

Plaintiff: Mr Red

I demand that Mr Green immediately remove his noxious environ~~mental~~ apparatus from his backyard. He keeps dangerous chemicals in oil drums. He has heaped reeking compost against our shared wall. He dug a well right against that wall which has led to the cracks in my basketball court. His wind turbine is extremely loud and the vibrations have loosened the pole of my basketball hoop. The solar panels are an eyesore and have lowered my property value. Plus he opened a shop in his garage to sell his “crafts” and vegetables. I am glad he wants to save the world, but why should I suffer? I can no longer relax on my patio or enjoy my pool without smelling the fumes, hearing the whir, seeing the ugly panels or choking on dust from his digging in the garden. I’ve already had to repair my pool pump because the water always has some scum in it blown in from next door. On top of all that, people keep blocking the road when they come to buy from his “store.” From the moment he began to make these changes he has been sanctimonious and irrational. Please help him see reason or at least let the law force him to be reasonable.

Defendant: Mr Green

Mr Red is a typical suburban fool. I am doing all I can to make up for what he and others like him have done to our planet. Everything I have done is in my backyard and built with my own hands. Aren’t we free to use our property as we wish?! I didn’t complain when he paved over so much of his yard or made that hideous basketball court. I am fulfilling the mitzvah of Ba’al Tashkhit which says we should not waste or needlessly destroy anything. If I were holding services or doing some other mitzvah in my backyard could he stop me from doing that too?! He certainly didn’t mind the vegetables from the garden or the wicker baskets I make when I shared them with him. Nor did he mind when I offered to let him hook up his irrigation system to my well. And when I first put in the compost pile, he said it had a wonderful earthy smell.

Consider the following topics:

Well, wind turbine, solar panels, veg oil drums, compost, veg & craft shop and whether there is a need to move/remove them and/or pay damages.

Veg Oil

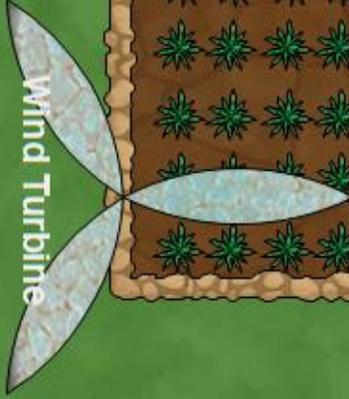


Solar Panels

Veg & Craft Shop



Vegetable Garden



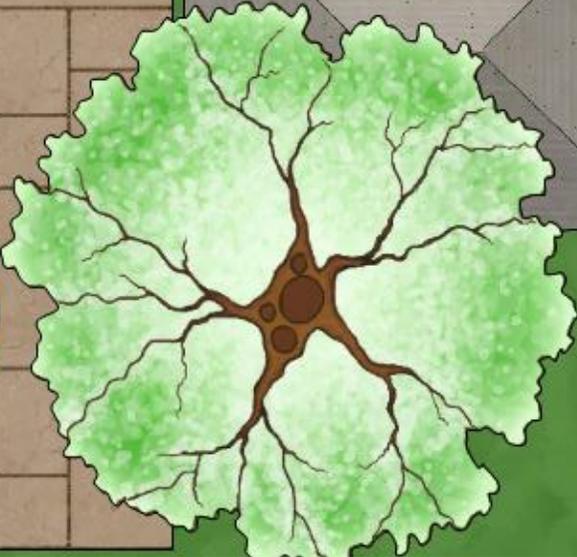
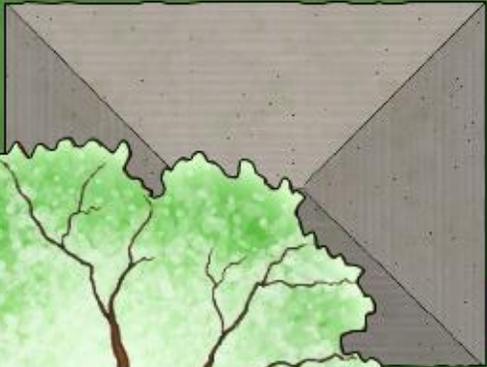
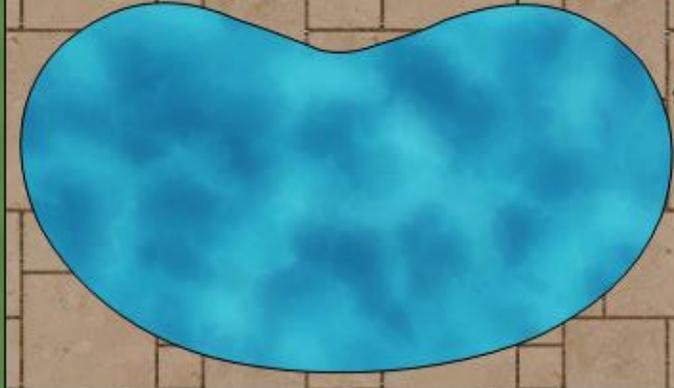
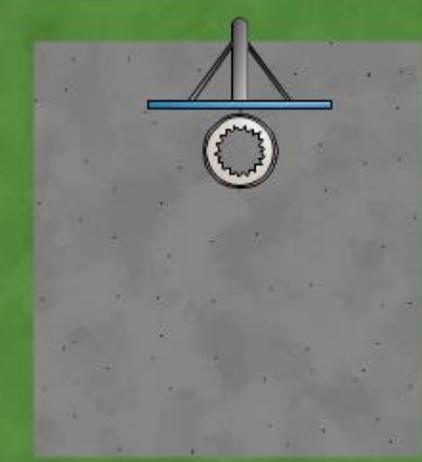
Wind Turbine



