

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

### PROTRUDING AIR CONDITIONER

Mr. Weiss and Mr. Schwartz were neighbors in a semi-attached house. The winter wore on, with snow piled up all around.

"The upstairs room adjacent to the Schwartz's is cold at night," Mrs. Weiss said to her husband. "The radiator is not adequate, and the kids complain. Any ideas?"

"We could add a split-unit heating/cooling air conditioner," Mr. Weiss answered. "Anyway, that room is not connected to the central AC, so the kids also complain that it's hot in the summer."

"I don't want to place the outside unit on the front of the house," Mrs. Weiss said. "We can place it on the wall facing the Schwartz's. There's a small inlet between the houses, measuring seven feet square."

"That inlet is part of Schwartz's property," pointed out Mr. Weiss. "Although the outside unit will be on our wall, it will hang over the Schwartz's airspace. I'll ask them whether they mind."

"I'd like to hang a split-unit air conditioner on our wall over your inlet," Mr. Weiss said to Mr. Schwartz. "Is that okay with you?"

"I have to think about it," Mr. Schwartz said. "I don't know whether I might want to do anything with that area."

A week went by, and Mr. Schwartz did not respond.

"The truth is, I don't see what the problem is," Mrs. Weiss said. "The unit is affixed on our wall and doesn't interfere with them. They don't really use that inlet anyway; they just pile junk there."

"Still, the area belongs to them, so that airspace is theirs," replied Mr. Weiss.

"But nobody uses the airspace," argued Mrs. Weiss. "Do we really need their permission?"

Mr. Schwartz decided to consult Rabbi Dayan. He asked:

**"Can I hang an air conditioner unit over our neighbor's airspace?"**

"The *Gemara* (B.B. 59a-b) addresses a *ziz* (protrusion) from a person's wall or roof into his neighbor's courtyard," replied Rabbi Dayan. "The primary concerns are that of *hezek re'iya* (privacy invasion) when using the *ziz* to hang items and the possibility that the neighbor might want to build there" (C.M. 153:1).

However, Meiri cites an opinion that when the *ziz* is for regular use, such as when it is a *tefach* (handbreadth) or more, the courtyard owner can object regardless of the issue of privacy (*Pischei*

### Did You Know?

Any benefit of monetary value extended in recognition of a loan such as a discount or free usage of the borrower's item is considered *ribbis*.

Ask your Rav or email  
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לע"נ ר' שלמה ב"ר ברוך וזוג' מורת רייכלה בת החבר יעקב הלוי ע"ה ווייל

### MAASER ON PROFIT AND LOSS

**Q.** I generally set aside *maaser* from my earnings. If I initially earned a large amount of money from a business deal, but I later suffered a monetary loss, can I deduct the loss from my profits and *maaser* only from the remainder?

**A.** The *poskim* deliberate how to calculate earnings when a person's businesses yielded both profit and loss. Does a person have to *maaser* the full amount earned from his profitable business ventures even though he lost money in other businesses, or do his losses offset his profits so that he *maasers* only the net profit?

At first glance, it seems that two businesses, or even two separate deals within one business, should be considered independent of each other. The fact that Hashem helped him earn money on one deal should require him to *maaser* those earnings, just as a person is obligated to *maaser* his produce (*dagan*) or animals (*beheimah*) regardless of his net position in other business dealings. We do not say, for instance, that a farmer who has two fields growing crops, one of which thrived while the other was flooded and incurred a net loss, the losses incurred by the second crop do not offset the profits of the first crop. Some *poskim* rule, therefore, that a person may only deduct losses incurred in one business deal from the earnings of that same deal, because *maaser* is deducted from the net profit of each deal, and if a loss is incurred in a different deal, we do not balance that against the earnings (*Shu"t Shvus Yaakov* 2:86; see *Hafla'ah, Kesubos* 50a).

Other *poskim* rule, however, that even if someone owns multiple businesses, he calculates the net balance of all of his businesses and *maasers* only the bottom-line profit.

The question is when those calculations are made.

Some *poskim* rule that if there was a net loss at whichever point he decided to calculate his earnings, he then resets his books to zero, and if he



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*Choshen, Nezikin* 15:[2]).

Nonetheless, when there is already a window overlooking the neighbor's property, so that invasion of privacy is irrelevant and the neighbor cannot build there, *Shulchan Aruch* writes that he cannot object to the *ziz*. Similarly, the neighbor cannot object to protrusions from the roof to protect the wall from rain, since it's not intended for active usage when he does not want to build there. The neighbor has no loss, so this is considered *zeh neheneh v'zeh lo chaser*, and we force him not to be inconsiderate (*kofin al midas Sodom*). This logic would apply also to a protruding air conditioner unit (C.M. 153:5; *Sm"a* 153:14).

