

Money Matters

An Introduction to Jewish Business Ethics



Presented by Rabbi Gad Krebs

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Shiur 1: An introduction to Jewish Business Ethics

תלמוד בבלי מסכת שבת דף לא עמוד א

אמר רבא: בשעה שמכניסין אדם לדין אומרים לו: נשאת ונתת באמונה, קבעת עתים לתורה (לפי שאלם לריך להתעסק בדרכך ארץ, שאם אין לךך אין תורה הולךך לקבוע עתים לתורה דבר האוב, שלא ימשך כל היום לדרכך ארץ), עסקת בפריה ורביה, צפית לישועה, פלפלת בחכמה, הבנת דבר מתוך דבר?

Rava said when they bring someone to their final judgement they ask him: Did you maintain your business dealings honestly? Did you fix times to learn Torah? Did you have children? Did you hope for the final redemption? Did you learn wisdom in depth? Did you understand the depth of matters?

Being a chilul Hashem

תלמוד בבלי מסכת יומא פרק ח - יום הכיפורים [דף עג עמוד ב]

היכי דמי חילול השם? אמר רב: כגון אנא. אי שקילנא בישראל מטבחה ולא יהיבנא דמי לאלתר. אמר אביי: לא שנו אלא באתרא דלא תבעי, אבל באתרא דתבעי - לית לן בה... אביי אמר: כדתניא, [דברים ו] ואהבת את ה' אלהיך - שיהא שם שמים מתאהב על ידך, שיהא קורא ושונה ומשמש תלמידי חכמים, ויהא משאו ומתנו בנחת עם הבריות, מה הבריות אומרות עליו - אשרי אביו שלמדו תורה, אשרי רבו שלמדו תורה. אוי להם לבריות שלא למדו תורה, פלוני שלמדו תורה - ראו כמה נאים דרכיו, כמה מתוקנים מעשיו, עליו הכתוב אומר [ישעיהו מט] ויאמר לי עבדי אתה ישראל אשר בך אתפאר. אבל מי שקורא ושונה ומשמש תלמידי חכמים ואין משאו ומתנו באמונה, ואין דבורו בנחת עם הבריות, מה הבריות אומרות עליו - אוי לו לפלוני שלמד תורה, אוי לו לאביו שלמדו תורה, אוי לו לרבו שלמדו תורה, פלוני שלמד תורה - ראו כמה מקולקלין מעשיו וכמה מכוערין דרכיו! ועליו הכתוב אומר +יחזקאל לו+ באמר להם עם ה' אלה ומארצו יצאו.

What is deed considered a Chillul Hashem?

Rav said "For me it is when I go to the butcher and purchase meat and don't pay immediately". Abaye said "That is only in places where they don't send invoices, but in a place where they do this isn't relevant." ... Abaye said "As we have learned 'You should love Hashem your G-d'- Hashem should become love (by others) through you(r actions). You should learn Torah and serve the Wise. Your business dealings should be done honestly. (As a result of this) People will say 'Praiseworthy is his father that taught him Torah, praiseworthy is his Rabbi that taught him Torah. How unfortunate are those who have not learned Torah. This man who learned Torah see are pleasant are his ways, how righteous are his deeds, regarding him the verse says "And he said to me my servant Israel I am glorified through you". But someone who who learns Torah and serves Talmidei Chachamim but doesn't do his business dealings honestly, and doesn't speak nicely to others what do people say of him? Woe to him that learned Torah, woe to his father that taught him Torah, woe to his Rabbi that taught him Torah. See how distorted are his deeds, how ugly are his ways!! Regarding him the verse states "and they said

regarding them 'these are the people of Hashem and they come out of his land?'

The obligation to be Holy קדושים תיהו!

רמב"ן ויקרא פרק יט פסוק ב

והענין כי התורה הזהירה בעריות ובמאכלים האסורים והתירה הביאה איש באשתו ואכלת הבשר והיין, א"כ ימצא בעל התאווה מקום להיות שטוף בזמת אשתו או נשיו הרבות, ולהיות בסובאי יין בזוללי בשר למו, וידבר כרצונו בכל הנבלות, שלא הוזכר איסור זה בתורה, והנה יהיה נבל ברשות התורה:

לפיכך בא הכתוב, אחרי שפרט האיסורים שאסר אותם לגמרי, וצוה בדבר כללי שנהיה פרושים מן המותרות... וגם ישמור פיו ולשונו מהתגאל ברבוי האכילה הגסה ומן הדבור הנמאס, כענין שהזכיר הכתוב (ישעיה ט טז) וכל פה דובר נבלה, ויקדש עצמו בזה עד שיגיע לפרישות...

