

Principles of Damage

Ref: *Sefer Kinyan, Hilchot Shechenim, Chapter 11*

1) Direct damage e.g. a person cannot stand in his property and shoot arrows across to his neighbours and claim that he can do as he wishes in his own property. Therefore, a person is duty bound to maintain a fair 'distance' so as not to be 'shooting arrows' at his neighbour i.e. causing damage in the following cases:

4 categories

- *Ashan* (smoke)
- *Reach bet hakisei* (toilet smell)
- *Avak* (dust) and types of dust
- *Nidnud hakarka* (shaking of the ground)

Concerning the first 3 (smoke, toilet smell, dust), if he didn't maintain his distance and damage was done, since it is the wind which helped carry the smoke or other items of damage, the owner would not be liable.

2) Indirect damage e.g. bees next to a mustard patch. It is not the mustard patch which damages the bees honey. The bees decided to eat the mustard leaves. Here, person whose property would be damaged should distance himself from the source of damage.

Similarly, this applies to any invasion of privacy where halacha stipulates that a wall be erected.

3) Generally if a colleague sees his neighbour causing him tolerable "damage" and does not protest, he loses his right to protest in the future because it is assumed that he forwent his right to the other party. The above 4 categories (plus some situations of privacy) however, are intolerable and therefore the neighbour can protest whenever he chooses because it is assumed that he has not forgone his right to the other party until a *kinyan* is made.

There are also subcategories of these exceptions which also allow future protest. These are damages which are of an ongoing nature.

4) Where it is claimed that one's neighbour did not protest the tolerable damage and thereby forwent his ability to protest in the future and the neighbour disputes this, then it is the duty of the person who has been damaged to bring proof. If he cannot bring proof the 'damager' has to take a *shvuat hesset* and he is free.

5) Where it is claimed that a *kinyan* was carried out to allow activities which cause intolerable damage, the 'damager' has to bring proof that a *kinyan* was made between them. If he cannot, then the neighbour must take the *shvuat hesset*, and the 'damager' then has to remove his damaging force.

 **Reminder:**
Pack on Oaths

