בס"ד

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Halacha Insights

Is Giving a Gift a Problem of Ribis?

Many ask, is it permissible for a borrower to give a gift to the lender, such as a wedding present or bar mitzvah present? Similarly, is it permissible to send him *mishloach manos*, if he wouldn't have sent him a *mishloach manos* had he not lent him the money?

First of all, it must be clarified that *ribis* is prohibited even if it is given to the borrower in the form of a gift and not as *ribis*, as explained in Shulchan Aruch (*Yoreh Deah* 160:5), and Shulchan Aruch adds (17) that only *talmidei chachamim* are permitted to lend food to each other, since it is certain that they only meant to give gifts to each other. But others who aren't *talmidei chachamim* are not permitted to do so, and the Shach explains the reason, because we attest that the gift was given because of the loan, and is therefore prohibited.

Therefore, if the borrower has not yet returned the entire debt to the lender, the gift is part of the payment and it is therefore *ribis*, since the borrower returned to the lender more than he lent to him, and he can't claim that it is a mere gift.

This can be proved from the *halachah* of *tzedakah*, where *the Shulchan Aruch Harav* rule it is prohibited for the borrower to give *tzedakah* to the lender. Even though he is not giving the *tzedakah* because of the loan but to fulfill the mitzvah of *tzedakah*, nevertheless it is prohibited due to the *issur* of *ribis*, and even though it is considered a friendly gift and not because of repayment of the debt, it is included in the prohibition of *ribis*. Even if he doesn't say that he is giving the gift because of the loan, it is prohibited. [For this reason, the *acharonim* (Mishnas Ribis and others) rule that it is prohibited to give a *mishloach manos* on Purim to the lender.]

Therefore, if the loan has not yet been repaid, it is prohibited

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Editorial

With praise and thanks to Hashem, we present some of the chidushim from our Beis Medrash and halachic clarifications, for the benefit of the lomdei Torah, who will certainly enjoy the material in this pamphlet.

We have added a section of advice and help in monetary matters, since those who take halachic advice in these issues save much disappointment and grief.

As the Alshich writes (Devarim 4:8) clear words regarding the importance of understanding that our minds cannot understand the Torah's monetary laws:

"These non-Jews mistakenly think that although the mitzvos are unique to the Jews, the משפטים, the logical monetary laws, are not, since the non-Jews also have monetary laws. But they are mistaken, because the Torah's monetary laws connect us to Hashem just like the mitzvos. This is the meaning of the passuk ומי גוי גדול אשר לו חוקים ומשפטים צדיקים – 'which great nation has righteous mitzvos and monetary laws,' the mitzvos and monetary laws are equal, rebutting the non-Jews' claim that they also have monetary laws. As we wrote in parashas Mishpatim, the non-Jews' monetary laws are only correct physically, but these laws don't have any holy dimension, while משפטי ה' אמת, Hashem's monetary laws are also spiritual. Whoever obeys the Torah's mishpatim brings much kedushah in its root, and is mashpia much Light. Just as one who performs a mitzvah creates an advocate angel, similarly one who acts in accordance with Hashem's mishpatim brings a holy power, from Hashem's power. This is why the Torah writes חוקים ומשפטים צדיקים, righteous mishpatim, and not חוקים ומשפטים צודקים, correct mishpatim, because they are the power of Hashem, and from every mishpat is created an angel, which are the many משפטים צדיקים referred to in the passuk. These angels, created by following the Torah's mishpatim, are termed משפטים צדיקים because they are created from the משפטי צדק."

The editorial board

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even without intention and he is used to giving the present, which are reasons to permit *ribis*.

That is regarding a loan that has not yet been repaid. [See also Bris Yehudah in his *Ikrei Dinim* 4:12, who says that it maybe permitted even if the loan hasn't yet been repaid if it is certain that he is giving the present for a wedding or bar mitzvah, on condition that there is proof (*umdana*) that he would have given the present even without the loan.]

