

Pest Control: Managing Nuisance Neighbors

Adapted from the writings of Dayan Yitzhak Grossman

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The Associated Press reports:

In his battle against rats, New York City Mayor Eric Adams scored a split decision Tuesday when a hearing officer dismissed one summons while upholding another issued by a city inspector citing him for not doing enough to keep rodents at bay from his Brooklyn townhouse... The hearing officer, noting the thousands of dollars Adams has invested in addressing his rat problems, credited the mayor for taking “credible” steps to control the rat population at his rental property. But the hearing officer admonished the mayor for not sufficiently heeding his health department’s advice for the proper disposal of trash and recyclables, saying that “the presence of several bags on the ground could provide shelter or protection for rodents, which amounts to a harborage condition.”[1]

The New York City health code defines harborage as “any condition that provides shelter or protection for rodents, insects or other pests.”[2] More generally, it defines “conditions conducive to pests” as

conditions of property construction, operation, and maintenance in occupied or vacant property that promote or allow for the establishment of pest populations, their feeding, breeding, and proliferation, and foster the creation of harborage conditions. Such conditions may include but are not limited to: the presence of weeds or other vegetation that are sources of food or shelter for rodents; accumulation of refuse and other material in or on which pests may find shelter, hide or nest; the presence of cracks, gaps, or holes in building exteriors or interiors that enable the free movement of pests; the presence of food or water accessible to, and capable of, sustaining a pest population; or unsanitary conditions that attract pests.”[3]

Halacha has rules prohibiting conditions conducive to pests, not as part of a special health code, but among the laws governing the conduct of neighbors (*nizkei shecheinim*). The Mishnah requires that one avoid conditions that provide predators access to his neighbor’s poultry:

One must distance a ladder four *amos* from a neighbor’s dovecote so that a marten will not climb it and jump into the dovecote and eat the birds...[4]

In the course of discussing this Mishnah, the Gemara relates:

Rav Yosef had small date palms that bloodletters would come and sit under while they drew blood. Crows would come, drink the blood, fly up onto the palms, and ruin the dates by smearing them with blood.

Rav Yosef said to the bloodletters: Rid me of this crowing.

Elsewhere, the Gemara mandates the distancing or removal of trees that attract or harbor avian pests:

Rava bar Rav Chanan had palm trees along his boundary with Rav Yosef’s vineyard. Birds would occasionally come to perch in the

palms, and from there they would descend into the vineyard and damage it. Rav Yosef said to Rava bar Rav Chanan: Go cut down your palm trees...[5]

There is, however, a major limitation on the general responsibility to avoid causing a nuisance to one's neighbors: The halacha follows the view of R' Yosi that "just as this one may dig a pit within his own property, that one may plant a tree within his property." [6] This means that in general, each man may do whatever he wishes in his own property, and the requirement to avoid nuisance applies only to that which can be described as *girei didei* ("his arrows," i.e., direct and immediate). Accordingly, the Gemara explains that the Mishnah requires that one distance his ladder from his neighbor's dovecote because sometimes, as he places the ladder against the wall, a marten will be resting in a hole, and it will jump onto the ladder and immediately spring into the dovecote. [7]

Similarly, Tosafos understands that the Gemara's requirement that one remove trees from the vicinity of a vineyard applies only when he is planting tall trees, which can immediately attract or harbor birds, but not when he is planting seeds, because in that case the harm is not considered *girei didei*. [8]

The Rosh, however, explains that the case of the trees constitutes *girei didei* because the owner of the trees shoos the birds away and sends them directly to the vineyard. [9] The *Acharonim* note that according to this approach, the obligation applies even to the planting of seeds. [10]

While the Shulchan Aruch omits the qualification of Tosafos that the obligation applies only to the planting of tall trees, and the Rama cites it only as "some say," [11] it is unclear whether there is any essential disagreement here. Although the *Acharonim* do assert that according to the Rosh, the obligation applies even to the planting of seeds, this is only due to the assumption that the owner shoos the birds toward the vineyard. Where this consideration is absent, the Rosh would presumably agree with Tosafos that the obligation applies only to the planting of tall trees, where the potential for harm is immediate.

R' Yaakov Ariel, however, apparently understands that there actually is a fundamental dispute here between Tosafos and the Rosh whether conduct that does not attract pests immediately but does engender chronic infestation constitutes *girei didei*, and that while Tosafos takes for granted that it does not, the Rosh maintains that it does. [12] I do not understand, though, how this understanding of the Rosh can be reconciled with his actual words. Rav Ariel seems to conflate the aforementioned understanding of the Rosh (in his *psakim*) of the Gemara's ruling in the case of the trees with a position he takes in a *teshuvah* (in a different context) that any situation involving major harm to a victim who is unable to practically avoid the harm is automatically classified as *girei didei*. [13] But this seems questionable, because the Rosh in his *psakim* clearly does not invoke the doctrine of his *teshuvah* in explanation of the Gemara's ruling regarding the trees; instead, he resorts to the assumption that the owner of the trees actively shoos away the birds.

Rav Ariel's analysis of this topic appears in a *teshuvah* addressing a situation rather similar to that of Mayor Adams: Someone was storing bales of hay in his yard, and they were attracting rats, which were causing harm to his neighbors, one of whom demanded that he remove the hay. Rav Ariel ultimately concludes that although it is admittedly a matter of dispute whether this is considered *girei didei*, the hay should nevertheless be removed on various grounds, including:

- The view of the Rosh that any considerable and ongoing harm that is preventable is automatically classified as *girei didei*.
- The view of the Nesivos Hamishpat that the determinant of what is prohibited under *nizkei shecheinim* and what is not, is the relative burden that engaging in or abstaining from a particular course of action would place on the two neighbors.[14] Accordingly, in our case, where the owner of the yard can prevent the proliferation of rats without undue limitation of his ability to utilize his property, he is obligated to do so, if not as a matter of strict halacha, then at least as an ethical imperative (*lifnim mishuras hadin*).

[1]Bobby Caina Calvin. NYC Mayor Adams gets split decision in battle against rats. AP News.

<https://apnews.com/article/politics-animals-mice-and-rats-eric-adams-new-york-city-682a076ad8bfca1e27620326546dd835>.

[2]New York City Health Code, Article 151.01 (b).

[3]Ibid. (a).

[4]Bava Basra 22b.

[5]Ibid. 26a.

[6]Ibid. 25b.

[7]Ibid. 22b.

[8]Tosafos ibid. 26a s.v. *Aval bigfanim*.

[9]Piskei HaRosh ibid. *perek 2 siman* 28.

[10]See Bais Yosef, Sma s.k. 59, and Nesivos Hamishpat *Chidushim* s.k. 47 ibid.

[11]Shulchan Aruch C.M. 155:25.

[12]Shu"t Be'ahalah Shel Torah C.M. *siman* 88, *Harchakas Nizkei Chuldos Bechatzer*, os 2.

[13]Shu"t HaRosh *klal* 108 *siman* 10. The Rosh's ruling in this *teshuvah* is codified in Shulchan Aruch ibid. *se'if* 20.

[14]Nesivos Hamishpat ibid. *Biurim* s.k.18.