

# RESPONZA

rainwater from his roof run onto the land of another neighbor, this does not give him the right to let more noxious water run onto his neighbor's land. Emanuel Quint, a contemporary commentator on the *Shulhan Arukh*, offers an example: if a person has the right to conduct rainwater onto his neighbor's land, he cannot conduct dirty laundry water instead.<sup>92</sup>

The *Shulhan Arukh* states that a community can prevent a citizen from setting up his gutter pipes in such a way that the water from his roof is conducted into the public domain.<sup>93</sup> Furthermore, it states that a person on the lower floor in a condominium may not maintain an oven in his apartment unless the ceiling is at least 7 feet above its top. The upper neighbor must provide a good floor of at least 11 inches beneath his stove or oven.<sup>94</sup>

A neighbor on a lower floor may not use machinery that causes movements or vibrations which may affect products stored by a neighbor on the upper floor.<sup>95</sup>

Apart from the ones already mentioned above, there are further limitations on the distance of noxious odors and particles from the nearest inhabitants. This also applies to food processing facilities and beehives.<sup>96</sup>

Another ruling forbids the nuisance caused indirectly by a person who works with blood or meat: the shrieking of birds attracted by the waste, or the filth caused by their bloody feet, may upset sick or sensitive neighbors.<sup>97, 98</sup> Many similar prohibitions exist.

## Responsa literature

The responsa literature has dealt with several specific nuisance cases. Congregants of a synagogue complain to Maharam<sup>99</sup> that the smoke and odor of a bathhouse next to the synagogue is causing them severe nuisance. Maharam refuses their request for closure because the bathhouse functions only once a week, and the law forbidding smoke refers only to continual smoke. With regard to odors, he says that, as even the odor from covered toilets is permitted, there can be no reason to forbid the odor from the bathhouse.<sup>100</sup>

Rashba wrote a responsum that smoke caused by regular households should not be evaluated in terms of the Talmudic injunction permitting the forced removal of a furnace. The latter refers only to ongoing or serious smoke such as that caused by 'industrial' furnaces.<sup>101</sup>

One person tells Rosh<sup>102</sup> that his neighbor, a blacksmith, is causing him damage: his house vibrates each time the neighbor strikes with his hammer, preventing him from sleeping, and creating dust and smoke with his work. Rosh responds that, as the neighbor is a

INDUSTRIAL  
VS. PRIVATE  
RESIDENTIAL  
POLLUTION  
VIBRATION  
AND SOUND  
DIFFUSION

A RAIN-  
WATER  
EASEMENT  
IS NOT A  
WASH WATER  
EASEMENT  
PUBLIC  
SAFETY  
TENANCY  
SAFETY

TENANCY  
NUISANCE

PUBLIC  
NUISANCE/  
HAZARDS

WILDLIFE  
ATTRACTION

REASONABLE  
USE  
PELLODIC  
NUISANCE

to "take off his vestments and put on other vestments, and carry the ashes outside the camp to a clean place."<sup>76</sup> Commenting on this, Maimonides says that the remains should be protected in these places "from being dispersed by wind and pigs";<sup>79</sup> Meiri comments that they should be kept "from being washed away by floods."<sup>80</sup>

Several Talmudic texts refer to nuisance limitation and also consider elements of health protection. Among these are laws which forbid polluting activities within Jerusalem: "One should not erect there a dung-heap. One should not build there a melting-oven, one should not establish vegetable and fruit gardens, with the exception of the rose garden which has been there since the time of the first prophets. One should not grow chickens there. One should not leave a corpse overnight there."<sup>81</sup>

There are many more examples in Mishnah and Talmud of Halaḥah forbidding pollution at specified sites. One cannot open a bakery or a painter's shop under somebody else's granary, nor erect a cow shed there.<sup>82</sup> This is because the heat of the baker's or painter's ovens causes hindrance, as does the odor of the cows' dung.<sup>83</sup>

Although in Biblical times Jewish graves may have been close to individual dwellings, in later periods Jewish cemeteries had to be outside towns.<sup>84</sup> Like other potential pollution-causing hindrances, this is mentioned in the Mishnah: "One removes the place where dead animal bodies are gathered, the graves and the tanneries, for 50 cubits from the town. One only puts a tannery on the east side of town."<sup>85</sup> Commentators explain that the east wind is hot and usually blows in so leisurely a manner that it does not convey odors to the town. Others explain that east winds blow infrequently in the Land of Israel.<sup>86</sup>

Another type of hindrance concerns darkening the light of somebody's window. The Mishnah states that it is forbidden to construct a wall within four ells of a neighbor's window.<sup>87</sup> The Talmud explains that one should not block out the light coming in at his window.<sup>88</sup> Riva<sup>89</sup> explains in his commentary that whoever builds a wall without keeping sufficient distance takes somebody's else's light "and the air in his possession which he enjoys and there is no greater damage than blocking somebody's light."<sup>90</sup>

