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HOLY GIFT

Gifting a Mezuza or Other Items of Kedusha to A Non-Jew

In the United States, schools and yeshivas benefit from the government's largesse in numerous ways. When public officials pay official visits to our institutions, it is common to reciprocate by presenting them with some token of appreciation and gratitude, as a form of common courtesy.

There have been instances in which communal leaders chose to present non-Jewish public officials with kosher Mezuzot to hang on the door of their office as a meaningful gift. These officials have been very moved by the gesture and eager to benefit from the protective powers of the Mezuza.

Expressing appreciation to public officials who assist our institutions and communities is an admirable practice; nevertheless, as explained below, there might be Halachic issues with this particular gift of appreciation.

THE WORTHIEST GIFT

The incident in the Talmud that is most similar to the above-mentioned practice is found in the *Yerushalmi*[1]. A special friendship existed between the Roman King Antoninus and Ribbi Yehuda HaNassi (known as *Ribbi*). The Talmud recounts an incident in which King Antoninus sent Ribbi Yehuda HaNassi a precious stone as a gift, and in return, Ribbi Yehuda HaNassi sent the king a *Mezuza*.

Antoninus was puzzled. He asked, "I sent you such an expensive gift and you send me a piece of parchment?"

Ribbi Yehuda HaNassi replied: "I will always have to guard your gift to ensure that no one will steal it. Whereas my gift to you, the *Mezuza*, will watch over you and protect you at all times!"

It would seem from this story that it is permissible to give a non-Jew a *Mezuza*. Yet, the matter is not so simple. In fact, the *Rema*[2] rules that it is forbidden to give a *Mezuza* to a gentile.

GUARDING THE SANCTITY

The reason many *Poskim* prohibit giving a *Mezuza* to a non-Jew as a gift is based on a concern that the recipient will not treat the holy object with the proper sanctity and respect.[3] The story of Ribbi Yehuda HaNassi and Antoninus may have been an exception to the rule because Ribbi knew with certainty that Antoninus would treat the *Mezuza* with the proper respect.

FEAR OF REPRISAL

Still, in the *Darke Moshe* on the *Tur*[4], the *Rema* relates that the ruler of a certain city once asked his Jewish subjects to send him a *Mezuza*. The townspeople were afraid to refuse, lest they incur the wrath of the powerful ruler. Despite this fear, the *Maharil*[5] ruled that it is forbidden. The *Rema* disagrees with the *Maharil* and rules that if there is a concern of "*Eiva*" – hatred; a fear that refusing to send the *Mezuza* will lead to hatred towards the Jews that could have dangerous reprisals, it is permitted to send it. The *Rema* reiterates this leniency in his glosses on the *Shulhan Aruch*[6].

The *Shu"t Be'er Sheva*[7] discusses this topic at length and posits that Ribbi only sent a *Mezuza* to Antoninus out of a concern of

1 Pe'a 1:1

2 Yore De'a 291:2

3 R. Avraham HaLevi in Shu"t Ginat Veradim, Orah Chaim 2:28, adds another reason for the prohibition. He says that giving a Mezuza to a non-Jew is in and of itself a "Horada BiK'dusha", lessening of the holiness of Mezuza – as it will no longer be used to satisfy the Torah obligation.

4 ibid

5 Hilchot Mezuza, Ot Daled. This is also the view of the Ohr HaHayim in his Sefer Rishon L'Tzion

6 The Levush agrees with the Rema and permits this in a case of possible Eiva

7 Siman 36

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A Shiur Halacha by Dayan Shlomo Cohen

WHAT'S YOURS IS MINE: ROOTING OUT MIDDAT SEDOM

In this week's *Parasha* we read about the destruction of the people of *Sedom*, a town with evil and wayward ways. *Hachamim* relate many stories of the atrocities they committed. Hashem in all his mercy saw no alternative but to completely destroy *Sedom* despite *Avraham Avinu's* pleas.

What did they do wrong? Did they have any ideology or beliefs?

