

HALOCHOSCOPE

Congregation Shaaray Tefillah, Pittsburgh, PA

Correction to last week's issue: Section B par 2 should read "Lo Sigodedu [Parshas Re'eh]"

By no means will the following discussion put this matter to rest, but it will point out the Halachic side to the problem. As always, those who feel that after examining the references and any other available source material, they dispute the conclusions drawn, are welcome to do so.

The question:

A number of people are in shul on a summer day. Some of them feel too warm and would like the window open or the air-conditioner turned on, while others are too cold for this. The reverse occurs in the winter. How do we settle this issue? Do we follow the majority, or does anyone have preference over the other?

The issues to be addressed:

- (A) *Nizkei Sh'chenim* - the Jewish law on being a good neighbor.
- (B) *Hilchos Shutfin* - the Jewish law regarding a partnership.
- (C) *Hakol Cholim Etzel Hakor* - "all are considered sick with regard to the cold."

(A) *Nizkei Sh'chenim*

In Jewish law, the consideration one must have for a neighbor is not merely ethical, but has Halachic guidelines. An example of this is when the consequences of one's actions on one's own property will affect a neighbor. The privacy laws are considered by many to be Scriptural in nature. [See Parshas Balak 24:2-5, Bava Basra 60a, 2b, Ramban, etc.] Other laws, such as damages that one may sue a neighbor for, were initiated by the Rabbis to protect the interests of neighbors. Most of these Halachos are applied when one has a right to prevent a neighbor from doing something that could cause damage. If damage is not actively caused by the neighbor, but happens by itself, for example, if one plants a tree whose roots later spread into his neighbor's well, the owner of the tree is not held responsible. However, when direct damages result from his actions the neighbor can protest and stop him. For example, one may not dig a waterhole too close to his neighbor's wall. If one did dig the hole and the neighbor does not protest, one gains a *Chazakah*, the 'rights' to continue with the project -the neighbor has given up his right to veto. There are, however, a number of exclusions to this rule where, even if someone did not protest initially, he does not lose his rights. The common denominator of these exceptions is that all are considered so objectionable that silence does not imply consent, for example, when the action causes pain, or physical hardship that is unbearable, to a neighbor. Even if one sensitive person claims hardship, although

nobody else is bothered, his rights are upheld. [See Bava Basra 25b and all Perek 2, Poskim. Shulchan Aruch Choshen Mishpat 156:1,155:36-41. Aruch Hashulchan 33.]

(B) Hilchos Shutfin

There are three possibilities in Halachically resolving a dispute between the parties in a partnership. One can either break up the partnership, or one party could buy the other out of the partnership, or in some cases, one party can force his partner to conform to his plans. This third category is generally understood to be a Rabbinical institution. Halachically, a shared courtyard or a street, especially a dead-end street, has the same rules as a general partnership regarding certain shared interests. Since this is a partnership that cannot be broken up, nor bought out, it falls into the third category. In this way, the different homeowners can expect to enforce certain restrictions on their fellows' use of this area if they claim that it poses a hardship for them. This includes the right to claim that the street be clear, meaning that a resident can be prevented from building an addition onto the front of his house. If a resident opens a business, the other residents can force him to close down if they claim that their sleep is being disturbed because of the activities of his shop or his customers. Even if all the residents but one are not opposed, the objecting resident's rights are upheld. [See Sh. Ar. C.M. 156:1-4, 162:1.] Similarly, any resident's use of the common area that is considered unusual by the standards of the local population can be objected to by the other residents. [See Bava Basra 57a. etc, Sh. Ar. C.M. 140:15 Rema 161:5.]

A member of a shul is considered a *Shutaf*, a partner, in the whole shul and a *Shachen*, a neighbor, regarding his own seat. In this way, the different people attending the shul have rights that are upheld under the guidelines of Hilchos Sh'chenim and Hilchos Shutfin. [See Teshuvos HaRosh Klal 5, No 3,7 Sh. Ar. C.M. 162:7, 171:1 commentaries.]

The question, therefore, in our case is: can an individual claiming discomfort or hardship because of heat or cold enforce his rights? Here, both sides claim discomfort so one could easily say that neither has any more of a right than the other. It is said in the name of Rav Yisroel Salanter that in the summer the rights of those who want to open the windows are upheld, but in the winter, we rule in favor of those who want it closed. However, as we shall see in the next section, it is not always so simple.