Ramban Vayikra 19:2

The matter works as follows the Torah warns of sexual illicit acts and forbidden foods and permits relation between husband and wife and the consumption of wine and meat, therefore one could potentially be a glutton, a sexual despot speaking all kinds of blasphemy and yet never transgress any specific transgression in the Torah. He thus would be considered "A despicable person with the Torah's permission (?)". Therefore the Torah adds an additional verse which works over the general prohibitions and tells us to separate ourselves even from those things that are not intrinsically problematic...and to not be a glutton or vulgar ... until he reaches a level of separation and sanctity.

תלמוד בבלי מסכת בבא מציעא דף פג עמוד א

רבה בר בר חנן תברו ליה הנהו שקולאי (נושאי משאות, ותברו ליה שלל במקום מדרון, ונפשיעה, אי נמי זדיגלא) חביתא דחמרא. שקל לגלימייהו, אתו אמרו לרב. אמר ליה: הב להו גלימייהו. - אמר ליה: דינא הכי? - אמר ליה: אין, [משלי ב'] למען תלך בדרך טובים (לפני משורת הדין). יהיב להו גלימייהו. אמרו ליה: עניי אנן, וטרחינן כולה יומא, וכפינן, ולית לן מידי. אמר ליה: זיל הב אגרייהו. - אמר ליה: דינא הכי? - אמר ליה: אין, [משלי ב'] וארחות צדיקים תשמר.

Rabba bar bar Chanan's barrels of wine were broken by his workers. In compensation he took their cloaks from them. They came to Rav and told his what had happened.

Rav said to him (to Rabba bar bar Chanan) "Give them back".

He retorted "Is this the law?"

He answered "Yes, as it says "in order that you walk on the good path'."

The workers said further to Rav "We are poor and we have worked all day and we are tired and have nothing to show for it".

Rav said to him (to Rabba bar bar Chanan) "Pay them their day's wage".

He retorted "Is this the law?"

He answered "Yes, as it says "and the paths of the righteous you should guard."

Traits Of The Sodomites

משנה מסכת אבות פרק ה משנה י
ארבע מדות באדם האומר שלי שלי ושליך שליך זו מדה בינונית ויש אומרים זו מדת סדום שלי שליך ושליך שלי עם הארץ שלי שליך ושליך שלי חסיד שלי שלי ושליך שלי רשע:

There are four different characteristics of man:

One who says "what's mine is mine and what's yours is yours" - this is an average person. Some say this is the characteristic of S'dom.

"Yours is mine and mine is yours" - simpleton.

"Mine is yours and yours is yours" - Chasid.

"Mine is mine and yours is mine" - Wicked.

Additional Readings for Shiur 1

Article 1: Taken from Mishpatei Hatorah- Rabbi Tzvi Spitz

Question:

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:

- A. 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)

- B. 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)

- C. 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.

Article 2: Value Conflicts In Jewish Business Ethics: Social Versus Fiduciary Responsibility

Rabbi Asher Meir

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Social Responsibility in the Marketplace

The Torah mandates many familiar, ritual laws, but it also promulgates many social commandments. In particular, there are numerous detailed halakhot which regulate commerce. These regulations are in keeping with the general principle that the elevating influence of Torah should extend to every area of human endeavor.

Beyond the mandatory halakhot, there are certain standards of exemplary conduct which were outlined by Chazal and the Rishonim and which a conscientious business person should consider binding, even though in general they are not enforceable in *beit din*.¹ And of course, conduct of business is not exempt from the general commandment to sanctify God's name by dignified conduct in all our social interactions.

There is an important distinction between Torah business ethics and those standards of proper conduct which are set out by the business world itself. The guiding principle of secular business ethics is "doing well by doing good," and is meant to distinguish the "enlightened" businessman who recognizes that fairness pays dividends in improved community relations, employee good will and so on, from the "primitive" profit seeker who will stop at nothing for an extra dollar. Whereas the Torah businessman views his business dealings as an additional field of endeavor in which he can carry out God's commandments. For him, the interface between Torah and business is defined by "doing good by doing well," success in business providing an added opportunity to improve society and sanctify God's name.