In some cases, the neighbor can object so that the protrusion does not acquire *chazakah* (permanent rights) should he ever want to build there. However, this applies only in a spot where he might want to build in the future, and where it will be difficult then to move the air conditioner, or where the air conditioner might overhang a *sukkah*, etc. (*Mishkan Shalom* 5:[5,16]).

"If the neighbor objects because the air conditioner makes noise, one cannot complain about reasonable noise that someone makes in his own property," concluded Rabbi Dayan. "However, since the permissibility for a protrusion over the neighbor's airspace is based on *kofin al midas Sodom*, any justifiable complaint, including that of disturbing noise, is sufficient basis to object" (see C.M. 153:8, 156:2; *Mishkan Shalom* 10:[68]; *Emek Hamishpat, Hilchos Shecheinim* 7:4; 35:16-17).

**Verdict: If the air conditioner does not interfere in any way, the neighbor cannot object. However, if he has reason to object, even that of disturbing noise, he can prevent protrusions above his property.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #6  
(Bordering Property)  
Partner (continued)

לע"נ ר' יחיאל מיכל ב"ר חיים זוג' ח' בת ר' שמואל חיים ע"ה

### Q: What is the status of a partner regarding the rights of *bar metzra*?

A: A business partner, who is not a partner in the property being sold, has a low-level status of *bar-metzra*. Therefore, if a person bought a property from his business partner, the adjacent neighbors cannot claim *bar-metzra* to take it from him, since he also has a partial *bar-metzra* status. In contrast, a partner in the property itself, has high priority as *bar-metzra* and can take it from a business partner that bought it (C.M. 175:49; *Sm"a* 175:88; *Beis Shlomo* C.M. #51).

The aforementioned business partner, who does not share in the property itself, is a lower level *bar-metzra* than a neighbor, and therefore cannot remove an adjacent neighbor who bought the property, or even an outside party. Moreover, some maintain that if the neighbor and business partner come together, the neighbor has priority (*Aruch Hashulchan* 175:33).

In most cases that the neighboring *bar-metzra* does not have rights, e.g., where there is loss to seller, neither can a partner.



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later earns money on a new deal, that does not offset his prior loss. But if he waited until the end of the year and calculated his profit and loss for the year all at once, the losses do offset his earnings (*Shu"t Shaar Ephraim* 84; *Shu"t Chavos Yair* 224).

Some explain that when a person calculates his profit and loss for the previous earnings period, that is considered the final tally (akin to the *goren* with *maaser dagan*), and he may offset any profits with any losses at that point (*Hagahos Chasam Sofer, Yoreh Dei'ah* 249:1).

Others maintain, based on the *passuk* that is the source of *maaser kesafim*, that the earnings of an entire year are considered one unit, and if a loss occurred during the same year as a profit, it is deducted from the profit, but if it occurs in a different year, it is not deducted (*Shu"t Noda b'Yehudah Tinyana, Yoreh Dei'ah* 198, cited in *Pis'chei Teshuvah, Yoreh Dei'ah* 249:1, *Shu"t Shevet Halevi* v. 5, 133:4).

The *poskim* recommend that a person designate a day, either every half-year or year, when he calculates his profit and loss. The *Chavos Ya'ir* (loc. cit.) recommends that this date be Erev Rosh Hashanah, because that is the day when his financial books for the year, which were determined on the previous Rosh Hashanah, close. But this calculation can also take place at the end of the fiscal year according to the tax authorities (see *Shu"t Shevet Halevi* 9:201 and 5:133[3]).

Some *poskim* write, however, that if a person already set aside *maaser* when he made a profitable deal, and he later incurred a loss, he can no longer reclaim that money because it is sanctified (see *Chavos Ya'ir* loc. cit., and *Beis Lechem Yehudah* 249:3). (It is possible, however, that one may deduct this loss from a future profit; see *Noda b'Yehuda* [Kama, *Yoreh Dei'ah* 73, cited in *Pis'chei Teshuvah* loc. cit.].)

Some *poskim* write that only losses that were not caused by negligence can be deducted from profits, but if someone lost money due to negligence, he must *maaser* the full profit and absorb the loss himself. The concept of *maaser kesafim* is that a person is a business partner, so to speak, with Hashem, and he may therefore deduct his losses from his profits, provided he wasn't negligent. If he was negligent, however, then he is subject to the *halachah* (*Choshen Mishpat* 176:10) regarding someone who is negligent with a human partner's assets - namely, that he absorbs the entire loss himself (*Shu"t Meishiv Halachah, Yoreh Dei'ah* 192, according to *Chavos Ya'ir* loc. cit., but see *Tzedakah Umishpat* ch. 5. fn. 35).

Obviously, if someone suffered a personal financial loss, such as his house was robbed or he lost his wallet, he may not deduct the losses from that robbery from his business earnings when calculating his *maaser*.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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