



Giving Away Offensively Left Materials

לעילוי נשמת
 יואל אפרים בן אברהם עוזיאל זלצמן ז"ל

Question: Contractors have been using an area in our building for deliveries during apartment renovations. Some materials have been left there for extended periods, creating an unsightly situation. Building management announced that materials must be removed within a specified timeframe, after which they would be declared *hefker* (ownerless) and available to anyone. Does management have the halachic authority to declare others' property *hefker*, even with warning?

Answer: We understand that you are asking only out of halachic "curiosity," which allows us to answer you. Nevertheless, since you have not relayed potentially impactful details that are likely difficult to determine, our answer is quite general. We will take a quick look at a few scenarios and halachic concepts.

Aveida mida'at: The *gemara*, in a few places excludes from the *mitzva* of *hashavat aveida* (returning lost objects) an object that is an *aveida mida'at* (when the object is in a precarious situation and its owner does not act to protect it). The Tur (Choshen Mishpat 261) says that in such a case, the object is presumed to be *hefker*, whereas the Rambam (Gezeila 11:11) says that while *hashavat*

aveida does not apply, the owner still owns it, so that it is forbidden for others to take it. The Shulchan Aruch (CM 261:4) rules like the Rambam, and the Rama (ad loc.) cites the Tur. The fact that some *gemarot* imply one way and others the other way (see Bava Batra 87b and Bava Matzia 21a) provides impetus for *poskim* to make distinctions. Thus, each side in the *machloket* can agree with the other side in exceptional cases (see Encyclopedia Talmudit, s.v. *aveida mida'at*).

One of the *gemara*'s cases of *aveida mida'at* (Bava Metzia 31a) is similar to our case. Reuven's cow was grazing in a (non-Jewish) vineyard, and the vineyard owner warned Reuven that if this persisted, he would kill the cow. The *gemara* says that if Reuven ignored the warning, it is *aveida mida'at*, and it is likely that the *machloket* of the Rambam and Tur applies here (see Even Ha'ezer Gezeila 11:11). Most explain that whether it is *hefker* depends on the assumptions about the object owner's mindset (see Beit Yosef, CM 261), which would make it dependent on the specific case. In our case, too, contractors ignore the warning of having their materials confiscated, raising the question of what they are thinking when they leave them there.

Several *poskim* recommend putting up signs in *batei midrash* to tell people they will relinquish their rights to *sefarim* left for a long time (see

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Living the Halachic Process III, I-12). However, this will not work here, if the noncompliant contractors are not agreeable to management's dictates. Therefore, unless we can assume the contractors do not care about the remaining materials, *aveida mida'at* will probably not make them available to be claimed.

Authority to force removal: At times, one may take strong, unilateral steps to ensure their rights (see Bava Kama 27b-28a; Shulchan Aruch, CM 4). If Shimon's objects impede use of Reuven's property, Reuven can take steps that include breaking the objects to get by, but not to purposely break them. Factors that affect what Reuven can do include prominently how necessary it is to take the steps and how grievous Shimon's actions were (see Pitchei Choshen, Sh'eila 1:25). In one very grievous case (Bava Metzia 101b; Shulchan Aruch 319:1), Reuven can sell some of the objects to pay porters to remove the others.

However, this is an insufficient precedent regarding your question. Shimon's ownership can be overlooked only to the extent needed to move the objects, not to give away the

offending objects. The contractors' objectionability is also not as severe as the one in the *gemara's* case. If management is forbidden to confiscate, it also distinguishes our case from that of Bava Metzia 31a, where it is *aveida mida'at* because the non-Jew's threat will not be tempered by Halacha.

Therefore, without casting final judgment, one would be hard-pressed to allow people to claim the materials if the owners want to keep them. ■

Having a dispute?



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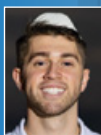
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