This translation only covers the dissent by Justice Englard and a portion of the response by Justice Turkel.

LCA 6339/97

Appellants:
1. **Moshe Roker**
2. **Rina Roker**

v.

Respondents:
1. **Moshe Solomon**
2. **Hanna Solomon**
3. **Yair Barker**
4. **Yaale Barker**

The Supreme Court as Court of Civil Appeals

[Dec. 23, 1999]

Before: President A. Barak, Deputy President S. Levin, and Justices E. Mazza, N. Cheshin, T. Strasberg-Cohen, J. Turkel, I. Englard

Judgment

Justice I. Englard:

We are addressing this request for leave to appeal as if leave were granted, and as if an appeal was filed in accordance with the leave granted.

1. Before us is a dispute among neighbors in a condominium, which has persisted for over ten years. The reason for the dispute is construction carried out in the common property of the building by the owners of one apartment. After several cycles in the courts, an order was issued against the owners of one apartment (hereinafter: the Appellants), pursuant to the request of the owners of two other apartments (hereinafter: the Respondents), requiring the Appellants to restore the situation *ad integrum*, and demolish any construction performed by them in the common property, as well as to return joint possession of the entire common property seized by the Appellants to the Respondents. The Appellants were also ordered to pay the Respondents damages for suffering and loss of enjoyment of the common property, in the amount of NIS 10,000.

2. An appeal was lodged in the District Court against this judgment issued by the Haifa Magistrates Court on Nov. 5, 1996, by Judge R. Tovi-Friedman. That appeal was dismissed on Sept. 28, 1997, in a judgment by President M. Slutzky, Judges S. Finkelman and S. Wasserkrug concurring. The court reemphasized that any change in the common property requires the prior approval of a general meeting of the apartment owners; that any construction in the common property without consent is an infringement thereof, and constitutes a permanent deprivation of its use by the other apartment owners; that any infringement of the common property, even without any attendant damage, is sufficient to justify a restraining order; and that a building permit does not, in and of itself, legitimize construction involving infringement of the property rights of other apartment owners in the common property. The District Court therefore ruled that inasmuch as the Respondents had been harmed by the erection of a structure on the common property without their consent, they are entitled to the remedy of *restitutio ad integrum* by means of a demolition order, and to being granted the possibility of using the common property. They Respondents were also entitled to damages for suffering.

3. That judgment of the Haifa District Court is the subject of the appeal at bar. Actually, the Appellants do not dispute the legal presumptions of the trial court. Their main argument is that the circumstances of the matter do not justify an order to demolish the structure unlawfully built on the common property. In other words, their claim is that the court should exercise discretion in regard to the remedy of demolition. Indeed, the questions as to whether a court has such discretion in the case of construction on another's land – and if so, how to exercise it – are new,

and of significant legal importance. Therefore, after hearing the arguments of the parties, the original panel decided that the proceedings would continue before an expanded panel of this Court. In view of the expansion of the panel, the President ruled that the parties would be permitted to submit written summaries of their arguments, and that the decision would be made on the basis of the material in the Court's file, with the addition of the briefs submitted by the parties, without need for further supplemental pleadings. This was, indeed, done. We reviewed the material in the file, and the briefs submitted by the parties, and decided, as stated, that due to the importance of the subject, leave to appeal would be granted.

4. The starting point of our examination is that the Appellants' construction on the common property was unlawful. Therefore, in principle, the Respondents have a right to *restititio ad integrum*. Thus, exercising discretion by the court to refrain from demolishing the structure is not a matter of course, but rather depends upon the special circumstances of the instant case. Therefore, the details of the case regarding the conduct of the parties, as well as the external circumstances, are of importance. I will present them in brief:

(a) We are concerned with a four-apartment condominium built in the nineteen fifties. In the early nineteen eighties, it became known that it was possible to increase the floor-area by some 40%, totaling about sixty square meters. The homeowners' committee held several meetings to consider expanding the various apartments. The Appellants, who were interested in executing a plan to expand their apartment, submitted a request for a building permit in 1986.The Respondents submitted an objection to the plan, and the local committee decided to conduct an inspection of the building, which took place on Nov. 19, 1986. On Jan. 5, 1987, the local committee decided to grant a building permit subject to several conditions, among them that separate storage units would be built for the Respondents in place of the area that they had been using in the existing bomb shelter. It should be noted that the loss of the use of the shelter as a storage area was one of the reasons for the Respondents' objection to the request for a building permit. The Respondents appealed the decision before the district committee, which decided to deny the appeal on May 14, 1987.