Well



Compost



A person may not dig a cistern, trench or a storage vat next to a wall belonging to a neighbor unless he distances himself 3 t'fachim (handbreadths) from the wall. He must seal the wall of the digging so the water will not seep through and damage his neighbor's wall.

A separation of 3 t'fachim is needed between olive debris, tar, salt, lime, or flint stone and a neighbor's wall or these substances must be coated in cement.

Similarly, a separation of 3 t'fachim must be made between a wall and plants, plowing and a cesspool where urine is collected.

When someone wants to dig a well near the property boundary, if the next field is not in need of a well, he may dig next to the boundary without fear of protest. If the other field might be suitable for a well, the first digger must distance himself 3 t'fachim (handbreadths) from the boundary. If the second neighbor digs a well, he must do the same. *Mishneh Torah Hilchot Sh'chenim Chapter 9*

When a person makes a threshing floor or latrine or place for work that makes dust or dirt, it must be far enough away from others that the dirt, smell or dust does not reach his neighbors and cause them damage.

Even though the separation is required, if an ordinary wind carries the damage, he is not liable because the damage did not come through the force of the person himself.

When someone crushes grain or such on his property, but as he beats on it his neighbor's courtyard shakes to the extent that a cover falls off a jug, he is considered to have caused the damage. He must either move far enough away so it no longer shakes or cease the action.

With regards to **all** separations: if someone should have made separation at the outset but didn't and yet his neighbor saw what he was doing and remained silent, the neighbor is considered to have waived his right to ever protest. This only applies if it was obvious that he waived his rights, for example: he helped him perform the activity, he told him to do it or he clearly saw him do it and remained silent. Whenever someone establishes a right to perform a damaging activity, that right cannot be revoked. However, this applies to all damages **except** those caused by smoke, the smell of a latrine, dust and such and the shaking of the ground. For these, no permanent right can ever be established. Even if a neighbor has tolerated it for years, he can still come and decide he no longer accepts it and force the activity to move or cease. Unlike other types of damages, a person's disposition will never fully tolerate such as these so we assume he has not fully waived his right to protest. If a kinyan, a formal agreement was reached, however, then he may not retract his permission.

If one of the inhabitants of a lane or courtyard became a craftsman, and the others did not protest, he has established the right to practice his trade. If there are people constantly coming and going, even if the neighbors remained silent, the craftsman has not established a right to customer traffic. This damage is like smoke and dust and they may later protest.

In most cases, when an activity has been ongoing it is the responsibility of the one whose rights have been encroached upon to prove that he never accepted it in the first place. If he cannot bring proof that he has only now been made aware of the problem or that he has been complaining since the beginning to no avail, then the right is established and cannot be revoked.

On the other hand, if it is a case where one never fully gives up his right, such as smoke, dust, smell and shaking then the burden of proof is on the one who has encroached upon the rights of the other to prove that a kinyan, formal agreement, took place. *Mishneh Torah Hilchot Sh'chenim Chapter 12*

There is a general principle that one should not *act in the manner of Sodom* meaning that when something is good for one party and absolutely does not cause the other party any loss, we force the latter party to go along with it. *Bava Batra 12b, Shulchan Aruch Choshen Mishpat 174:3*