Ethical conflicts which arise in business need to be resolved by conscientious application of specifically Jewish standards, as well as careful attention to general principles of ethics. Narrow conformity with the demands of the *Shulchan Arukh* will not always lead to behavior which is Torah-true.²

Business Ethics and Fiduciary Responsibility

A common ethical dilemma involves the manager of a corporation. The manager's initial responsibility is his fiduciary duty to act in the interest of the investors. Insofar as the investors are interested in maximizing returns, this responsibility can obviously conflict with the business manager's broader social

responsibility. The question then arises whether "exemplary" conduct is called for even at someone else's expense.

Perhaps Jewish business ethics must distinguish between standards appropriate for owner/proprietors and those appropriate for employed managers.³ Where indeed should the line be drawn between excessive largesse on the one hand and inhumanity on the other?

A relativist code of ethics could conclude that there is no clear demarcation. Indeed, a prominent book on economic aspects of secular law legitimizes even criminal activity in defending shareholders' interests! "An important question about the social responsibility of corporations is whether the corporation should always obey the law or just do so when the expected punishment costs outweigh the benefits of violation... If those costs are set at too low a level, the corporation has an ethical dilemma."⁴

It should be clear that a Torah point of view can not legitimize this kind of "ethical dilemma." A principle of Jewish law is "ein shaliach lid'var aveirah" - "transgression can not be delegated,"⁵ and just as the shareholders are forbidden to act improperly, it is forbidden for their agent to so act on their behalf.⁶

At the opposite extreme, it is evident that excessive largesse in pursuit of social goals constitutes irresponsible use of the shareholders' investment, which are a deposit in the hands of the manager.⁷ As the Shulchan Arukh determines, "A person can not give what does not belong to him."⁸

It seems that the locus of the dilemma for the conscientious businessman is in those areas of conduct which are neither mandatory nor prodigal.

Disclosure as a Solution

It has been suggested that the entire problem could be circumvented by adequate disclosure: as long as the company's policy is open and revealed, it may be presumed to have the shareholders' consent. However, such openness, while important, could not excuse a policy which otherwise would be considered irresponsible. The modern publicly held company, with thousands or even millions of shareholders, can not adequately consult with its owners on even major points of policy, and their silence can not be construed as assent.⁹

Of course, in the case where a policy is part of the corporate charter, all partners in the enterprise - including all shareholders - are partners in furthering this policy. Just as a corporation can be formed solely for furthering social goals - such as a non-profit organization - a corporation can be formed to do business with particular social goals in mind.

Halakhic Status of a Corporate Manager

The first step to achieving a halakhic resolution of the dilemma facing the corporate manager is to adequately define the halakhic role he fulfills.¹⁰ A manager is on the one hand not (necessarily) an owner; on the other hand he is authorized to carry out all executive functions of the company - effecting acquisitions and entering into contracts etc. Four obvious candidates for halakhic analogy spring to mind:

Partner (Shutaf): Like a partner, a manager has authority to deal in the assets of the business even though there is someone else with a stake in its assets. But this is a poor characterization of a manager. The manager's status falls short of that of partner in the sense that he has no ownership interest per se; on the other hand it exceeds that of a partner since his executive power is unrestricted by the owners.

Agent (Shaliach): The manager is certainly an agent of the investors, but his status differs significantly from the usual case. In general authority is delegated (that is, extended) to an agent, the primary authority remaining with the principal; but to a manager authority is transferred - the owners of a company have no ability to act on its behalf.

Employee (Po'el): For the same reason it seems that the concept of employee, while appropriate, is insufficient to capture the unique powers of the business manager. It is true that the employee has independent ability to act on behalf of the employer - "yad po'el kiyad ba'al habayit" (the hand of the worker is like that of the employer),¹¹ but his ability is subordinate to that of the employer rather than superseding it.

Custodian (Apotropos): The term apotropos in the Gemara refers to a guardian and administrator of someone else's assets. Most commonly it refers to an administrator of the assets of minor orphans, appointed either by the deceased parent or by the court; but the term can apply also to an administrator in the case of some disability other than minority, such as insanity or absence.

