



Must One Give His Apartment for Free?

לעילוי נשמת
 יואל אפרים בן אברהם עוזיאל זלצמן ז"ל

Question: A friend of mine splits his time between apartments he owns in two cities. He says that he does not charge rent to anyone who stays in the apartment he is not using because Pirkei Avot (5:10) says that one who subscribes to *sheli sheli* (mine is mine) employs *middat* (attribute of) *S'dom*. Is there a counterargument to allow charging rent?

Answer: We believe the counterargument is correct.

Pirkei Avot actually cites two opinions, and the main one is that if one realizes that "yours is yours," even if he treats "his as his," employs an "average approach." Furthermore, the *mishna* does not discuss specific actions but an approach to life. If someone is often forthcoming with his property, he is not following

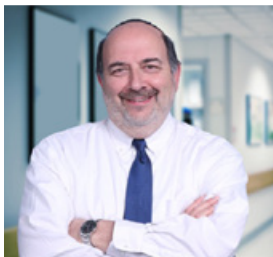
"*sheli sheli*" even if he asks money to use some of his things. It is wonderful for your friend to emulate *Avraham Avinu* and be consistently generous, but failing to reach that level does not put one in the **opposite** camp.

Is one required to allow to borrow his property (for free)? In five contexts in *Shas*, at least one opinion prescribes forcing Reuven to cede to Shimon a financial right in a way that does not hurt Reuven and thereby avoid *middat S'dom*. None of those cases refers to lending one's property to someone else.

Consider the possibility that one is always required to let people use his things for free. Are the halachic discussions of rentals only for sinners? Realize that this would cancel large elements of healthy markets. What incentive would one who can afford more property than he needs have to buy and rent out property to one who can only afford a rental?

Undoubtedly, then, one who wants to be a landlord may buy property in order to rent it out. It is also obvious that if he bought it for secondary usage without a plan to rent but then decides that he wants rental income, he can turn it into rental property. The question is only if he does not plan to use it on any regular basis for rental, and the opportunity arises to allow someone to use it on a one-time basis. Here, there is logic to say that if he is not looking to use it for

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profit, why not be altruistic and give it for free?

The argument for no pay is bolstered by the *sugya* of *zeh neheneh v'zeh lo chaser* (Bava Kama 20a – 21a), regarding whether when Shimon already lived in Reuven's property without permission, he must pay for that usage. The two pertinent variables are whether Shimon was otherwise slated to rent living quarters, in which case he benefited from Reuven, and whether Reuven is in the practice of renting out his property, so that he loses if Shimon lived there for free. We rule that if Reuven did not lose, Shimon is exempt even if he benefitted (Shulchan Aruch, Choshen Mishpat 363:6).

Does the fact that Shimon does not have to pay, because Reuven did not lose, mean that Reuven must permit free usage if asked for permission in the first place? Tosafot (ibid. 20b) says that the person has a right to refuse use of his property; it is not considered *middat S'dom* (see Noda B'ye-huda II, CM 24). The Rama (CM 363:6) rules that as long as one **can** rent it out if he wants to, he may charge for it. In contrast, if the possibility of rental does not exist, he cannot demand pay, as it would be considered *middat S'dom*.

Note also that the possibility of forcing sharing due to *middat S'dom* could exist only when lending causes no loss of any sort (see Pitchei Choshen, Geneva 8:(1)). Regarding use of one's apartment, there could be many factors of "loss." We will mention a few out of many possibilities: concern that Shimon's kids might damage it; Reuven may be inconvenienced making sure the place is tidy for Shimon; Reuven's privacy could be compromised. If Reuven can refuse, he can also say that he is willing,

but only if payment makes the danger/trouble worth his while.

While we covered only a small fraction of possible scenarios, it would be rare that someone with an extra apartment would be required to allow others to use it, or if he allowed it, forbidden to take money for the usage. ■

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