The Chicago Center
Digest
# Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן קנ"ג סעיף י"א

# Overview

**Siman 153 Seif 11:**

**A *Bais HaKnesses*, or stones and wood from an old *Bais HaKnesses* that was torn down may be given away as a gift since if one would not have received some sort of benefit it would not be given as a gift and thus it is considered a sale. Similarly, these items may be exchanged for others and the old ones become deconsecrated. These items may not be used as security, or rented or lent to others even with the agreement of the seven trustees since they will retain their sanctity being that there is nothing else that will take over the sanctity.** This limitation applies when the loan will cause the sacred item to be lowered from its present level of sanctity but it is permitted to loan a *sefer Torah* to be used for Torah reading, even a Torah owned by a community that will be lent to an individual.

- Shulchan Aruch refers to where this is done by the seven trustees in the presence of the community. Some authorities maintain that this transaction need not be done in the presence of the *tzibbur* but all opinions agree that in a large city this may not be done. (M.B. 66)
- It is also permitted if they anticipate some benefit; therefore it would be prohibited to give these items as a gift to a distant city since they will not receive reciprocal benefit. This discussion is limited to where the items will be used for non-sacred purposes but if they will be used for sacred purposes it is permitted since it does not involve lowering it from its present state of sanctity. Magen Avrohom writes that one may also give a *sefer Torah* or other sacred item away as a gift since it is not lowered from its level of sanctity. (M.B. 68)
- Rema means that the borrower or renter will use the item for a non-sacred purpose. (M.B. 73)
- Olas Tamid asserts that the borrower or renter must read from the *sefer Torah* or *daven* with a *minyan* in the *Bais HaKnesses* because otherwise it would involve a lowering of the sanctity but Magen Avrohom disagrees. (M.B. 74)

# Halacha Highlight

## Selling a *Bais HaKnesses* for some future benefit or payment

Shulchan Aruch Siman 153 Seif 11

**דאי לאו דהוה להו הנאה מיניה לא הוו יהבי ליה**

**For if they had not received some sort of benefit from him they would not give it to him**

Shulchan Aruch that it is permitted to give away a *Bais HaKnesses* or stones or wood from an old *Bais HaKnesses* as a gift. The reason is that if they had not received benefit from the gift recipient they would not give him a gift. From this perspective it is considered an exchange comparable to a sale. Mishnah Berurah (ס"ק ס״ח) writes in the name of Ritva that it is also permitted to give away a *Bais HaKnesses* as a gift even if they anticipate some future benefit. Sefer Tzedaka U'Mishpat (פי"ד הע' נ״ט) questions this ruling. *Poskim* explain that this transaction is effective because the sanctity of the *Bais HaKnesses* is transferred from the *Bais HaKnesses* to the item that is received as a gift. Accordingly, how is it possible to make this transfer of sanctity if the object that will become sanctified has not yet been transferred?

He answers that when the community gives the *Bais HaKnesses* to someone as a gift it creates a *shibud* – lein - on the recipient to do something nice for them and the sanctity of the *Bais Haknesses* takes hold of that *shibud*. This must be the mechanics of the transaction and associated transfer of sanctity because if this was not the case it would be prohibited to sell a *Bais Haknesses* on credit since the money that will become sanctified is not being transferred at the time of the transaction. It must be that it is sufficient for there to be a *shibud* to pay that money. He then notes that Maharil Diskin (קו"א סי׳ ה׳ אות י״ח) expresses uncertainty whether it is possible to sell a *Bais HaKnesses* on credit and have the sanctity take hold of the money at the time that payments are made.

# Stories to Share

## Starting Fresh

שער הציון, ס׳ קנ״ג, ס״ק ס״א: ״דאם אינם מתפללים בבית הכנסת... יכולים למכרה״

The tragic destruction of Jewish life in the Soviet Union left many shuls in various cities and towns where Jews once abounded devoid of congregants, and often expropriated by the government. But now that the iron curtain has crumbled and the Soviet Union is no more, there are many groups coming in to do outreach with the largely ignorant Jews of these communities.

Naturally, they take over the old shuls whenever possible. These are places that the local Jews take pride in and are a perfect way to reattach them to their rich spiritual heritage. But taking over a shul has a halachic catch: what about the custom that used to be followed in these shuls? Can a minyan daven Ashkenaz in what was once a shul that davened Sefard, or the reverse? And are they obligated to follow the many customs, some of which are very well documented and were faithfully followed in these shuls from their inception? After all, in general it is forbidden to change the customs of a community, and these shuls had been part of the same community with the same customs for centuries.

This question eventually reached Rav Yosef Shalom Elyashiv, zt"l. Rav Elyashiv replied that they need not keep the old customs there. "Since there is an opinion that the holiness of a shul that was left desolate with no one davening in it is rendered void, and that it can even be sold without the intervention of the ז׳ טובי העיר—as the Sha'ar Hatzion brings in siman 153:61—it is obvious that the old customs are no longer considered in place. Therefore there is no longer any obligation to follow these customs there. They may begin fresh."

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