It seems that the concept of apotropos best captures the main features of the investor/manager relationship:

Like the manager, the apotropos "acquires and distributes, builds and destroys, plants and sows and does whatever he considers to be in the interest of the orphans."¹²

The apotropos, like the manager, is the sole executor; the actual owners are generally disabled from active involvement in the management of the assets. In the case of the apotropos, the disability is minority or incapacity; in the case of the corporation it is due to the separation of ownership and control which is the essential characteristic of corporate structure.¹³

The owners, while not exercising day to day control, determine who in fact the executor is. The orphans when they are grown do not exercise control jointly with the apotropos; they can however withdraw their assets or choose a new apotropos.¹⁴

The article will assume that the manager is considered an apotropos. Though this assumption will not be a critical determinant of the conclusions, it will help to focus the discussion.

From Custodian to Fiduciary

Direct application of the rules governing an apotropos of orphans would indeed give us a clear answer to our question. Such a custodian is at the tight-fisted extreme of our hypothesized ethical spectrum, and is legally prohibited from any use of the orphans' assets which is not directly intended for their monetary benefit. He may not give charity from these assets, and is even allowed to lend them out in ways which would normally be considered usurious exploitation of the borrower.¹⁵ These restrictions are relaxed only to allow "doing well by doing good," that is when the orphans stand to gain monetarily.¹⁶

It might occur to us that the fiduciary relationship itself compels these restrictions: since the assets do not belong to the fiduciary, and since the owner can not be consulted (because of the disability which necessitates the fiduciary relationship), the only safe solution is a Scroogeian parsimony.

Yet the usual rule which governs agency is not restraint but rather assessment - "umdana." That is, the agent does not expend the minimum, but rather what he guesses would be the expenditure of the principal. In the absence of a basis for appraisal, he would spend the average or usual expenditure. This is the rule for an agent who gives tithes¹⁷; and more importantly, seems to be the rule for an apotropos of an incapacitated adult.¹⁸

Evidently the stifling restrictions on a custodian for minors are unique to this particular case. According to the Maharit, the justification for these restrictions is not the disability per se, but rather the temporary nature of this disability - in a short time the orphans will be able to express their own desires and it is unnecessary to "jump the gun."¹⁹

It is clear at any rate that the business executive does not have a mandate to act in an excessively tight-fisted manner by virtue of his fiduciary responsibility, nor does he have license for such behavior. A reasonable assessment of the average investor's degree of liberality, subject to his legal obligations, define a minimum level for the degree of enlightenment the manager should display in his business relationships.

Leadership in Ethical Behavior

Insofar as the ideal level of social responsibility in a Torah perspective may be higher than that attributable to the average shareholder, fiduciary responsibility still presents a conflict to the observant manager. Is it possible to justify exemplary behavior on his part, at the evident expense of the investor? After all, he is hired to be their faithful agent.

The basis for an affirmative answer lies in a proper and non-superficial understanding of the manager's relationship to the firm, and of the goal of the firm itself. Three main points are relevant:

First, a manager is not only permitted but expected to implement a personal vision of the business. This is a key element of effective management. His vision of ideal community and employee relations, which will certainly be colored by his personal ethical standards (in our case, those of the Torah) are an inseparable part of his business ideal.

Furthermore, even to the extent that the manager's personal values do not incorporate themselves naturally into the actual job of managing the company (as they do in point 1) he is not expected to sacrifice these values. Rather the company hires, or fails to hire, on the understanding that these values will be reflected in his work performance. When a firm hires a religious executive, it is aware that he will miss days of work due to his religious commitments; likewise it will be aware that certain acts within the job performance itself may be impossible for him to carry out.

The most compelling argument, however, is that is unthinkable that any society should have on the one hand specific standards of proper behavior - in our case business ethics - and on the other hand an accepted method of social organization which effectively vitiates these same standards! The social norm can not have disappeared; it must have been transferred to the new form of organization. Either the corporation as a "legal person" assumes ethical responsibilities, or the ethical responsibility of the owners is delegated to the managers together with the money-making responsibility.