The *Mishna* in *Pirke Avot* gives us some insight into this matter. The Mishna says there are four types of mindsets when it comes to ownership and sharing.

One who says what is mine is mine and what is yours is yours is considered to be a mediocre person, and some say that it is the way the people of *Sedom* behave. What's wrong with that? Seems perfectly logical...

But, in truth, if you follow this mantra fully, you will end up telling the rich man not to help the poor man, because he must not give up his money for another.

The *Shulhan Aruch* rules that if someone lives on your land, if the land is not meant to rent out or to use, you may not charge them. This is true even if there is a benefit to the squatter, as he would've rented elsewhere were it not for your property. This is immoral to charge him as it constitutes a *Middat Sedom*.

The *Rema* explains, however, that you may prevent them from living to begin with, but

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GENERAL HALACHA

Free Wifi: Using a Wireless Internet Connection without

In today's world, *Poskim* are often faced with *Halachic* questions related to technology that did not exist in earlier times. Take, for example, the following commonly asked question: Is it permitted to use a neighbor's wireless internet connection without permission? On one hand, perhaps, since one would usually have to pay for a wireless internet connection, the neighbor whose wireless connection one is using can indeed demand payment. On the other hand, perhaps one can argue that since the neighbor does not lose anything monetarily when another individual uses his wireless, there is no obligation to pay for using it.

Despite the lack of *Halachic* sources that deal directly with wireless internet, there is a discussion in the *Gemara* (*Bava Kamma* 20a) that may hold the key for resolving this. The Gemara queries whether one who lives in someone else's yard (we will refer to a house, which may be a more common case) without the owner's knowledge or permission (i.e., squatting) must pay the owner for his benefit.

The *Gemara* analyzes the specifics of the case: If the house is not usually rented out by the owner, and the squatter wouldn't have paid money for the usage he received (i.e. he has a house, or he would have slept in a car), then it is an example of *zeh lo neheneh v'zeh lo hasser*: one does not benefit, and the other does not lose anything. In such a case there is certainly no question that he is exempt from any payment.

The *Gemara* continues: If the house is usually rented out, and the owner would have rented it to another if not for the presence of this person, then the owner suffers a financial loss, and the person does derive monetary benefit, as he would have spent money to stay elsewhere. It is then a case of *zeh neheneh v'zeh hasser*, one benefits while the other suffers a loss on his account. In such a case, the squatter would certainly have to pay. The Gemara concludes that the inquiry refers to a case where the house was not intended to be rented out, so the owner doesn't lose anything, but the one living there does benefit, as he would have paid to stay somewhere else. This is known as a case of *zeh neheneh v'zeh lo hasser* – one benefits while the other doesn't incur a loss.

Consequently, the question of the *Gemara* is whether we should say that since the owner didn't lose anything, the "squatter" is exempt from payment, or perhaps say instead that if benefit is derived, one is obligated to pay, even if no financial loss was involved.

Although the *Gemara* does not resolve this question conclusively (it is a dispute between numerous *Amora'im*), *Maran* in *Shulhan Aruch* (H.M. 363:6) rules that one is exempt from paying in such a case. What might be the basis for this ruling? Perhaps it can be understood in one of two ways:

There is an obligation to pay only when one takes something from another thereby causing a loss. However, if no loss is caused, then no obligation exists to pay.

The obligation to pay is determined by the *Hana'ah* – benefit – derived, as the benefit is worth money. Therefore, we should say that anyone who derives benefit from another should pay, even if no loss is caused. However, instead we invoke the principle of "*Kofin 'Al Middat Sedom*" – *rooting out the ethos of Sedom*, that if a person does not lose anything, we can force him to forego receiving payment for it.