(b) On June 1, 1987, the Respondents filed suit in the Haifa Magistrates Court for a permanent injunction against the Appellants. The Respondents also filed a motion for a temporary injunction, which was granted on Nov. 16, 1987. The Magistrates Court handed down

its decision on Sept. 5, 1989, denying the Respondents' suit for a permanent injunction, on the grounds that the Respondents had consented in principle to the expansion of the Appellants' apartment. However, the Magistrates Court left the temporary injunction in place pending appeal. The appeal was filed on Sept. 13, 1989, but a request to extend the temporary injunction was denied by the District Court on Oct. 10, 1989. On Dec. 19, 1989, the Haifa District Court decided to prevent the Appellants from continuing construction beyond what had been completed to that date. However, in the interim period during which there was no injunction in force – that is, between Oct. 10, 1989 and Dec. 19, 1989 – the Appellants succeeded in completing the expansion of the apartment in accordance with the plan.

(c) The Respondents' appeal to the District Court was granted on Aug. 29, 1990, holding that there was no basis for the Magistrates Court's finding in regard to the Respondents' consent to the construction plan. The result was that, in the framework of this suit, the Appellants were prohibited from performing any further construction. The court added that "this does not represent any finding on the question of whether the Appellants (the Respondents before us – I.E.) can now institute new proceedings for restoring the situation to its original state". The Appellants were granted leave to appeal by this Court, but ultimately withdrew their appeal, and it was therefore dismissed on March 8, 1995.

(d) After the conclusion of the first campaign – successfully from their perspective – in the District Court, the Respondents began the current campaign to restore the situation to its original state by demolishing the structure. I will briefly describe the construction. The Appellants are the owners of the apartment on the first floor. Part of the apartment rest on columns, and part on the shelter. The Appellants closed in the space between the columns, attached part of the shelter to it, and added an addition on the side of the building, on the lawn. In place of part of the shelter, they built – in accordance with the requirements of the local committee – two storage units behind the shelter, in conformance with standards, while apparently excavating the property slope. According to an expert estimate from 1995, the cost of removing the construction stands at some NIS 40,000, while restoring the lawn and garden would cost some NIS 50,000.

5. It is true that the Appellants carried out the construction when there was no injunction in force, and while the judgment of the Magistrates Court permitting the construction still stood. However, upon the overturning of that judgment upon appeal, their construction on the common

property became (retroactively) illegal. Moreover, the District Court rightly held in the current campaign that the Appellants cannot claim to have acted in good faith. As stated, the Respondents filed an appeal against the decision of the Magistrates Court ten days after it was given. The Appellants were aware of the determined objection of the Respondents, and therefore good faith cannot be claimed in regard to the construction in the disputed area, not to mention that the judgment in their favor had not, at the time, become final.

6. I will, therefore, return to the question of principle: Does the court have discretion in regard to the remedy of demolition of the structure under these circumstances of unlawful construction in the common property?

…

21. However, for the purpose of finding a source for preventing abuse of a right, we do not actually have any need to graze in foreign pastures. This concept is clearly expressed in Jewish legal tradition in the famous principle stating: "*kofin al midat s'dom*" ["one may be compelled not to act meanly"] [1] (*KETUBOT* 103a; *EIRUVIN* 49a; *BAVA BATRA* 12b; 59a; 168a). This combination of manner and compulsion is unique to the Jewish conception of the role of the state, which is not limited to the interpersonal area – in accordance with the approach of the liberal state – in preventing harm to another person. Rather, as Maimonides defined it, the Law of Moses is intended to bring the human being to a state of moral perfection and intellectual perfection, where the last is the primary objective of humankind (GUIDE FOR THE PERPLEXED, III:54). However, in this area of moral perfection, Judaism, too, was also aware of the Kantian problem of enforcing morals. In Kant's view, the law, as a normative system of external compulsion, stands in contrast to morality as a normative system that we must obey from a recognition of internal obligation. The Sages, as well, were of the opinion that coercing an individual to act morally is far from moral perfection. It is against the background of this tension between compulsion and personal moral perfection that we can understand the halakhic disagreements concerning the scope of legal compulsion in regard to "*midat s'dom*".