We can now crystallize an approach which incorporates all of these facets. An ethical principle, though privately held, is by definition a standard which the individual sees as applicable to society as a whole. Thus, the manager will automatically project his conception of right and wrong onto the community of investors. As a result, the executive who acts in accordance with his convictions is thereby fulfilling, and not breaching, his responsibility to act on behalf of the owners. Just as transgression can not be delegated, wrong behavior in general resists delegation. And the employer himself must take for granted that the manager will use his personal convictions as the applicable standard for any questions of right and wrong which he encounters.

Nothing Succeeds Like Success

We suggested above that in contrast to the utilitarian business-ethics idea of "doing well by doing good," the Torah attitude more closely approximates "doing good by doing well." The approaches differ in their ultimate goal, but they have in common that profitability - doing well - matters.

Doing well matters first of all in the mundane sense that making a living per se is a necessity and indeed an important mitzvah. But even someone completely uninterested in personal material gain should be interested in running a profitable business. A firm which is profitable will be able to extend its enlightened business practices to the greatest number of employees and communities; conversely, a business which fails not only will be unable to perpetuate such practices, but will become an example to others that "nice guys finish last."²⁰

It follows that any socially desirable practice which is not required by the letter of the law needs to be carefully examined if there is reason to believe that its application will interfere with the ability of the concern to prosper. Business practices that interfere with sustainable success could be counter-productive even from the social standpoint.

The Religious Consideration

We have defended the proposition that exemplary business behavior is in general justified even if it could be partly at the expense of shareholders, to the extent that it is part of a coherent and self-perpetual vision of the business. The justification is on ethical grounds, to which could be added a purely religious consideration: our sages have indicated to us that generosity in considering the needs of others is a source of material blessing to the giver. They urged us to "Tithe in order to grow in wealth."²¹ The manager who acts ethically and responsibly, may justifiably put faith in God that no one will suffer from his thoughtfulness.

A Commandment is Greater When Performed Individually

The thrust of this article has been very "lenient" in "exempting" the manager from acting in a cut-throat way. Are there, nonetheless, cases in which a manager should refrain from adopting policies which he would see fit to promote if he were owner?

It seems that it would be improper to use company resources for social goals which the individual investor could as well carry out himself. Building a public library for the town where a factory is located out of genuine concern and gratitude for the community is praiseworthy, for the company is in a unique position to carry out such an undertaking. But contribution to a recognized charity can be carried out by the individual shareholder from his earnings, and it seems he would have a valid complaint against a manager who used profits for that purpose.

This reinforces the point made earlier that the manager acts with rectitude on behalf of, and not in spite of, his employers. As manager of a company he can promote society's welfare in ways which the individual can not, just as he can promote profitability better than the individual. It is in these specific areas that he should focus his efforts.²²

Conclusion

The Torah bids us to sanctify all areas of life. The area of business is certainly included, and certain business policies are called for in the sanctification of this most important area of human endeavor. These policies may occasionally seem to hinder the pursuit of profits. However, to the extent that they do not prevent the firm from prospering it seems that they should not be viewed as coming at the "expense" of investors, and the responsibility of managing others' resources should not prevent the manager from running a "Torah-true" business.

Notes:

1. When the strict rule of law seems inequitable. An example would be granting an exemption from liability when there is no actual negligence (BM 83a, Yer. BM 6/6), or waiving an exemption in the case where the details of the case do not clearly justify it (BM 24b, BM 30b, BK 99b). In some places batei din have enforced these standards of "lifnim mishurat hadin" - "beyond the letter of the law." An excellent summary (which advocates a lenient approach to such obligations) is Shmuel Shilo, "On One Aspect of Law and Morals in Jewish Law: Lifnim Mishurat Hadin" in Israel Law Review, vol. 13 no. 3, July 1978.

2. For example, certain kinds of income tax evasion seem superficially to find halakhic license. Torah leaders have prominently decried such self-serving interpretations of the law.

3. Indeed, in ritual law we find many cases where the Torah is lenient not only beyond the letter of the law, but even in the letter of the law itself so as not to shortchange the employer. For instance, the employee who is paid by the hour recites a shortened version of the grace after meals, is permitted to pray in circumstances not generally suitable for shmoneh esreh, and in some cases is called upon to abbreviate his prayers - all in order not to deprive the employer of the full value of his wage.

