



A PROJECT OF CHICAGO COMMUNITY KOLLEL

# PARSHA ENCOUNTERS

29 Sivan 5767 / June 15, 2007

Parshas Korach ✍️ Rabbi Yitzchok Broyde

## A Good Fight

**T**he mishneh in Avos (5,20) states, “ Any dispute which is for the sake of heaven will endure. However, any dispute which is not for the sake of Heaven will not endure.” The mishneh continues, “ What is an example of a dispute which is for the sake of Heaven? This is the dispute of Shammai and Hillel. What is an example of a dispute which is not for the sake of Heaven? This is the dispute of Korach and his followers.”

There are several questions which immediately present themselves upon a cursory review of this mishneh. What is the meaning of a dispute that endures? In most cases one side will prevail and the other side will fade into oblivion. In addition, the mishneh leaves unsaid what the key factor is which determines if a dispute is for the sake of Heaven or not.

The Meiri in his commentary on Avos sums up the underlying message of this mishneh as follows: “A person must always strive to uphold the truth and to dispute anyone who attempts to corrupt it, because the truth fears no one.” The Meiri further explains that the definition of a machlokes (dispute) which is for the sake of Heaven is one in which the sole intention of the participants is to uphold the pure and unchanged truth. A machlokes which is not for the sake of Heaven is when the underlying desire is to defeat one’s opponent and to be the victor.

The Machlokes of Shammai and Hillel never reached a personal level. On the contrary, there was always a tremendous

respect shown one to another (as recorded in Yevamos). The machlokes of Korach on the other hand, although superficially seems to have a righteous justification, on a deeper level was not a machlokes for the sake of Heaven.

The Chosid Yavetz explains that the lesson of this mishneh is that if there is an argument in Torah learning and both sides are attempting only to establish the truth of the Torah, then both opinions will endure throughout history, even if in truth one of the sides has erred. Similarly, even after the halacha is decided like one opinion, the opposing opinion is not discarded. This is illustrated with the machlokes of Shammai and Hillel where although the halacha was decided like Hillel, both opinions were still inscribed in the mishneh for eternity.

May we merit to be fully aware of all our motives before entering a fray.

*Rabbi Broyde learns full-time at the kollel.*

### **RABBI YAKOV HOROWITZ**

#### **COMING NEXT SHABBOS!**

*PROGRAM:*

Oneg Shabbos 9:30 p.m.-

**at M/M Bruce Leon - 2949 W. Fitch**

Shiur on Shabbos 5:00 p.m. -

**at M/M Dennis Ruben - 6519 North Central Park**

Shalosh Seudos after 7:30 p.m. Mincha -

**at the Kollel— 6506 N California**

# HALACHA ENCOUNTERS

## Halachic Zoning Laws

Rabbi Moshe Rosenstein

**T**he summer is a perfect time for construction and home improvement projects. Most homeowners are aware of the various zoning and building code issues that must be dealt with before a major project gets underway. The city must be contacted. If necessary, inspectors must come and survey the property, a permit must be issued, etc. It is important to realize, however, that there are also a great many potential *halachic* issues that can arise from altering or adding to one's home or property that must be dealt with as well.

The focus of this week's *Halacha Encounters* will be examining some of these issues and addressing what the *halachic* rights of the homeowner – and neighboring homeowners – are. **For purposes of this article, it should be assumed that all city zoning issues have been dealt with properly. The focus will only be on the halachic issues that exist, irrespective of city ordinances that must legally be obeyed.**

### The Halachic Background

There is an entire body of *halacha* referred to as “*Nizkei Sh'cheinim*” – “damages” that occur between neighboring properties (or, for that matter, others who live in that town). Much of the largest *maseches* in the *Shas Bavli*, *Bava Basra*, deals exclusively with these matters. The basic underlying premise of this body of *halacha* addresses the possible “conflicts” between one's right to do what he wishes to do on or in his own property, and how others may be adversely effected by one exercising his rights in this way. For example:

- Doing construction on one's home that causes part of the new structure to extrude over the neighbor's property. (*Siman* 153, 1-5)
- Opening a new window that will provide a view of the neighbor's private yard. (154, 3-11)
- Angling a drainage gutter that causes the water to run off into a neighboring property. (153, 6-12)
- Opening an amateur auto repair shop in the back yard when the exhaust fumes irritate neighbors. (155, 36-33)
- Playing loud music until all hours of the night when it disturbs the sleep of the neighbors. (156, 2-3)

Issues such as these, and a myriad more, are discussed extensively in the *Gemara* and *Shulchan Aruch*, primarily in *Choshen Mishpat Simanim* 153-156. Because of the vast body of information and cases that can arise, we will only address the very basics of this intricate area of *halacha*.

