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TIPPING POINT: MAY ONE GIVE GRATUITIES TO SERVICE WORKERS?

Adapted from the writings of Dayan Yitzhak Grossman

At the end of the year, it is common practice in the U.S. to leave a gratuity for mail carriers, sanitation workers, and others that provided services throughout the year.

One of the Gemara's¹ three interpretations of the prohibition of "velo sechaneim"² is that one may not give a "free gift" (*matnas chinam*) to a non-Jew.³ Although the Gemara proceeds to explain that the permissibility of giving gifts to non-Jews is actually the subject of a dispute between R' Meir and R' Yehudah, the universal halachic conclusion is that such gifts are prohibited.⁴

1. Avodah Zarah 20a.

2. Devarim 7:2.

3. Whether the prohibition extends to non-idolatrous non-Jews is the subject of considerable discussion among halachic authorities, a full analysis of which is unfortunately beyond the scope of this article, but see: Shu"t HaRashba cheilek 1 siman 8; Meiri Avodah Zarah 20a sv. Kvar yadota; Bais Yosef C.M. siman 249; Bach ibid.; Shach Y.D. siman 151 sk. 18; Nishmas Kol Chai Y.D. siman 54; Sdei Chemed Klaim Vol. 3 ma'areches halamed klai 90 p. 298; Shu"t Be'er Moshe cheilek 3 siman 117 os. 2; Shu"t Sheivet Halevi cheilek 4 siman 213; Shu"t Minchas Chein cheilek 1 Y.D. siman 8 osos 3-12; R' Doniel Neustadt; Do Not Show Them Favor—Weekly Halacha, Parshas No'ach 5773.

4. Rambam Hilchos Avodas Kochavim 10:4; Shulchan Aruch Y.D. siman 151 se'if 11 and C.M. 249:2; Tur Y.D. siman 151; Sma C.M. ibid.; Shach and Taz Y.D. ibid.

Despite the unambiguous prohibition, the consensus of contemporary authorities is that tipping non-Jewish workers and service providers is generally permitted, for a variety of reasons. As we shall, see, however, none of these reasons is applicable to all situations, and some of them involve novel ideas and may be debatable. We shall subsequently propose a rationale of our own which is more broadly applicable than many of the other suggestions.

Several of the justifications given by the *Acharonim* are based upon a qualification of the prohibition by the Tosefta:

When does this prohibition apply? When he does not know him, or when he is traveling from place to place. But if he is his neighbor or his friend, it is permitted, because it is as

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PARSHAS VAYECHI

STRATEGIC HEIR COMMAND

Excerpted and adapted from a shiur by
Dayan Yehoshua Grunwald

The time approached for Yisrael to die, so he called for his son, for Yosef, and said to him, "Please—if I have found favor in your eyes, please place your hand under my thigh and do kindness and truth with me—please do not bury me in Mitzrayim."

Bereishis 47:29

The Maharil Diskin asks why Yaakov made a request rather than a command, which would have bound Yosef due to the mitzvah of *kibud av*.

A possible answer is that the Gemara explains *kibud av va'eim* to mean providing for a parent's essential needs like food and clothing, and the Rashba writes that other requests are not included; burial in Eretz Yisrael may not be an essential need. But the Gra suggests, based upon the Rashba, that providing nonessential needs is still required, though at a lower level of obligation. And R' Nissim Karelitz writes that anything parents ask in order to allay their fears for the child is included in the mitzvah, so Yaakov's fear of his own suffering (see Rashi 47:29) would certainly qualify.

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Q&A from the
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Fruit Preserves

Q May I remove the cherry tree in my backyard?

A The Torah forbids the cutting down of fruit trees: "Do not destroy its trees" (Devarim 20:19). One may also not instruct a non-Jew or a child to do the job (Chut Shani, *Bal Tash'chis* 1:6). The Gemara (Bava Kama 91b) also cautions that transgressing this *issur* can cause early death *R"l*, and it is listed by the *poskim* among dangerous activities that must be avoided (Taz Y.D. 116:6).

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though he is selling it to him.⁵

This is understood to mean that the ostensible gift is really a quid pro quo: either compensation for a favor received in the past, or an outlay in anticipation of a favor to be reciprocated in the future.

Accordingly, R' Moshe Stern (the Debrecener Rav) rules that it is permitted to tip taxi drivers, in order to forestall a future in which drivers will refuse to accept recognizably Jewish customers:

For if he does not give it to him, then the taxi driver will not stop for him in the future, because the owners of the taxis will publicize among themselves that a Jew with a Chassidic appearance does not tip, and the owners of taxis will no longer stop for Chassidim, and this will understandably result in great harm...⁶

This rationale for tipping is obviously limited to those contexts where the concern that Jews will be refused service in the future is a realistic likelihood.

