

HALOCHOSCOPE

Congregation Shaaray Tefillah, Pittsburgh, PA

This week's question:

During an exceptionally bad storm, a large tree in someone's backyard was knocked down and fell into the neighbor's yard destroying the neighbor's car. The insurance company did not pay the claim in full for the car claiming that the storm was an "Act of G-d" (1). The owner of the car would like to collect damages. Is the owner of the tree responsible for the damage done to the car? The part protruding into the neighbor's yard must be removed. Who should remove it or pay for its removal- the owner of the tree or his neighbor? After that part has been removed, the remaining trunk is suspended above the ground with one end resting on a roof and the other end resting on the wall separating the two backyards and leaning downwards into the neighbor's yard. According to Jewish law, does the neighbor have authority to serve notice to the tree-owner that it is a hazard and he will be held responsible for damages that occur if it falls down unless he removes it by a certain date? Finally, does the owner have a Halachic obligation anyway to prevent accidents in his home?

What are the issues:

- (A) *Nezikin* - the laws of damages in Judaism
- (B) Unexpected damages
- (C) The removal of debris
- (D) Serving notice of a hazard, and consequential responsibility
- (E) *Lo Sasim Damim Beveisecha* - Home safety

(A) Nezikin

The Jewish laws of damages are set forth in the Talmud, based largely on Pesukim in Parshas Mishpotim. A person is responsible for any damage caused by his actions. Generally speaking, only if it can be shown that he is not in control of his actions, such as a *Shoteh*, an incompetent, or one who can otherwise not be held responsible for his action, such as *Oness*, circumstances beyond control, is he absolved from his obligation to compensate. A person is also responsible for damage caused by his possessions or other damage which he does not cause with his own hands, but resulted from an action of his. There are certain major categories called *Avos Nezikin*, which differ in the application of their laws. Examples of *Avos* include: if someone's animal damaged someone else or their property, the owner can be held liable. Also, a person is held liable for damage resulting from the spreading of a fire he lit. So, too, can he be held responsible for not removing something of his which is an obstacle in a public thoroughfare. Each of these *Avos* have *Toldos*, sub-categories, that follow the same guidelines as their *Avos*.

As a rule, one is liable for damage caused by laxities in taking care of a situation that can be expected to result in monetary loss or physical harm. However, there are specific guidelines when and where one is obligated to pay compensation, and to the amount payable. [See Talmud Baba Kama, especially 2a-5b.]

(B) Unexpected damage

In some cases one is exempt from compensating for an unexpected cause of damage. As we have mentioned, there are times when a person can show that the damage was beyond his control and be absolved of his responsibility. For example, if someone is sunning on his rooftop and is blown off by an uncommonly strong wind and hurts someone else when he falls down, he is still held responsible - this is deemed an *Oness Karov Lepshia*, "almost" negligence. However, this is only true for *Adam Hamazik*, damage caused directly by a human. Regarding *Aish*, damage caused by fire, if someone lit a fire in a safe place and a wind came along and fanned the flames and blew it to another place where it caused damage, the fire-lighter is liable. If, however, the wind was unusually strong and unexpected, he is not liable for the resulting fire damage. [See Baba Kama 27a, 28b-29a, 56a, 59b-60a; Baba Metzia 82b, Tosafos; commentaries and Poskim.]

Aish is one of the *Avos*. Its characteristics are that it is inanimate and causes damage as it moves. A *Toldah* of *Aish* is an object left on a rooftop that is blown down and causes damage as it falls. Here, too, if the wind that blew it down was expected, a normal wind, the owner is liable. If, however, it was a strong wind (Rambam Hil. Nizkei Mamon 14:7 says any wind that is not common *Tamid*, always, is in this category [See Magid Mishnah, Be'er Hagala Choshen Mishpat 418]) he is not liable. Since, in our case, the tree was healthy and could not be expected to be blown down by a regular wind, it would follow that the owner is not liable for the damage caused by its falling down in a storm. Had it been a frail tree, then it is possible that the owner is responsible for its removal from a place where it can cause damage. Therefore, if it causes damage even in a storm, he might be responsible. This raises a question of *Techilaso Bipeshia Vesofa Be'oness*, where someone initially is negligent, but had no control at the time the damage was done. We will discuss this issue in section D. [See Baba Kama 6a, 29a; Shulchan Aruch Choshen Mishpat 411:2. commentaries, etc.]

(C) The Removal of Debris

If someone built a wall on his side of the property line, and it fell into his neighbor's property, he is responsible to clear up the debris. By the same token, if a tree falls into a neighbor's property, the owner is responsible for the removal. [See Baba Metzia 117a-118a; Sh. Ar. C.M. 166.]