But there is another type of prohibited *ribis*, where the borrower gives the *ribis* to the lender after the loan is repaid. This is called *ribis me'ucheres* (belated *ribis*), and it is *ribis de'rabanan*. Because any additional money, or money equivalent, that the borrower gives to the lender because of the loan, even if he gives it to him after the loan is repaid, is prohibited, because he is giving it as a result of the loan.

The Rosh rules that the *Chachamim* only prohibited *ribis me'ucheres* if the borrower explicitly states that he is giving the gift because of the loan. But if he doesn't say so, even if he gave the gift because of the loan, it is permitted, since he gave the additional money or gift after the loan was already repaid. But the Rambam disagrees and prohibit even without stating that he is giving the gift because of the loan.

Therefore, in the case of *ribis me'ucheres* we can be lenient to give a gift if one doesn't state that it is because of the loan, since the Rema (160:6) rules according to the Rosh that it is only prohibited if the borrower explicitly states that his intention in this gift is for the loan. The Shach writes that every case must be judged individually.

Back to our case of wedding gifts or bar mitzvah presents, since he is giving the present at the *simchah* it is as if he explicitly states that the gift is because of the *simchah*, and it is therefore permitted. And although their friendship is only because of the loan, this doesn't seem to be a problem in *ribis me'ucheres*. [This idea is mentioned by the Cheshev Ha'efod, regarding somebody who gave *ribis* under the façade of a wedding present, and he didn't want to permit it because of this idea alone. However, in that case it is more stringent, because he gave him the full amount of the *ribis*, only under the façade of a wedding present, while in our case he indeed intended the present to be a wedding present, and it is therefore permitted.]

– Halacha Insights – The Deceitful Estate Agent

Recently, the following *shaalah* **came to the** *Heichal Hora'ah* (for the sake of privacy we have changed details):

Somebody bought a house, and the estate agent told him that the house had an HMO license (House in Multiple Occupation license). Based on his words, the buyer bought the house, but it turned out that the house was not eligible to receive an HMO license. It also emerged that the estate agent knew that the seller already applied for an HMO license and was rejected, and the estate agent tricked the buyer that he will be able to attain the license.

A similar case came before us, where a person bought a house under the presumption that the buyer will be able to extend, and based on this he bought the house. The entire sale was on the basis of this extension, but it later emerged that the seller had fooled the buyer, and he won't be able to extend the house. Can the buyer claim it is a *mekach ta'us* and thus invalidate the sale?

Let us first clarify the first case, that of the deceitful estate agent.

Seemingly, although the seller relied on the estate agent's words and because of the estate agent he lost money, this is termed *grama* in *halachah*, and the rule is that *grama* is exempt. However, we could claim that this is a case of *garmi*, which is liable of paying for the damage caused.

[*Grama* and *garmi* are two types of damages with different rulings: *grama* is exempt of payment, *garmi* is liable of payment. The difference between them is the manner of the damage, and the *poskim* bring several definitions and conditions in this intricate law. In general, *garmi* is direct damage, *grama* is indirect damage.]

From Shulchan Aruch it appears that this is a case of *garmi*, and therefore the estate agent is liable to pay. The Shulchan Aruch rules (*Choshen Mishpat* 306:6) regarding a person who showed a coin to an expert who told him that it is legal tender, and it transpired that he was mistaken. If it was an *ones*, the expert is exempt, but if not, he must pay for the loss of money.

Similarly, in our case the estate agent knew that the buyer trusted him, and based on his words he bought the house, and since the estate agent knowingly misled him, the estate agent will have to pay for the damage caused.

However, this is not as simple as it seems. In the case of the coin, the buyer lost his money because of the expert's mistaken advice, while in our case the buyer didn't lose anything. He still has the house! But what, the seller didn't gain as much as he expected. Is this called "damage"?

Similarly, we can ask: Can the buyer claim back the fee paid to the estate agent? Since he trusted the estate agent regarding the HMO, and it is clear that he only paid the fee because of the HMO license, he should receive back the fee. Or maybe he must pay the fee since he eventually bought the house, albeit without an HMO license.