## Specific nuisance cases

In the framework of overall relations between neighbors, we find a series of cases in the *Shulhan Arukh* of causing nuisance to one's neighbor which seem to us to have an environmental character.<sup>91</sup> We do not know, however, how these cases were perceived at the time that they occurred. If one neighbor has the right to let the

has introduced millstones.<sup>112</sup> The owner of the second courtyard complains that this is destroying his walls and causing him damage; he thus requests removing it. The answer given is that a person can exercise his profession in his home in order to earn a living; however, he cannot receive customers in his home to sell his wares, because he can do so in the market thereby reducing noise hindrance to his neighbors.<sup>113</sup>

A 16<sup>th</sup> century responsum from Rabbi Shlomo Cohen<sup>114</sup> refers to the case of a person living on the upper floor of a house; the pipe from his toilet descends through the wall of the apartment below, and from there the effluents flow into a ditch. A neighbor who buys the lower apartment wishes to close the pipe, claiming that he suffers from the smell. The rabbinical decision is that he has no right to close the pipe because it has been there for many years; the pipe is closed and the ditch is covered; neither is the smell very strong or continual.<sup>115</sup>

In another responsum the same rabbi refers to the damage caused to the inhabitants of a town by the dyeing industry. He says that the economic interests of a city, dependent on the textile industry for its livelihood, take precedence over the damage caused to neighbors in the vicinity.<sup>116</sup> However he comments that the owner of the business would do well to reduce the hindrance as much as possible. In Chapter One, a responsum in line with this is mentioned from the 17<sup>th</sup> century Italian rabbi, Shmishon Morpurgo.

Chatham Sofer is asked by his son-in-law Rabbi Bunem about a case involving a potential future hindrance. Three people have inherited a house. One of them wishes to open a kind of pub on the upper floor; while one of the others living on the ground floor wishes to prevent this, claiming that it will cause him nuisance, mainly from noise. Rabbi Bunem says that there will be significant consequences if the complainant is judged to be in the right, as there are several shops in the community against which similar nuisance complaints might be launched, thereby affecting the livelihood of the owners. Chatham Sofer says that the Halakha is that the person on the upper floor should be prevented from opening the pub, where people would sit drinking wine. However, his opinion on this was not entirely clear-cut. Those selling wine and other goods from their homes cause less hindrance. Thus the case in question cannot be used as a precedent.<sup>117</sup>

Meir Tamari, whose research has focused on economic aspects of Halakha, has attempted to draw a more general conclusion from Talmudic Halakhot and responsa on environmental nuisances. He considers that in an independent Jewish state, planning should be carried out which permits the removal of sources of pollution.<sup>118</sup> The

PLANNING

AFFECT ON COMPETING SAME-INDUSTRY BUSINESSES

ECONOMIC INTERESTS OF CITY - VC MW - SAUCE

SNAP PIPE ISSUES

ALTERNATIVE SALES OUTLETS

Halakha-abiding Jew and the problems are caused by the neighbor's willful actions, he is entitled to tell him to stop his nuisance causing activities.<sup>109</sup>

Another responsum by Rosh refers to a case where a person has dug a well in his courtyard for collecting and storing rainwater. A lot of water has collected and overflowed into the neighbor's cellar, making the courtyard stink. Rosh decides that the owner of the well has to repair it and pay for the damage caused.<sup>100</sup>

In Rivra's responsa, we find an indication that, while existent hindrance has to be accepted, it cannot be increased without the agreement of the person who will be increasingly disturbed. The question refers to a vineyard located within somebody else's vineyard. The owner of the first vineyard owns an access road which passes through that of the second one. He then acquires additional vineyards next to the first one, which have access roads to the outside. However, he closes all of these and wants to use the existing access road for the new vineyards. In doing so, he considerably increases the traffic of workers and produce on that road, causing damage to the owner of the second vineyard.

Rivra replies that the second owner is entitled to stop the first one from using the road for any traffic other than the original vineyard. What is more, any damage which has already been caused should be paid for.<sup>106</sup>

*Terumat HaLesher*<sup>108</sup> is of the opinion that neighbors cannot stop somebody from producing occasional smoke, nor can they prevent a neighbor from building a new oven which produces such occasional smoke.<sup>107</sup>

One of the responsa of Radbaz<sup>106</sup> refers to a person who uses medicinal incense. This causes a bad smell to reach a neighbor's home, and may endanger his baby's health. The decision of Radbaz is that, although the person causing the nuisance is doing so in his own home, he must move it far enough away that the smell will not reach the neighbor's house even on the common wind (even if there is doubt whether wind will carry the smell). Radbaz insists on this because of the potential danger to human life.<sup>109</sup>

Rivash<sup>105</sup> is asked about two men, one of whom has opened a weaving unit in his courtyard. His neighbor claims that the beating of the cloth during production damages his wall, as well as his wine. Furthermore, his wife is sick and the noise gives her headaches. Rivash confirms that the damage has indeed been caused, and that the owner of the weaving unit must move his operation elsewhere.<sup>111</sup> Maharitbach, a 16<sup>th</sup> century chief rabbi of Jerusalem, is asked a question about two adjacent courtyards: in one of them, the owner