It would seem from an analysis of *Tosafot* and other sources that the second explanation may be the accepted one. *Tosafot* say that in a scenario where someone is living in another's home *without the owner's knowledge* (*Shelo MiDa'ato*), even if it is usually rented out, the one who benefits is still exempt from paying. The reason is that such benefit is only considered damage of *Gerama* – indirect damage, and does not actually destroy anything. Therefore, according to *Tosafot*, in a case of *zeh lo neheneh v'zeh hasser*, where one does not benefit but the other (the owner) suffers a loss, the one benefiting is still exempt.

The problem with *Tosafot* is that according to this, why does the *Gemara* state that one is obligated to pay for benefit if it was gained at the expense of a loss for the owner — isn't that also a case of *Gerama*?

R. Aharon Kotler (*Sefer Mishnat Rav Aharon*) answers that evidently according to *Tosafot*, the basis for liability ("*mehayev*"), is not the loss experienced by the owner (in that he could have rented the property out), since that is defined as *Gerama*. Rather, the basis for liability is the benefit of the one living there. Thus, the only reason why one need not pay in a case of *zeh neheneh v'zeh lo hasser* – *this one benefits and the other doesn't lose* – is because the owner does not lose anything, and we apply the principle of *Kofin 'Al Middat Sedom* and do not allow him to charge. But in a case where the owner experiences a loss and is considered a "*hasser*", we don't say *Kofin 'Al Middat Sedom*.

According to this approach, that the determining factor is the benefit, we can better understand the following *Halacha* mentioned in the *Gemara* (*Bava Kamma* 20b) and cited in the *Shulhan Aruch*: If a person lives in another's house *Shelo MiDa'ato* – *without his knowledge*, in a situation of *zeh neheneh v'zeh lo hasser* (as described above), but the "squatter" then causes even a small amount of damage to the walls (i.e. they become slightly black, which causes the value of the house to decrease slightly), the owner is now considered to have incurred a loss – a *hasser*, and the squatter must pay, even the loss was minimal.

The *Rema* then adds (363:7) that in that case, one doesn't just pay for the small damage done, but rather for the full amount of the benefit, which would be the fair market rent. Some commentaries ask on the *Rema*, why should one have to pay the full amount (since if not for the damage, he would have been exempt) shouldn't it just be limited to the small amount of damage caused?

The answer is, that according to our second explanation, the benefit the squatter received should've technically obliged him to pay, only that since the owner incurs no loss it is unfair to charge. Thus, if there is a slight loss, it is fair to charge for the benefit, and that benefit is valued at the fair market rent price.

This explanation can also help us understand another point mentioned by *Tosafot* and cited by the *Rema* (363:6): The exemption in the case of *zeh neheneh v'zeh lo hasser – a benefit to one without a loss to the other* – applies only when the person lived in the house without the owner's knowledge. But if he asked the owner first whether he gave him permission to stay there and the owner refused, then if he does so anyway, he must pay. Now, if the basis for the exemption in this case is that no damage was caused, then the same should

be true in this case as well, and he should not have to pay. But if the explanation is because there is a benefit that one should pay for, only that we impose the principle of *Kofin 'Al Middat Sedom,* and don't make him pay, then this *Halacha* is logical: We only apply the rule of *Kofin 'Al Middat Sedom* after the fact, but if the owner does not give permission before the person lives in his house, and he has a good reason why he does not want to allow him to do so, then we can invoke the obligation to pay for the benefit that was received.

Based on this analysis of the sources relating to this *Sugya*, we can now return to our original question concerning using another's wireless internet connection. It would seem that we can divide the question into two:

If the person requests permission beforehand

If he didn't request permission beforehand

In case A, if the one with the connection refuses to allow the other to use it because it might slow him down, then this would be similar to the case in *Tosafot* and the *Rema,* where the person benefiting must pay the full value of the benefit, which would be equivalent of the price for the internet connection. According to our understanding, we would not apply *Kofin 'Al Middat Sedom* since he has a valid reason for not wanting his neighbor to use the connection, as it might slow down his usage of the internet.

