

VOLUME II: NUMBER 23: MIDAS S'DOM / TRAITS OF THE SODOMITES

by Rabbi Aron Tendler

Question:

In this weeks Parsha we are given a glimpse of the city of S'dom and it's inhabitants. Our Rabbis speak disparagingly of those who display the traits of the Sodomites in business dealings with their fellow men, and teach us "Kofin Al Midas S'dom" - we force such people to drop their claim against the other party. What is Midas S'dom, and when is this concept employed in Bais Din?

Answer:

1. A. Our Rabbis have said that in a situation where a person has derived benefit from the property of his friend, and the friend has had no loss at all from this use, nor is this property that the friend uses to derive income from by renting it out to people - the person who has used the property does not have to pay the owner for the benefit that he has derived from it. When a person wants to charge others for use of his property, and had no loss at all from the use, this is a Sodomite trait. It is not proper for a Jew to conduct himself in this manner towards his fellow man.

Therefore, if a person would live in someone else's empty house for a while, without the owner's knowledge, or if a person used any of his friend's other property without permission, the person need not pay the owner for this use, even if the owner demands payment for it. This is assuming, of course, that the owner suffered no loss or displacement at all, and this is not a property that the owner uses as a rental property.

However, if the owner of the property incurred any loss at all through this person's use, even if very minute, the person who used it must pay the full value of his use to the owner. (1)

2. B. Although the owner of the property may not demand payment from his friend in the above mentioned situation after the fact (B'dieved), this does not mean that he is obligated to allow his friend to use the property, if he requests to do so (L'chatchila). He may refuse to allow his

friend to use his home, for example, even if he will not be using it or renting it to others.

If the owner refused to allow his friend to use the property, and the friend went ahead and did so anyway, the friend would be obligated to pay for the use, and it would not be considered Midas S'dom for the owner to demand payment. The Halacha of "Kofin Al Midas S'dom" only applies after the fact (B'Dieved), i.e. the owner was never consulted and his friend already made use of the property with no loss to the owner, as mentioned above. (2)

3. C. Another case in which Midas S'dom would apply would be if partners owned property, and made a time sharing agreement that each would use it at different times. If one partner would need the property for additional days, and the other partners are not using it on those days, a Bais Din may allow that partner to use the property even against the other partner's objections, because of Midas S'dom. In this case, the law of Kofin Al Midas S'dom would apply even before the fact (L'Chatchiloh). (3)

Sources:

(1) The underlying principles of these Halachos are discussed in Bava Kamma (20a-b), Bava Basra (12b), the Shulchan Oruch in Choshen Mishpat (174:1,363:6-8), and in the Teshuvos Mahari"k (Shoroshim 9:112). The following is a short summary of the words of the Mahari"k:

Our Chazal have instituted that in any situation that a person benefits from use of his friend's property, and the friend has suffered no financial loss as a result of this, and the owner did not need it during that time, nor was he interested or able to rent it out during that time (as explained in the Rema in Choshen Mishpat 363 at the end of Halachos 6 and 10) - the user is exempt from paying the owner for use of the property. Despite the fact that the user is profiting financially from this by not having to rent a similar property from others, since the owner incurs no loss, it would be Midas S'dom for him to demand payment and we do not allow this.

(2) Tosafos and the Nimukei Yosef in Bava Basra (ibid.) state that although after the fact a person may not demand payment if he has had no loss, this does not mean that he must grant permission to others to use his property! Similarly, if there is any financial loss at all to the owner, even if only minute, he now has a valid complaint against the person who used his property without permission, and it is not considered Midas S'dom to demand full payment for the benefit that the person derived from the property. This is stated as the Halacha in the Shulchan Oruch. However, the Tur there quotes the opinion of the Rama"h that the user need only pay for the actual damage that he has caused the owner, and not for the entire benefit that he has derived from the property.

(3) Although we have stated above that a person can not be obligated to allow others to use his

property without paying (before the fact), regarding partners in a shared property we must take a different approach. In this situation each partner actually has ownership in the entire property, and any time sharing arrangement made between them regarding when each would use it is merely a convenience to enable each partner to properly benefit from the property.

Therefore, in a situation where a partner would wish to make use of the joined property during a time slot not allotted to him, when it is not in use, and the other partners object to this "on principle", a Bais Din can force the others to allow their partner to use their property. Since he is using an area in which he is an owner, and the only reason the time sharing agreement was made was to allow the other owners their turn, if they are not using it and will suffer no loss at all, it would be Midas Sedom to prevent him from using it. However, since this could be a potentially volatile issue among partners, no person should take the law into his own hands and use the property against the wishes of the others, and this decision must be made by an objective Bais Din.

Feedback is appreciated! It can be sent to toatendler@torah.org.

This week's class is based on a column by Rabbi Tzvi Shpitz, who is an Av Bais Din and Rosh Kollel in the Ramot neighborhood of Jerusalem. His Column originally appears in Hebrew in Toda'ah, a weekly publication in Jerusalem. It has been translated and reprinted here with his permission and approval.

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Please Note: The purpose of this column is to make people aware of Choshen Mishpat situations that can arise at any time, and the Halachic concepts that may be used to resolve them. Each individual situation must be resolved by an objective, competent Bais Din (or Rabbinic Arbitrator) in the presence of all parties involved!