OVER LOW REMEDY

PLURAL APPROVAL OR INCREASED DISCUSSION

TRAFFIC ON PARTNERSHIP ROAD

THE PEOPLE AFFECTED 3rd party

WISDOM TO SICK PEOPLE

The sabbatical and *yovel* years can be interpreted in economic terms as ways of redistributing wealth and property. Gordis refers to both the social and the environmental aspects of these laws. The land lying fallow provided the poor with a source of food which he sees as "an important element... of social legislation for the underprivileged in ancient Israel."<sup>126</sup> He adds: "But even more fundamental than the above agricultural and social functions, the law reaffirmed a deep religious principle: God was dramatically reasserting His ownership of the land, of which man is only a temporary custodian."<sup>129</sup> The *yovel* year is not applied today, and it is not known whether it was ever practiced in the past.

Another prohibition mentioned in the Mishnah is relevant to land protection: it concerns raising small cattle – goats and sheep – in the land of Israel.<sup>130</sup> The motivation has environmental aspects as they are currently defined: they destroy fields and vineyards.<sup>131</sup> One part of domesticated nature is protected from another,<sup>132</sup> even though the principal reason is to protect the property of the Israelite landowners.

#### D) *Sub-category: Animal protection*

Simultaneous with the growth of general environmentalist concerns in recent years, interest in animal protection has increased. This can be partially understood by the fear expressed by scientists that many species are facing extinction in the coming decades. The aggressiveness of certain sectors of the animal rights movement has also brought the subject to public attention.

In Jewish law there are numerous references to issues of animal welfare.

#### 1) *Zatar batatei bayymin*

One important halakhic principle of relevance to animal welfare is the prevention of suffering to living creatures – *zatar batatei bayymin*. One central prohibition concerns *ever min habaal*, the prohibition from eating a limb of a living animal. The Halaakha is related to the text of Deuteronomy 12:23: "But make sure you do not partake of the blood; for the blood is the life, and you must not consume the life with the flesh." The prohibition of *ever min bahai* is equally relevant to all humanity, as it is part of the seven Noahide laws.

Gordis considers *zatar batatei bayymin* and *bat lasbit* to be the two key ethical principles within Judaism's environmental teachings. The former has several Biblical roots. He cites an example from the Torah: "Deuteronomy 22:10 forbids the farmer to plough with an ox and a donkey yoked together because the practice would obviously impose great hardship upon the weaker animal."<sup>133</sup>

community, being independent, should be able to allocate land and other resources in such a way as to provide for the common good thus being the yardstick according to which ecological obstacles are considered in halakhic sources."<sup>134</sup>

#### c) *Sub-category: Land policies and soil protection*

The Torah sets out the commandment of the sabbatical year, *shemittah*. Each seventh year the land had to rest and lie fallow. "Six years you shall sow your land and gather in its yield; but in the seventh year you shall let it rest and lie fallow. Let the needy among your people eat of it, and what they leave let the wild beasts eat. You shall do the same with your vineyards and your olive groves."<sup>135</sup> In the seventh year the Jew was not allowed to plow the land nor to sow seeds. What was growing in the sabbatical year by itself served as food for the poor and animals. From a modern environmental point of view, *shemittah* serves to prevent exhaustion of the land.

The law of *shemittah* applies only to the Land of Israel. Today adherence in Israel is almost total, even if generally symbolic. In Israel a national arrangement exists to fictitiously sell land to Gentiles.<sup>136</sup> Secular agriculturalists adhere to this agreement for economic reasons: non-adherence would result in substantial loss of clientele.<sup>137</sup> *Shemittah* was the subject of one of the first halakhic debates to arise in Palestine, in relation to the first Zionist settlements in the late 19<sup>th</sup> century. Aryeh Fishman writes that, while rabbis in the Diaspora suggested selling land to Gentiles and allowing them to work it during the seventh year, rabbis in Palestine insisted that all work on land cease throughout this year, whether it was done by Jew or Gentile.<sup>138</sup> The first option, that of the fictitious land sale, prevailed and is now the predominant practice in Israel.

In recent years, the religious kibbutz movement has begun to pay more attention to *shemittah* laws by "abstaining from new plantings and by circumventing the letter of the law through introducing automated sowing machinery. Every kibbutz also symbolically excludes one tract of land from the formal sabbatical sale of its land, and leaves it fallow."<sup>139</sup> Some other religious settlements apply by-droponic cultures.

After each 49 years, a *yovel* year should be declared.<sup>140</sup> In this jubilee year the same prohibitions regarding working the land are applied as for the sabbatical year. In addition, all land sold during the preceding 49 years is returned to its original owner without compensation.<sup>141</sup> This law is based on the Torah text: "The land shall not be sold in perpetuity, for the land is Mine; for you are strangers and sojourners with Me."<sup>142</sup>