4. Richard A. Posner, *Economic Analysis of Law* (Fourth Edition; Boston; Little, Brown & Co., 1992), p. 421. It is interesting, and perhaps dismaying, that the author is a Federal judge.

5. Bava Metziah 6a a.f.

6. See Meir Tamari, *Kesef Kasher* (Jerusalem, Reuven Mass, 1994), p. 173.

7. A possible candidate for such an indictment would be a prominent data-processing firm which through the mid-80's invested huge sums in truly wonderful social programs (especially aggressive affirmative action) which had no foreseeable benefits for their business, at a time when their grip on the market was slipping precipitously.

8. Choshen Mishpat 235/26.

9. It is true that anyone who buys shares after a policy is revealed considers himself to be getting his money's worth under such a policy. But the manager is employed by current, and not future, shareholders.

10. There is an extensive literature discussing the halakhic status of a limited liability corporation. Some authorities consider the corporation to be an independent halakhic "actor," as it is a "legal person" in the eyes of the civil law (Rabbi Dichovsky, *Piskei Din Rabaniim* 10/273). Most seem to view it as a partnership of the familiar variety. In the words of Rabbi Menashe Klein, "A limited liability corporation is considered a partnership like any other". (Cited in Meir Tamari, *Kesef Kasher* 172. This is also the opinion of R' Chaim Zimbalist in the Rabbinical court decision just cited) and of R' Moshe Feinstein *Orach Chaim* I, no. 90. Our concern is not the halakhic status of the company itself, but that of the employees who manage it.

11. Kiddushin 41b.

12. Rambam, *Nachalot* 11/4; *Shulchan Arukh*, Choshen Mishpat 290/7.

13. If we accept that a corporation is a legal person, it has an inherent incapacity similar to that of a minor.

14. Responsa of Mabit 1/335 demonstrates conclusively that in the case where the donor specifically appoints an apotropos for grown children that they have no control of the assets. This is also evident from Choshen Mishpat 290/26. The Rema there, referring to the case where there was no specific instruction to extend the custodianship past majority, rules that the grown children can dissolve it; the evident implication is that until they do so sole authority resides in the custodian.
15. Choshen Misphat 290/8.
16. For instance, the apotropos is allowed to give charity from the orphan's assets if this will improve their public stature, helping them in their business and personal endeavors - BB 8a, Choshen Mishpat 290/15. And he is allowed to make a compromise with legal rivals if this will save money by eliminating litigation costs - Choshen Mishpat 12/3, based on Bava Kama 21a.
17. Terumot 4/4.
18. In such a case the apotropos is bidden to assess what the owner would have done in such a situation - Responsa Maharit 127, based on Ketubot 48a. In particular, the gemara there rules that an apotropos for a grown person gives charity; see Rambam Nachalot 11/11.
19. Responsa Maharit 1/127 who justifies exceeding the restrictions in a case where the minor is in danger, exclaiming "If not now, when?!" According to this hypothesis, a custodian for a prisoner or fugitive (see Choshen Mishpat 285/2) could also be subject to such restrictions; possibly there is an additional factor in the case of orphans, that we have no prior basis on which to impute their desires.
20. Indeed, commerce per se provides a benefit to society - see Mishnah Nedarim 4/6. While condemning the "greed is good" philosophy which sees the invisible hand as exempting individuals from concern for the good of society, we can recognize that market forces do reflect valid social exigencies.
21. Taanit 9a.
22. This could be considered the "ethical corollary" of the financial maxim that company value can not be increased by diversification or leverage activities which the individual investor could duplicate on his own.

Shiur 2 Ona'at Mamon- Pricing Correctly

ויקרא פרק (כה:יד) כי תמכרו ממכר לעמיתך או קנה מיד עמיתך אל תונו איש את אחיו:
"When you sell property to your kinsman, or buy any from your kinsman, you shall not wrong one another." (Vayikra 25:14)

Arukh Ha-shulchan (227:1):

"There are two types of ona'a. The first is ona'a regarding the actual merchandise, when one sells it as quality merchandise that comes from such-and-such place, when it actually comes from a different place, or it is somewhat defective, unbeknownst to the buyer... The second ona'a... applies when the storekeeper knows that this merchandise is now sold in all the stores at such-and-such price and no more, and a certain buyer is not proficient [in the prices], so he takes from him an expensive price, more than the conventional price."