### An Outline of the Basics of Property Rights

There are two fundamental, underlying principles that operate when it comes to *nizkei sh'cheinim*, one applying to the “*mazik*” (the one who is doing something that may affect his neighbor) and one applying to the “*nizak*” (the neighbor who feels his property rights are being impinged upon).

The *mazik* is not allowed to do anything that will cause any “damage” to his neighbor's property.<sup>1</sup> “Damage” is in quotes because what the *halacha* defines as damage is not necessarily actual physical harm to the neighbor or his property. It can also mean, in this context, physically impairing the full use of another's property or causing the neighbor to limit his use of his own property. For example, let's assume Reuvain has a window on the side of his home overlooking Shimon's driveway (in such a way that he has a right to have such a window there). It would not be permissible for Shimon to construct a garage *even on his own property* in such a way that the structure adversely effects Reuvain's use of his window.<sup>2</sup> Reuvain could force Shimon to distance Shimon's structure four *amos* from his window. Likewise, if Shimon would like to build an addition on the back of his house and open windows that will now

overlook Reuvain's private yard, Reuvain can stop Shimon from doing so by claiming that he will no longer be able to perform private activities in his yard, as he is concerned that Shimon or his family will be watching him.<sup>3</sup> [Several contemporary *poskim* rule that today, with the city's zoning laws clearly defined and known to all, one does not have the *halachic* right to stop his neighbor from doing many of the “damages” described by *Chazal* and *Shulchan Aruch*.<sup>4</sup> Should a situation arise involving these scenarios, a *shailoh* must be asked as there are many details and potential mitigating factors.]

The *nizak* is not allowed to be unreasonable in his demand that his neighbor stop his construction or activities. There is a concept in *halacha* referred to as “*kofin al midas S'dom*.” We can force someone to *not* act in the way of the people of *S'dom* who, for no good reason at all, would prevent others from using their property.<sup>5</sup> What this means on a practical level is the following. Even though technically speaking, one would have a legal right to prevent others from using his property or airspace simply because it belongs to him and he does not have to let others use it, we in effect force him not to be stingy in this way.

Having said this, there still exist many scenarios that are not easily subsumed under one of the two principles discussed. Very often the “*mazik*” does not feel he is doing anything that affects his neighbor adversely and the “*nizak*” does not feel he is being unreasonable in objecting to his neighbor's activities. It is in these situations that a competent Rav or *posek* must be consulted. The possible consequences for not dealing with issues such as these up front can often be difficult and costly. Windows may have to be sealed, structures torn down and removed or money paid to placate upset neighbors.

### Using City Zoning Laws to Stop a Neighbor's Construction Plans

Often, for a project of substantial size, city zoning law will require the prospective builder to get his neighbors to sign a document stating that they do not object to his going forward with his building plans. The following question can then arise: if the plans are permissible according to the dictates of *halacha*, is the neighbor compelled “*al pi din*” to sign off on the construction, or is he allowed to use this opportunity to prevent the building that he feels will bother him? This is a question that is discussed in the *poskim* and the following *very rough* guidelines are set forth.<sup>6</sup>

- If there is absolutely no actual “damage” that will be done and the neighbor does not want to sign simply because he does not want this construction to take place, it may be that he must sign based on the idea mentioned above of “*kofin al midas S'dom*.”
- If, however, there will be some nuisance or difficulty caused by this construction (albeit not enough to allow him to *halachically* stop his neighbor from building), he may be permitted to hold off signing, or even to ask for some compensation in exchange for his allowing the construction to take place.

**As with all issues of this nature, both parties must make a *halachic* inquiry before taking any action that may be in violation of the *halacha*.**

<sup>1</sup> See *Pischei Choshen* vol. 5, 13:1 from the *Shulchan Aruch HaRav Hilchos Nizkei Mamon* 14.

<sup>2</sup> *Choshen Mishpat* 154, 21

<sup>3</sup> 154, 3

<sup>4</sup> HaRav Shmuel Fuerst *shlit”a*. This is also the opinion of Rav Dovid Cohen and Rav Hillel David *shlit”a*. They would not, however, advise one to *lichatchila* do construction in such a way that would be considered *nezek* by the *Shulchan Aruch*.

<sup>5</sup> *Bava Basra* 12b. See *Rabbeinu Gershom* who explains that this refers to the *midah* of *S'dom* mentioned in *Pirkei Avos* 5, 13

<sup>6</sup> *Pischei Choshen* vol. 5, chap. 13 note 1.