(D) Serving Notice

If a privately owned wall or tree collapses by itself into a public thoroughfare and causes damage, the owner is not liable for the damage. The reason here is that no outside force caused the wall to fall and it therefore does not qualify as a *Toldah* of *Aish*. In the cases mentioned in section B which are *Toldos* of *Aish*, an outside force, the wind, was involved. If the *Bais Din*, the communal Rabbinical Court, serves the owner notice that he should remove his wall because it poses a hazard, for example, it is leaning into the street, he has thirty days to remove the hazard. If it falls after the thirty-day period, he is liable for damage caused. If it is an

immediate hazard, they can compel him to remove it right away. [See Baba Metzia 117b. Baba Kama 6a-b, Tosafos and Rosh. Sh. Ar. C.M. 416.]

If, however, the wall was originally not built properly, then whatever the reason for its falling, the owner is responsible. This is true even though we have shown that he is not liable for something blown by an uncommon wind, here one must say that his initial negligence is sufficient to render him liable. The fact that the actual cause of the damage is *Oness* is not sufficient reason to exempt him. [See Baba Kama 56a; Yerushalmi 6:1 and commentaries; Tosefta Baba Metzia 11:5 Magid Mishneh, Nizkei Mamon 13:19; Sh. Ar. C.M. 416; Levush] It would follow that a tree perched precariously is as hazardous as a shaky wall. However, since the owner did not put the tree there, one could not draw a parallel to the improperly built wall. Therefore, he would only be liable if he was served notice by *Bais Din*. Only the *Bais Din*'s notice is enforceable, not that of any unauthorized body or individual.

All this, however, applies to damage done by a fallen or falling tree or wall in a public place. In a private place, such as a neighbor's property, the rules change. The damage caused by a fallen tree is a *Toldah* of *Nizkei Bor*, damages by a hole, which includes obstacles or hazards left on the ground. Generally, *Bor* is associated with damage in a public place, where one is not liable for *Oness*. However, in the damagee's domain, even if it is an *Oness*, the damager is responsible to make sure that his *Bor* does no damage. In our case, even if the neighbor does not formally serve notice, but the tree falls into his property and causes damage, even if the circumstances that led to its falling were *Oness*, the owner would be liable. However, one could argue that even a *Bor* is only the responsibility of the owner if he himself places it there, or caused it to fall there, such as leaving something on a rooftop which later falls into a neighbor's yard in a regular wind, and causes damage. Here, the owner did nothing. Does ignoring notice to move the hazard equal an act of placing a *Bor*? Actually, when *Bais Din* give notice and it is ignored, the subsequent damage is considered his *Bor*. The only question here is whether a private person, a neighbor, has the same right to serve notice regarding a danger to his private property. We do find that one may demand that a hazard on his neighbor's property be removed, under a different law, *Nizkei Shecheinim*, laws of neighbors. In this case, the seriousness of the hazard must be judged by *Bekiam*, independent experts. [See Sh. Ar. C.M. 155:20. Halachoscope Vol 1. No 15.]

(E) Lo Sasim Damim Beveisecha

This is a Scriptural commandment [Parshas Ki Setzei 22:8] obligating us to prevent danger in our own homes. It is linked by Rambam to the positive commandment [Parshas Vo'eschanan 4:9] to protect our lives and health. The dangers one must avoid include keeping dangerous animals as pets, shaky steps and ladders, unfenced pits or holes and the like. [See Kesuvos 41b. Rambam Hil. Rotzeach 11:4. Sh. Ar. C.M. 427 and 409. Chinuch Mitzva 546-547.]

In our case, if it can truly be shown that the tree is dangerous, there is an obligation to remove it. Furthermore, if the *Bais Din* sees a real danger, they can force the owner to remove his hazard based on this Halacha. They may even hire workers to remove it and bill the owner. [See Shita Mekubetztes, Baba Metzia 117b quoting Ramach.]

ANNOUNCEMENTS

SCHEDULE:

SHABBOS MINCHA	8:30 PM
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY - FRIDAY	7:00 AM
MINCHA SUNDAY	7:40 PM
MINCHA MONDAY-THURSDAY	8:54 PM
CANDLE-LIGHTING BALAK	8:36 PM
Plag Hamincha-Earliest time to light candles	7:20 PM
MINCHA EREV SHABBOS BALAK	7:00 PM

SHIURIM:

GEMORO MAKOS	SUNDAY	7:15 AM
HALACHA B'IYUN	MONDAY	9:00 PM
HILCHOS SHABBOS	SHABBOS	8:15 AM
HALACHOS OF BUSINESS	THURSDAY	4:30 PM

The entire community is invited to the Leo Unger Memorial Lecture about R. Shraga Feivel Mendelowitz, Builder of Torah-Chinuch, on Sunday June 27th, at 8:00, in the Kollel. Speaker: Rabbi Yitzchok Chinn, Rov of White Oak, PA.

This issue of HALOCHOSCOPE has been sponsored by Mr. Bezalel Danieł (Dan) Askin in honor of his daughter, Avra Yehudit's, trip to Israel.

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Any and all comments and suggestions are welcome and can be addressed to :
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