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[1] Translator's note: "Strict translation of this phrase, which is 'one is compelled not to act in the manner of Sodom' is not very helpful. The rule is interpreted to mean that if A has a legal right and the infringement of such right by B will cause no loss to A but will remove some harm from, or bring a benefit to B, then the infringement of A's right will be allowed. Such a concept at once brings to mind the modern view concerning abuse of rights." Shmuel Shilo, *Kofin Al Midat S'dom: Jewish Law's Concept of Abuse of Rights*, 15 IS.L.REV. 49 [abstract and full text available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2676836].

22. As Rabbi A. Lichtenstein pointed out in his deeply illuminating article *LeBeirur 'Kofin al Midat S'dom*', *HAGUT IVRIT BE-AMERIKA*, vol. I, 362 (1973) (Hebrew), to the best of his knowledge, there is no source in early rabbinic literature that describes this type of conduct [*midat s'dom*] in abstract, universal terms. One important source that refers to the general nature of *midat s'dom* as a human characteristic is to be found in the Mishna (AVOT 5:10):

> There are four types of character in men: He that says "Mine is mine, and yours is yours" – this is the middle [neutral] quality, and some say this is *midat s'dom*. He that says "Mine is yours and yours is mine" – is an *am ha'aretz* [uneducated person]. He that says "mine is yours and yours is yours" – is a pious person. He that says "Mine is mine and yours is mine" – is a wicked person.

It would seem that we have here a tannaitic[2] dispute as to the character of one who says "mine is mine, and yours is yours" – is this morally neutral or *midat s'dom*? Many scholars have made exerted efforts to clarify the relationship between the two views, and the prevailing approach is to harmonize the two. In principle, "mine is mine, and yours is yours" is the legal approach, and is necessarily value-neutral, inasmuch as its purpose is to preserve the "his" of each person. Rashi may be pointing this out in his commentary to AVOT in stating (*ad loc*., *s.v*. "*zo mida beinonit*"): "As we found in regard to Samuel of Ramah, of whom it was said: 'Then he would return to Ramah, for his home was there' (I Samuel 7:17)". It would seem that Rashi's intention is to refer us to the continuation of the verse: "and there he would judge Israel". In other words, he had clean hands because he took care not to benefit from others, as he and all Israel testify: "you have found nothing in my possession, and they responded 'He is'" (I Samuel 12:5). Thus, that is the proper legal value: to protect a person's rights against harm by another. Notwithstanding the desire for moral perfection, Judaism does not coerce a person to the pious manner of "mine is yours, and yours is yours". However, in special circumstances, the neutral manner of "mine is mine, and yours is yours" may – as "some say" – become an actual *midat s'dom*. That would occur when a person who behaves in that manner puts the emphasis on "mine is mine", while absolutely ignoring the interests of others. A salient example of such a situation is preventing benefit to another in a situation of "this one benefits, and the other loses nothing", see Rashi, *EIRUVIN* 49a, *s.v*. "*midat s'dom*": "*sheli sheli*".

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[2] Trans: The term "tanna" refers to the rabbinic sages of the Mishnaic period (approximately 10-220 CE).

23. Indeed, in the view of the "Rishonim",[3] the focus of the Talmudic discussions treating of *midat s'dom* is on the factual situation – that itself became a legal principle – of "this one benefits, and the other loses nothing". The conception is that when a person deprives another of benefit, where that benefit costs him of nothing, his conduct is deemed *midat s'dom*, and the law will compel him to desist. There are many, lengthy disputes among Talmudic sages and later halakhic decisors in regard to the details of the rule, and this is not the place for examining them. For an examination of the subject in modern literature, see, in addition to Rabbi Lichtenstein's article, N. RAKOVER, UNJUST ENRICHMENT (5748) (Hebrew), A. Weinrot, *Abuse of Rights in Jewish Law ("Kofin al Midat S'dom")*, 18 *DINEI YISRAEL* 53 (5755-5756) (Hebrew); Shmuel Shilo, *Kofin Al Midat S'dom: Jewish Law's Concept of Abuse of Rights*, 15 IS.L.REV. 49 [abstract and full text available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2676836].

24. It would appear that the scope of incidence of the "*kofin al midat s'dom*" rule in the framework of the principle of "this one benefits, and the other loses nothing" may be broader than that of the accepted doctrine of abuse of rights. While there are many disagreements among halakhic scholars on the question of the existence of a loss by the owner of the property, it would seem that in some cases the status of the "beneficiary" in halakha is preferred to that of the person relying on the doctrine of abuse of right in most, if not all, legal systems. However, the opposite situation – in which the balance of interests on the basis of a utilitarian test does not correspond with the principle of absence of loss according to the halakhic tests – is also possible. In such a situation, the result may be that the status of the "beneficiary" would be preferred under the doctrine of abuse of right.