R' Noach Isaac Oelbaum provides four justifications for tipping workers and service providers:

1. A worker with whom one has an ongoing relationship may obviously be tipped, based on the Tosefta.
2. Where tipping is customary, failure to tip will engender enmity (*eivah*), and it is permitted to give a non-Jew a gift in order to foster good relations (*darchei shalom*), because this is not considered a "free gift."⁷
3. Where tipping is customary, it is considered part of the workers' compensation, because they rely upon the tips and take them into account when assessing the profitability of their work.
4. It is plausible (*mistaveir*) that most of the time, tipping is motivated not by concern for the good of the recipient but by one's own interest, because he will feel embarrassed if he does not tip.⁸

Rav Oelbaum's first rationale is certainly correct, but as he himself notes, it is obviously limited to workers with whom one has an ongoing relationship. His second one is uncontroversial as well, but it is limited to where tipping is routine enough that a failure to tip will impinge upon *darchei shalom*. His third argument is certainly logical, though it lacks an explicit basis in the halachic literature, and once again, it only applies

⁵ Tosefta Avodah Zarah end of perek 13.

⁶ Be'er Moshe ibid.

⁷ See Tosafos Avodah Zarah ibid. s.v. R' Yehudah omer.

⁸ Minchas Chein ibid. at the end of the responsum os 23.

where tipping is standard and relied upon by workers. His fourth argument, that a gift given to assuage one's personal feelings of discomfort is not considered a free gift, seems quite novel.⁹

R' Doniel Neustadt writes:

Giving a gift shows affection, or at least, more than casual acquaintance, which can lead to forbidden relationships, ultimately even to intermarriage. It is, therefore, forbidden to give a gift to a gentile if one is doing so for no reason other than establishing a friendship or a relationship. If, however, the purpose of the gift-giving is to benefit the Jew, it is permitted, because it is no longer a "gift" but rather an incentive for the future or a payback for the past. Thus it is permitted to tip a waiter, a taxi driver, a barber, etc., for a job well done, to give a gift to the mailman to show appreciation for his work, or to give a year-end bonus to a valuable employee. This is permitted even if the Jew will not benefit from the non-Jew in the future.¹⁰

This is similar to the justification offered by other authorities, based upon the Tosefta. Rav Neustadt then adds:

[Indeed, once it is established that tips and gratuities are permitted, failure to do so when customary constitutes a chillul Hashem, as Orthodox Jews would be seen as lacking good manners, appreciation, etc.]

This consideration seems so obviously correct, at least where tipping is customary enough that failure to tip would be considered wrong, that it is surprising that other authorities do not mention it.

This writer would go further, however, and argue that even where tipping is not sufficiently common and expected that failure to do it would constitute a chillul Hashem, it would still be permitted to tip if one's intent is to make a kiddush Hashem. This is similar to the halacha about returning lost property to non-Jews, as codified by the Rambam and the Shulchan Aruch:

It is permissible to keep an object lost by an idolater...Indeed, if one returns such an article, he transgresses a prohibition...If, however, he returns it to sanctify Hashem's name, so that others will praise the Jewish people and know that they are trustworthy, that is praiseworthy. When there is a possibility of the desecration of Hashem's name, it is forbidden to keep an object lost by an idolater, and it must be

⁹ The Maharshal (Vam Shel Shlomo Bava Kama perek 10 siman 20) rules that returning lost property to a non-Jew can only be justified by the goal of making a kiddush Hashem, and not by the selfish desire to be praised for one's rectitude. Perhaps we can distinguish between the prohibitions against returning lost property to a non-Jew and giving him a free gift, but it is difficult to see why one's subjective feelings should suffice to avoid the latter prohibition but not the former. Further consideration of this point is required.

¹⁰ Rav Neustadt ibid. Rav Neustadt's footnote includes a reference to Ashrei Ha'ish Y.D. 10.33, a work to which I do not currently have access.

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If the tree no longer bears fruit, it may be cut down (Rambam Hilechos *Melachim* 6:9). Even if it yields some fruit, it may be cut down if the value of its wood exceeds that of its fruit. In calculating the value of the fruit, maintenance costs should be accounted for (Minchas Shlomo 100).

Some say one may move a fruit tree to another location if he removes and transplants it together with its root ball (She'eilas Ya'avetz 76 cited by Pis'chei Teshuvah Y.D. ibid.). Others are stringent (Chasam Sofer 2:102).

If the tree is dependent on supplemental water, you may deliberately withhold the water in order to cause it to die (Chazon Ish on Rambam *Melachim* 6:8). But an existing water source may not be diverted away from the tree (Rambam ibid.).

If you intend to build and the tree is in your way, it should preferably be transplanted (Minchas Shlomo ibid.), but you may cut it down (Rosh Bava Kama 8:15). It isn't necessary to alter the construction plans, even minimally, to accommodate the tree (Chut Shani ibid. 3). But given the associated danger, some *poskim* advise to have a non-Jew perform the cutting (She'eilas Ya'avetz ibid.). Others contend that if halacha permits the action, there's no reason to be wary of danger (Binyan Tzion 1:61). In practice, one should follow the first opinion, as hiring a non-Jew can be done easily.

returned.¹¹

It is clear from this formulation that even where failing to return the lost object will not cause a chillul Hashem, it is nevertheless praiseworthy to return it in order to make a kiddush Hashem. Tipping, as well, could presumably be justified by the goal of making a kiddush Hashem, even where failing to tip would not cause a chillul Hashem.



RAV ARVEH
FINKEL

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Another possible answer is that the mitzvah does not apply to the same extent after the parent's death. But R' Akiva Eiger writes that anything related to the parent's honor still applies, so Yaakov's concerns would qualify.

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¹¹ Hilechos Gezeilah Va'averdah 11:3, Shulchan Aruch C.M. 266:1.