

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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## HOLY GIFT

### *Gifts of Kedusha 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 Mezuzah.

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 WORTHIER GIFT

The incident in the Talmud that is most similar to the above-mentioned practice is found in the *Yerushalmi*<sup>1</sup>. 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 *Mezuzah*.

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 *Mezuzah*, will watch over you and protect you at all times!"

It would seem from this story that it is permis-

sible to give a non-Jew a *Mezuzah*. Yet, the matter is not so simple. In fact, the *Rema*<sup>2</sup> rules that it is forbidden to give a *Mezuzah* to a gentile.

#### GUARDING THE SANCTITY

The reason many *Poskim* prohibit giving a *Mezuzah* 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.<sup>3</sup> 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 *Mezuzah* with the proper respect.

#### FEAR OF REPRISAL

Still, in the *Darke Moshe* on the *Tur*<sup>4</sup>, the *Rema* relates that the ruler of a certain city once asked his Jewish subjects to send him a *Mezuzah*. The townspeople were afraid to refuse, lest they incur the wrath of the powerful ruler. Despite this fear, the *Maharil*<sup>5</sup> 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 *Mezuzah* 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*<sup>6</sup>.

The *Shu"t Be'er Sheva*<sup>7</sup> discusses this topic at length and posits that Ribbi only sent a *Mezuzah* to Antoninus out of a concern of



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

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 *Mezuzah* to a non-Jew is in and of itself a "*Horada BiK'dusha*", lessening of the holiness of *Mezuzah* – as it will no longer be used to satisfy the Torah obligation.

4 *ibid*

5 *Hilchot Mezuzah*, *Ot Daled*. This is also the view of the *Ohr HaHayim* in his *Sefer Rishon LTzion*

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

7 *Siman* 36

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1 *Pe'a* 1:1

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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-worshiper. A gentile who does not worship idols is not suspect to defile the *Mezuzah* or treat it improperly and one may present him with one. However, the *Ben Ish Hai*, in his *Teshuvot Rav Pe'alim*<sup>8</sup> 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*<sup>9</sup> 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

8 Vol. 4, Yore De'a, Siman 25  
9 Yore De'a, Vol. 1, Siman 184

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 *Mezuzah* on his doorpost or to keep up a *Mezuzah* 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 *Mezuzah* 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 *Mezuzah*. If these two conditions are not met, the leniency of *Eiva* cannot be used.<sup>10</sup>

### JUST GIVE THE CASE!

If a school gives a public official a *Mezuzah* 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 *Mezuzah* 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 *Mezuzah* case as with a gift of a kosher *Mezuzah* (and in all likelihood would never have known the difference). Thus, if anyone feels a pressing need to give a non-Jewish official a *Mezuzah* as a gift, an empty *Mezuzah* case would probably be a better alternative!

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

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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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