In case B, where he didn't ask permission beforehand, then it may depend on the question of whether a loss of any type was incurred. If the internet was being used at a time when clearly the one with the connection was not using it, and therefore he was not inconvenienced in any way, then we should apply the standard rules of *zeh neheneh v'zeh lo hasser,* and he would not have to pay for the use. But if the wireless was being used at a time that the owner may be using it also, it may be considered a case of *zeh neheneh v'zeh hasser,* since the neighbor's usage may slow down the use of the one who owns the connection (e.g., he is downloading large files or apps). Therefore, one would have to pay for the usage.

The amount required to pay though may depend on which explanation for *zeh neheneh v'zeh lo hasser* we adopt: According to explanation A, that the damage is the determining factor, then he need only pay a small amount, since the damage caused was only that it took a few minutes more to complete whatever tasks he wished to perform using the internet moving more slowly. This, in effect, may boil down to paying the difference between the cost of a fast-speed internet vs. a slow-speed internet. According to explanation B that the obligation is based on the benefit, only that if there is no loss there is an exemption on the basis of *Kofin 'Al Middat Sedom,* then it would seem that when there is a loss (such as the internet slowing down), one should pay the full value of the benefit he received, which would be the full price of purchasing a wireless connection.

MATTERS OF INTEREST

Avissar Family Ribbit Awareness Initiative: 'Interesting' Accounts

Reuven allows Shimon to make a purchase on his credit card. Shimon will pay the issuing bank directly, including the interest charged by the bank, several months hence. Both men reckon that there is no Ribbit problem, because the bank isn't owned by Jews. But Halacha views this case differently.

The bank has never heard of Shimon; the responsible party on the account is Reuven. When Shimon uses the card for his purchase, the bank is lending the money to Reuven, who, in turn, lends it to Shimon. The interest Shimon has undertaken to pay the bank is, in fact, interest on his loan from Reuven. By paying Reuven's interest debt to the bank, Shimon is actually paying interest to Reuven on his own loan. A Heter Iska must be implemented.

Reuven and Shimon are partners in a new venture. The partnership is not creditworthy, so to fund it, they agree that Reuven will take out a personal loan, and in the event that the business cannot pay, Shimon will pay half the debt.

Here, too, the bank is lending to Reuven and Reuven is then lending to Shimon. A Heter Iska will solve the problem.

EVENTS AT BET HAVAAD

Medical Halacha Hotline Now Live!

The Medical Halacha Center Hotline of the Bet HaVaad is now live! Under the leadership of Rabbi Yehoshua Greenspan, shlit'a, and staffed by renowned Poskim, Rabbi Eliezer Gewirtzman, Rabbi Yosef Fund, Rabbi Moshe Feldman and Rabbi Yosef Jacobowitz, the new Hotline is available to provide guidance in medical matters as they relate to Halacha.

HAPPENINGS AT THE BET HAVAAD

Court Recess

The "Beit Din Series" in the Ami was intended to provide for the general public a window into a contemporary Din Torah. Many people reported that this first of a kind series demystified the process for them. As can be expected, the series provided many answers.

It created many questions, too.

This week, in collaboration with the AMI magazine, the Beit HaVaad takes a brief recess from the usual story line and provides answers-to the questions that you have.

See this week's Ami for a lively Q&A.

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Eiva. The *Be'er Sheva* quotes a possible leniency that this prohibition only applies to a gentile who is an actual idol-worshipper. A gentile who does not worship idols is not suspect to defile the *Mezuza* or treat it improperly and one may present him with one. However, the *Ben Ish Hai,* in his *Teshuvot Rav Pe'alim*[8] writes that the *Be'er Sheva* only suggests this as a possibility and does not actually endorse this leniency.

HOW MUCH HATE?

Regarding what actually falls under the category of *Eiva*, Rav Moshe Feinstein *zt"l* writes in *Shu"t Igrot Moshe*[9] that this simply means that the non-Jew will hate the Jew for what the Jew did to him, which will certainly have some form of negative ramifications. It does not have to be such a severe hate that it could lead to a danger of possible loss of life. Rather, even if he will only severely injure the person or cause a serious loss of money, it is still considered *Eiva*.