However, in many cases the buyer borrowed from the bank on the basis that he could get HMO approvals, without which the deal wouldn't be worthwhile, since he will be paying more interest than he gains. In that

case the buyer actually loses money, and in such a case the estate agent would certainly liable.

But there is a different side to the question: Why did the buyer believe the estate agent?! Rabbi Shlomo Eiger writes in his *Teshuvos Rabbi Shlomo Eiger* (*Choshen Mishpat* end of 23) that every middleman is considered to be a liar, and no buyer is expected to trust him. As such, the middleman is not liable until the buyer tells him explicitly that he relies on him.

However, in our case, the estate agent clearly knew that the buyer trusts him and relies on him, while Rabbi Shlomo Eiger is discussing a case where there is no reason for the buyer to trust him.

Now to the second question, where the seller tricked the buyer, and it was clear that the buyer was only buying the property because of its potential extension building. The rule is, a *mekach ta'us* nullifies the sale. But here again, it is known that one can't trust a seller regarding his merchandise, since most sellers would lie when selling.

So is this a case of *mekach ta'us* or not?

The Mishpat Shalom (232) writes, if the mistake was in a detail that was the condition of the sale, it is considered a *mekach ta'us* even if the buyer was able to verify the issue. But if the mistake was in a detail that was not mentioned in the sale, it isn't considered a *mekach ta'us* if the buyer was able to clarify the facts.

If so, in our case the whole sale was around the extension that the buyer intended to build, and if so it is considered a *mekach ta'us* even if he naively believed the seller and didn't clarify the facts before completing the sale.

Another question: Someone has a house to rent, and wants to find out information about a new tenant, if he pays on time, or if he leaves on time. He asked the tenant's previous landlord, and he lied. Relying on the previous landlord's testimony, the person rented out the house to that tenant, and he suffered monetary loss due to that tenant's swindling.

Is the first landlord who advised him liable, since he knew that the other person was relying on him?

Perhaps, we could compare this to the Rema's ruling (*Choshen Mishpat* 129:2), if a person asks somebody about a lender, and he told him that the person is a faithful person, and based on that testimony he lent him money. However, it became apparent that the lender was a fraudster, and the borrower lost his money. Rules the Rema, the person who advised him to lend the money must pay, since the borrower relied on him.

According to that, the first landlord will be liable to pay for harming the second person. **וצ"ע**.

ע"י הרה"ג ר' **ברוך אברהם עסטרייכער** שליט"א,
ראה"כ ומרבני היכל הוראה 'דבר המשפט'

- Halacha Insights - Neighbors Responsibilities

With Hashem's help, we will explain the laws of neighbors' responsibilities to each other: it should be noted that in the days of Chazal they lived in different circumstances than today, they had different issues, and that is how the *halachos* were determined by *Chazal* and the *poskim*. Today, the reality has changed, the issues have changed, and the *halachah* has changed. But the present day *halachah* is established according to the rules set by *Chazal*.

Definition of *'Nizkei Shecheinim'*

What responsibility does a person living in a private house have towards his neighbors? We must also clarify, when *Chazal* required to distance from one's neighbor things that may harm him, on what halachic rules are these laws based? Why can't I do as I like in my own property?!

For example, if one's neighbor has a storeroom of grain or wine, *Chazal* forbade him to use anything that causes heat or has a bad smell, so as not to harm his neighbor's produce. But this law is different from any other *mazik*, because a regular *mazik* acts in the ground of the person who is harmed, while here a person is in his own home, and his actions on his own property harm his neighbor. Therefore, these *halachos* regarding neighbors' responsibilities are not based on the regular law of *mazik*.

There is also a large difference between a regular *mazik* and neighbors' responsibilities: Regarding the regular *mazik*, even if one only causes damage, the one causing the damage is obliged to remove his *mazik*, while regarding neighbors' responsibilities the *halachah* is in accordance with Rebbi Yossi that the one being damaged is obliged to distance himself. Only if the damage is a direct cause of his actions (*giri dilei* – his arrows), must the damager distance the cause of damage.

