the tree, but if the expense to cut down the tree will be great and the tree owner was not negligent, the owner is not responsible and the damaged party will have to bear those expenses (Mishkan Shalom, p. 123, 170). However, if while planting the tree the owner realized that the tree will cause his neighbor damage and it would be costly to prevent the damage, the tree owner is responsible for paying for the tree's removal (ibid., and Mishpetei Hachoshen, p. 184).

In your circumstance, the matter is subject to the discretion of the Dayanim as to whether they consider the damage extensive and whether it will have an ongoing impact on Shimon's use of his property.

For questions on monetary matters,  
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