25. For our purposes, I will suffice with one example from halakha according to which a person is permitted to trespass upon another's property on the basis of the principle of "this one benefits, and the other loses nothing" as an expression of "*kofin al midat s'dom*". I am referring to the rule established by the *SHULHAN ARUKH* in accordance with Maimonides – contrary to the objection of Rabbeinu Yaakov Baal HaTurim [Rabbi Jacob Ben Asher, ca. 1269-1343, author of the *ARBA'AH TURIM* [a.k.a. the *TUR*) – trans.] – in regard to "one who places a small ladder that does not have four rungs in the courtyard of his neighbor or in his field …". The owner of the

[3] Trans: Halakhic scholars active in the 11th-15th centuries, prior to the publication of Joseph Karo's *Shulhan Arukh*.

property cannot prevent the owner of the ladder from placing his ladder for his own use, as long as it causes no harm to the former. See MAIMONIDES, *MISHNEH TORAH*, *Hilkhot Shekhenim* 7:8; 8:4; 12:1-4. "… however, if he paced a small ladder, he cannot prevent it, since they say to him: you suffer no loss thereby, as whenever you wish, you can remove it", and see the *Magid Mishneh* [Rabbi Vidal of Tolosa (14th cent.)] commentary *ad loc*: "This is not mentioned in the discussion in the Gemara, but it is mentioned in the Gemara in regard to many rules where as long as this one benefits and the other suffers no loss, *kofin oto al midat s'dom* …". As opposed to this, see *TUR*, *Hoshen Mishpat* 153, which adds, after quoting Maimonides: "and this would not seem so, as how can he use his neighbor's [property] against his will"?!. This objection by the Baal HaTurim is rejected by his commentators the *Bayit Hadash* [Rabbi Joel Sirkis (1561-1640)] and the *Beit Yosef* [Rabbi Joseph Karo (1488-1575), author of the *SHULHAN ARUKH*] *ad loc*. The *Bayit Hadash* notes that "when it involves no invasion of privacy, and his anger is solely due to the trespass, *kofin al midat s'dom*". And see: *TUR*, *Hoshen Mishpat* 173, and the *BAYIT HADASH*, *ad loc*., ss. 3. For the halakha, see *SHULHAN ARUKH*, *Hoshen Mishpat* 173:13, and the commentaries *ad loc.*

26. It is only proper that Jewish law serve as a source of inspiration in interpreting the provisions of sec. 14 of the Land Law, and not just due to its obscure, incoherent language. In my view, it would be appropriate that the clear moral tendency found in the Jewish legal tradition in regard to the concept of ownership, the purpose of which is to limit a person's rule over his property, would find expression in the law of the State of Israel as a Jewish and democratic state. I would note that in addition to the personal moral dimension of the rule "*kofin al midat s'dom*", the rule also comprises what may a more important social dimension. After all, it was the absence of this moral dimension that sealed the fate of the people of Sodom for whom the principle is named. See: *SANHEDRIN* 1099a, and see Ezekiel 16:49; "Only this was the sin of your sister Sodom: Arrogance! She and her daughters had plenty of bread and untroubled tranquility; yet she did not support the poor and the needy".

27. From all of the above, we may, therefore, conclude that the doctrine of abuse of right in land has gained a place in our law, and in that framework, the principle of *kofin al midat s'dom*, as well. In light of this development, we should reexamine the approach of President Olshan, as

expressed in CA 281/61 *Shlusser v. Katz*, IsrSC 15 2329, 2333. First, President Olshan holds as follows:

> If a suit for an injunction is filed against a respondent who is a trespasser, the latter cannot object by claiming that the injunction, if granted, would severely infringe his vital interests …
>
> Therefore, despite the rule that granting an injunction is discretionary, the respondent must first show some grounds for his claim that the complainant must grant him a right to pass through the disputed property.

And he continues:

> A person cannot demand some benefit in another's property simply because it is convenient for him or because he requires it and the matter does not cause any harm whatsoever to the other, even if this person's difficulty may lead people to sympathize with him. Moral considerations should not be confused with equitable considerations in the legal sense. When a matter is dependent on the goodwill of the other, "goodwill" should not be imposed upon the other for equitable considerations. We have never heard of such a rule.