In order to understand the basics of neighbors' responsibilities, let us cite the Chazon Ish (*Bava Basra* 14:14): "Here, since he is on his own property performing routine activities, *Chazal* permitted some of these since it is natural for neighbors to be hurt one from the other in one way or another, and routine activities in one place can cause damage further away, and this is how he first attained the property. Therefore, the one being damaged is obliged to move, and even he doesn't it is considered as if he entered the *mazik's* property and he brought the damage upon himself." [Following this explanation, those damages that are permitted, like planting a tree whose roots damage in another person's property, is only permitted

if planted in one's own property, but not if planted in the other person's property, in which case he will be responsible due to "fire."]

The Nesivos (155:18) asks: Why are there things that don't need to be distanced even though they harm one's neighbor? And he answers: There are things detailed in Gemara that don't need to be distanced, because if he would be responsible for their damages he won't be able to use his property for regular usage, and he won't be permitted to do these basic acts since he can't protect them from damaging, and the Torah doesn't oblige a person to nullify his property. Instead, Rebbi Yossi says that the one being harmed is obliged to distance himself, because why should the *mazik* annul his property? The one being damaged should annul his property, and then he won't be harmed. (But as mentioned above, direct damage – *giri dilei* – isn't considered annulling one's property from its basic usage.)

However, even though neighbors aren't considered *mazikim*, since it is the norm to live together, *Chazal* put certain regulations and responsibilities on the neighbors [and according to some this distancing is *min haTorah*, see Gr"a 155:8, but the Chazon Ish implies that it is a Rabbinic regulation]. And according to some *rishonim*, where the one damaging is obliged to distance, if he doesn't do so he must pay for the damage done, and the two views on this are brought in Shulchan Aruch *siman* 155 *se'if* 33.

The Shulchan Aruch Harav writes: One must not harm his friend's money or cause him harm, even when he does a necessary act within his own property and it damages his nearby[1] neighbor. use that is necessary for him and from which harm is caused to his neighbor who is close to his house.

The Pischei Choshen gives a strong piece of advice in every issue of neighbors' disputes: Every side should fulfill the saying, "what you don't like, don't do to others!"[2] That way, many quibbles will be prevented.

What Things Must Be Distanced?

According to the Rabanan in Gemara, if a person is damaging his neighbor, the one damaging must distance himself, while Rebbi Yossi holds that the one being damaged must distance himself, unless the damage is direct (*giri dilei*) in which case the one damaging must distance himself. The *halachah* is according to the view of Rebbi Yossi.

But what exactly is regarded direct damage, what isn't? The Chazon Ish answers (*Bava Basra* 14:14): "The definition of *giri dilei* relies on [the *dayan's*] judgment, who should distance himself. If a person plants a tree in his friend's yard and damages his well, this is certainly caused by him, while if a person does a regular activity in his own property he isn't called a damager! Therefore [the *dayan*] must carefully weigh up the sides, what are the rights of the damager, what are the rights of the one being damaged."

The Nesivos adds, although we find a *machlokes* between the *rishonim* whether a neighbor is obliged to pay if he didn't distance as necessary, that is only in a case where his object **caused** damage to the neighbor. But if it was direct damage, for example one who grinds with millstones that shook the wall and damaged his neighbor, according to all views the damager must pay. On the other hand, if he didn't remove his ladder from his neighbor's fence, and a mongoose climbed on it and ate the neighbor's chicks, he is exempt from paying, since the damage was caused by the ladder and the mongoose together.

Regarding dust, for example he worked at home and dust flew into his neighbor's property, the Nesivos says he is exempt from paying, since this is a *din* of *gerama*, while the Shach (155:14) holds that he must pay.

Civil Law

Pituchei Choshen cites from *teshuvos* Beis Yitzchak (*Choshen Mishpat* 78), if civil law obliges the damager to distance himself, we follow that law.

...To be continued

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1) The additional word "nearby" implies that all the laws of nizkei shecheinim only relate to a nearby neighbor, and not one who isn't nearby.
2) Even if he isn't obliged by *halachah*.