As an example, Rav Moshe relates a theoretical case of a Jew who is a landlord and rents out apartments as his primary source of livelihood. One of his non-Jewish tenants asks him to put up a *Mezuza* on his doorpost or to keep up a *Mezuza* that was left there by a previous tenant. If the landlord knows for certain that if he denies this request, the non-Jewish tenant will be insulted and will move out of the apartment, causing him to lose a considerable amount of rent money until he can find a new tenant, it is considered *Eiva* and the landlord may leave the *Mezuza* up.

Rav Moshe stresses that both of these conditions must be met to fall under the category of *Eiva*: (1) Renting out apartments must be the landlord's main source of income, and (2) He must be absolutely certain that the non-Jewish tenant will move out if he refuses his request for a *Mezuza*. If these two conditions are not met, the leniency of *Eiva* cannot be used.[10]

JUST GIVE THE CASE!

If a school gives a public official a *Mezuza* unsolicited, it would seem that there is no concern of *Eiva* had they not given it. Therefore, it would be very difficult to permit gifting a *Mezuza* to a non-Jew in such a case.

It would probably be a safe assumption that a public official would be just as happy with a gift of an empty *Mezuza* case as with a gift of a kosher *Mezuza* (and in all likelihood would never have known the difference). Thus, if anyone feels a pressing need to give a non-Jewish official a *Mezuza* as a gift, an empty *Mezuza* case would probably be a better alternative!

8 Vol. 4, Yore De'a, Siman 25

9 Yore De'a, Vol. 1, Siman 184

10 Rav Moshe goes so far as to say that it would even be prohibited to give a non-Jew an unkosher Mezuza if the leniency of Eiva does not exist.

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Parasha and Halacha

you cannot charge them retroactively. [Although there are instances in which we can force an owner to allow someone to use it, for example, if the owner is barred by law or the circumstances from benefitting from the property. We must add that this is only with regards to temporary use.]

The *Noda B'Yehuda* was asked by an author and a printer, which in those days involved an arduous task of setting plates. Someone printed a commentary on *Mishnayot*, and the printer wanted to use those plates to print another set of *Mishnayot* without the commentary – and earn some extra bucks. However, the author claimed that the plates should belong to him. The printer retorted that it was *Middat Sedom*!

First, the *Noda B'Yehuda* answered, it would depend on how the printer was paid. If he was paid a lump sum for the entire job, then the plates and all of the work would belong to the printer. If, however, he was paid for each part of the job: for the arrangement of the letters, for the plates, for the printing etc. then the client would own the plates which he paid for, and then the question of Middat Sedom would arise.

He posits that this would be a matter of dispute between the Rambam and the Rosh. The Gemara in Bava Batra discusses two brothers who inherit a field with all the land having equal value. Generally, we would divide the land via lottery. However, one brother has a field next to one of the halves, and he wants the half that is near his property. The other brother objects, claiming that he should be paid for forgoing his right to a lottery. According to the Rambam such a claim would be a form of Middat Sedom, as the objecting brother gains nothing by giving up the other half. However, according to the Rosh, since the land would have been divided via lottery and he might have won the more lucrative half (which his other brother wants...), he may object to giving up his right.

Perhaps, the reasoning behind their dispute is whether or not one can apply the concept of "Middat Sedom" to the extent that one must "give up" his property – in this case, the right to a lottery. Similarly, in the case of the author, the rights to the plates are his property and the Halacha should depend on whether we follow the Rambam or the Rosh. Maran follows the Rambam while the Rema follows the Rosh.

However, in the printer's story, the Noda B'Yehuda argues, it may be that all would agree that the author can object to the reprint. This is because there may be a loss to the author, in which case the concept of Middat Sedom wouldn't apply, since, if there wouldn't be another set of Mishnayot, some people may buy the set printed by the author just for the sake of the Mishnayot.

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