(C) Hakol Cholim Etzel Hakor

On Shabbos, one may do a Melacha to save a person who is dangerously ill. When the danger is not great, but the patient is still sick, a Jew may not do a Melacha. In these cases, a gentile may be instructed to do the Melacha, even though normally one may not have a gentile do the Melacha forbidden to Jews. [See Halochosef Vol 1 No 1.] For example, when a woman who has recently given birth needs a fire lit or food cooked, a gentile may be instructed to do these Melachos. In these cases, a fire may be lit for her if she is cold even in midsummer. Accordingly, the Poskim rule that in very cold countries, a fire may be lit by a gentile for the benefit of children, or, if the adults are very sensitive to the cold, one may even instruct a gentile to light this fire for the benefit of adults. The reason given for this is that everyone is considered sick with regard to sensitivity to cold, presumably because of the susceptibility to catching a cold.

The Talmud, based on a Passuk in Mishlei, tells us that our health is

controlled by Hashem except for catching colds and according to Tosafos, heatstroke, or sunstroke. However, sunstroke is only caused by direct sunlight, whereas a cold results from any exposure to cold air. True, it is apparent from a dialogue in the Midrash between Rebi and Antoninus that heatstroke is even more likely a sickness to contract than a cold, but this dialogue was referring to traveller on the open road and not to people sheltered inside a house. Accordingly, we do not find special consideration given to a hot person to allow him to ask a gentile to extinguish the heat. Furthermore, *Kibuy*, extinguishing, is Rabbinically forbidden in this case, so even if we found some Poskim permitting it for a hot person, it does not necessarily show that they are given the same consideration as cold people. Some contemporary authorities permit asking a gentile to turn on an air-conditioner because it is also only forbidden as a *Shvus*, a Rabbinic ordinance, but not because hot people are considered real *Cholim*, sick people. Of those who permit asking a gentile to turn on an air-conditioner, one opinion only allows it in a private home, but not in a shul. All of this discussion is based on the assumption that the reason for allowing the lighting of a fire by a gentile is because the cold people are to be considered *Cholim*. There is, however, another opinion that the reason is because of extreme discomfort. This means that cold is only one example of extreme discomfort, but heat can be considered equally uncomfortable. In accordance with this explanation, just as one may ask a gentile to turn on the heat, the same should be true with a hot person wishing to have the air-conditioner turned on. Nonetheless, this is considered insufficient reason by the Poskim to equate cold people to hot people. [See Shabbos 129a, Sh. Ar. O.C. 276:5, commentaries, Kesubos 30a, Tosafos. Minchas Yitzchok Vol 3 No 23. Be'er Moshe Vol 6, Kuntres Electric 41 and 72.]

In our case, it is normal to expect the temperature in a shul to be room temperature (68 - 70 degrees) all year round. If anyone wishes to make it colder or warmer than this because of the outside weather, the others in shul may object. However, since it is not something that is always objectionable, especially when people have just come inside from extreme weather conditions outdoors, it might be considered within the bounds of "normal usage". This would mean that not protesting initially would imply a waiving of one's rights to object later. It might even mean that a shul member may claim the right to have the window opened since he has a share in the partnership. In such cases, however, if someone can show that he is especially sensitive to these variations in temperature, he is a "Choleh" and deserves special consideration. As we have shown, sensitivity to cold is automatically considered "Choleh" when it is cold enough to cause someone a cold, which varies in different people. A sensitivity to heat is not enough reason to demand that the whole shul be cooled off. However, if someone has been ordered by a doctor not to expose himself to even a moderate increase in temperature, he is, of course, considered a "Choleh".

It stands to reason that anyone may object to an extreme variation from room temperature since it is not a "usual use" of the common area. [See Sh. Ar. C.M. 155:39 Rema and 41.]

ANNOUNCEMENTS

SCHEDULE:

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| SHABBOS MINCHA | 8:00 PM |
| SHACHARIS SUNDAY | 8:00 AM |
| SHACHARIS MONDAY - FRIDAY | 7:00 AM |
| MINCHA SUNDAY - THURSDAY | 8:15 PM |
| CANDLE-LIGHTING BEHAR-BECHUKOSAI | 8:10 PM |
| MINCHA EREV SHABBOS BEHAR-BECHUKOSAI | 7:00 PM |

SHIURIM:

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| GEMORO MAKOS | SUNDAY | 7:15 AM |
| HALACHA B'IYUN | MONDAY | 9:00 PM |
| HILCHOS SHABBOS | SHABBOS | 8:15 AM |

Shalosh Seudos this week is being given by Mr. Yisroel Green in honor of the Yahrzeit of his mother.

This issue of HALOCHOSCOPE has been sponsored by Morton and Faithé Milch in honor of the Yahrzeit of Faithé's father, Mordechai ben Moshe Weiler, Zichrono Livracha - Lag B'omer.

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