…

35. As noted, the abuse of right doctrine should not be limited to cases of an improper motive by the complainant. The additional test – as we see in the aforementioned Swiss case – is an objective assessment of the mutual interests in light of the circumstances of the case. In weighing the mutual interests of the parties, I am of the opinion that a demolition order would constitute an abuse of the property right in the common property. Demolishing the addition to the apartment, demolishing the storage units built in accordance with a building permit, and restoring the situation to its original state do not stand in a reasonable relationship to the – somewhat abstract – fundamental interest of the Respondents in maintaining the totality of their right in the common property. The balance of interests clearly tends in favor of preserving the existing situation, while awarding damages to the other residents for the infringement of their right to use the common property.

36. This conclusion is clearly consistent with the spirit of the tests under sec. 74 of the Civil Wrongs Ordinance [New Version], and it is proper that, as far as possible, the considerations for granting parallel remedies according to the two systems, which both serve the objective of directly protecting property interests, be consistent. Moreover, it would appear that the solution of awarding damages rather than ordering demolition is also consistent with the Jewish law approach under the principle of "*kofin al midat s'dom*". Although the owners suffer some loss of the use of the common property, in light of the "beneficiary's" willingness to pay for the use of the common property it would seem that demolition of the structure would, under the circumstances, constitute *midat s'dom* that might, perhaps, also comprise an element of "*bal tashhit*" ["do not destroy/waste"]. (See MAIMONIDES, *MISHNEH TORAH, Hilkhot Melakhim* 6:10: "Not only trees, but anyone who breaks utensils, tears garments, and destroys buildings … transgresses the command of do not destroy …". However, it should be noted that *takanat hashavim* [rehabilitation] does not apply to cases of trespass upon property in the halakhic sense. See: *TUR, Hoshen Mishpat* 376, *BEIT YOSEF* and *BAYIT HADASH, ad loc*., quoting Rashba (RESPONSA RASHBA, III:188, and particularly see *OR SAME'AH*, II:11.The Author [i.e., R. Joseph Karo, author of the *SHULHAN ARUKH* – trans.] disagrees with the *RESPONSA MABIT* [R. Joseph b. Joseph di Trani (1505-1585)] III:143, who was of the opinion that a distinction should be drawn in regard to *takanat hashavim* in regard to real property, whether accidental or willful. The *OR SAME'AH* [R. Meir Simcha of Dvinsk (1843–1926)] also disagrees with this idea, which appears in *SHA'AR MISHPAT* [R. Israel Isser b. Zeev Wolf (ca. 1750–1828)] 360, according to which an accidental trespasser can prevent the demolition of his structure by paying the property owner for his land. The author of *SHA'AR MISHPAT* premises this idea – intended to prevent substantial loss – on the principle of returning lost property in the framework of "swarms of bees" (*BAVA KAMA* 114a-b). On this issue in practice, see: MAIMONIDES, *MISHNEH TORAH, Hilkhot Gezeila vAveida* 6:14; *TUR, Hoshen Mishpat* 274, 370; the gloss of the *Rema* [R. Moses Isserles (1520-1572)] on *SHULHAN ARUKH, Hoshen Mishpat* 274. Indeed, even in halakha we find many opinions in regard to the scope of *kofin al midat s'dom* in the context of "this one benefits, and the other loses nothing". We would note in this regard, the comments of the *Ba'al HaNetivot* [R. Jacob b. Jacob Moses Lorberbaum of Lissa (1760-1832)] in his *Mishpat HaUrim* commentary on *SHULHAN ARUKH, Hoshen Mishpat*, 154:3:

> And if one loses a small amount and one a large amount, it would seem that he makes up for him the small loss, as *kofin al midat s'dom*, but only when it is solely a monetary loss, but if the loss is in the land itself, he can say that land is worth a lot to me, as we see in Bava Kama 12 [b] see there.

This is not the place to elucidate the distinction between a monetary loss and a loss of the land itself (compare, in general, the abovementioned article by Weinrot, p. 71*ff*.), nor is it my place to decide halakha. It is sufficient to note that making up for a loss by monetary payment is a consideration in the halakhic sources in the framework of *kofin al midat s'dom*.

Therefore, if my opinion were adopted, the appeal would be granted, and the judgments of the Magistrates Court and the District Court would be vacated in regard to the remedy of *restitutio ad integrum*. Inasmuch as my conclusion is not acceptable to my colleagues, I see no reason to address the question of payment of damages by the Appellants for their use of the common property.

Justice J. Turkel

"*Ha! he who builds his house with unfairness, and his upper chambers with injustice*" (Jeremiah 22:13).

Introduction

1. I will begin by presenting the main points in utmost brevity. The owners of an apartment in a condominium extended their apartment by building on the common property without the consent of the other apartment owners. The Magistrates Court and the District Court granted the suits of the latter, and ordered that the trespassers restore the situation to its original state by demolishing the structure that they built on the common property, and returning possession to the joint owners. The trespassers were also ordered to pay damages to the other apartment owners for their suffering. In the opinion of my esteemed colleague Justice Englard, for reasons that he presented in detail, the significant expense that would be borne by the Appellants in restoring the situation to its original state tip the scale in their favor, and therefore, the judgments of the lower

courts should be vacated. I will put the cart before the horse and say that I utterly reject that conclusion.

…

Kofin al Midat S'dom?

22. I will briefly address the approach of Jewish law, if only to set the halakha – or what I believe to be the halakha, in my humble opinion – straight, and "to exalt the Torah".

The principle of "*kofin al midat s'dom*" (*MISHNA, AVOT* 5:10; TB *BAVA BATRA* 12b; 13a; 59a; *KETUBOT* 103a; *EIRUVIN* 49a; *MAIMONIDES*, *Hilkhot Shekhenim* 7:8; 12:1-4) – which means: a person is coerced not to act in the manner of the people of Sodom – is an important principle established by the Sages in Jewish law's rules of equity. But this rule does not have the power to uproot a positive commandment of the Torah. The Torah expressly states: "You shall not move your neighbor's landmarks, set up by previous generations, in the property that will be allotted to you in the Land" (Deut. 19:14), and Rashi explains: "You shall not move [*lo tasig*] [your neighbor's] landmark: A term similar to 'they shall be turned back [*nasogu ahor*]' (Isa. 42:17). That he moves the boundary marker of the land backwards into his neighbor's field in order to enlarge his own. But has it not already been stated: 'You shall not commit robbery' (Lev. 19:13)? What does 'You shall not move [your neighbor's landmark]' teach us? It teaches us that one who uproots his neighbor's boundary transgresses two negative commandments. One might think that this applies even outside the Land of Israel. Therefore it says, 'the property that will be allotted to you in the Land'. In the Land of Israel one transgresses two negative commandments, whereas outside the Land of Israel, one transgresses only the commandment of 'you shall not commit robbery'." This commandment was also stated in the ceremony of the blessings and the curses on Mount Gerezim and Mount Ebal: "Cursed be he who moves his neighbor's landmark" (Deut. 27:17). And Rashi explains there: "Who moves back his neighbor's landmark, moving it back and stealing the land. A term similar to 'is turned back [*vehusag ahor*]' (Isa. 59:14)." (Rashi, Deut. 27:17). Thus, we do not make recourse to the principle "*kofin al midat s'dom*" to allow an act of uprooting a boundary and stealing land.

Moreover, an examination of the sources appears to show that this principle was not employed in a manner that infringes rights in real property. It would seem that the only instance

that might arguably be seen as an infringement of real-property rights is that of recourse to the principle in order to prevent a person from opening a window in a wall of his house that would overlook his neighbors' courtyard (*TB BAVA BATRA* 59a); *MAIMONIDES*, *Hilkhot Sekhenim* 7:8. It should be noted that Maimonides' approach in this regard was criticized by the most respected halakhic decisors, who took pains to distinguish and restrict the rule. In any case, it would seem to me that, at the end of the day, we may conclude that the view of halakhic scholars is that, as a rule, a person cannot be compelled to waive his property rights and permit others to benefit from his property, even if the matter involves no economic cost whatsoever. And indeed, even according to the approach of those who hold that compulsion is possible in some situations, we do not employ the principle of *kofin al midat s'dom* in regard to substantive property interests (see Weinrot's interesting article, *Abuse of Rights in Jewish Law ("Kofin al Midat S'dom")*, 18 *DINEI YISRAEL* 53 (5755-5756) (Hebrew), and the references cited there and elsewhere. And see CA 538/80 *Zarhi (Avrahami) v. Koresh*, IsrSC 36 (3) 498, in which the Supreme Court, *per* Sheinbaum J., rejected the use of the principle in a similar case).

Thus, the principle "*kofin al midat s'dom*" cannot serve the Appellants, who, as stated at the outset, built what they built unjustly and unlawfully.