תלמוד בבלי מסכת בבא מציעא דף נ עמוד ב

אמר רבא, הלכתא: פחות משתות - נקנה מקח, יותר על שתות - ביטול מקח. שתות - קנה ומחזיר אונאה, וזה וזה בכדי שיראה לתגר או לקרובו. תניא כוותיה דרבא: אונאה פחות משתות - נקנה מקח, יתר על שתות - בטל מקח. שתות - קנה ומחזיר אונאה, דברי רבי נתן. רבי יהודה הנשיא אומר: יד מוכר על העליונה, רוצה - אומר לו תן לי מקחי, או תן לי מה שאניתני. וזה וזה בכדי שיראה לתגר או לקרובו.

Rava said the law is as follows: less than one sixth- the sale stands. More than a sixth- the sale is void. If it is a sixth- the sale stands but the ona'a must be returned. All of these are as long as one can see the salesman or his kin.

תלמוד בבלי מסכת בבא מציעא דף נח עמוד ב

תניא, רבי יהודה אומר: אף המוכר ספר תורה אין לה אונאה, לפי שאין קץ לדמיה. בהמה ומרגלית אין להם אונאה - מפני שאדם רוצה לזווגן. אמרו לו: והלא הכל אדם רוצה לזווגן! - ורבי יהודה: הני חשיבי ליה, והני לא חשיבי ליה. - ועד כמה? - אמר אמימר: עד כדי דמיהם. תניא, רבי יהודה בן בתירא אומר: אף המוכר סוס וסייף וחטיטום במלחמה אין להם אונאה, מפני שיש בהן חיי נפש.

Rabbi Yehuda said even if one sells a Sefer Torah, gems or animals there is no Ona'a since there is no end to their prices. Animals and gems because a man wants to partner them up... Rabbi Yehuda ben Beteira said " even if one sells a horse, sword or shield in war there is no Ona'a, because one's life is dependant on it.

שולחן ערוך חושן משפט סימן רכז:כא

האומר לחבירו: על מנת שאין לך עלי אונאה, יש לו עליו אונאה. בד"א, בסתם, שאינו יודע כמה אונאה יש בו כדי שימחול; ואין צריך לומר אם אמר: על מנת שאין בו אונאה, שהרי יש בו. אבל במפרש, אין לו אונאה. כיצד, מוכר שאמר ללוקח: חפץ זה שאני נותן לך בק"ק יודע אני שאינו שוה אלא מאה על מנת שאין לך עלי אונאה אני מוכר לך, אין לו עליו אונאה. וכן לוקח שאמר למוכר: חפץ

זה שאני לוקח ממך בק' יודע אני ששוה ק"ק ע"מ שאין לך עלי אונאה אני לוקח ממך, אין לו עליו אונאה.

One who says" on condition that you won't claim ona'a- there is ona'a. this is only in a case where it is said 'stam', because the purchaser doesn't know how much he is being ripped off...but if one explains that the item costs X and I know that it is worth less and I will sell it on condition that there is no Ona'a- the sale is good.

שולחן ערוך חושן משפט סימן רכז:כג

בעל הבית המוכר את כלי תשמישו ואינה את הלוקח, אין בו דין אונאה, שאילו לא הרבה לו בדמים לא היה מוכר כלי תשמישו. ואפילו מכרם מחמת דוחק, אין בו אונאה. ויש מי שאומר דדוקא שהלוקח יודע שזה המוכר בעל הבית, אבל אם לא ידע, או שקנה ע"י סרסור, יש בו אונאה. [בית יוסף : ומ"ש ואפילו שמכרם מחמת דוחק דלא שייך האי טעמא אפ"ה לא פלוג רבנן וכו'. ל"כ הרא"ש בתשובה כלל ק"ב (סי' ג) והאריך לתת טעם לדבר:]

A person who sells his household belongings and rips off the purchaser there is no ona'a, because if it wasn't for the profit made he would sell his possessions. Even if he sells them because of a desperate need, there is no ona'a.

Why is there such a thing as Ona'ah?

רא"ש מסכת בבא מציעא פרק ד סימן כ

ויראה דבכל שאר דברים אפי' פחות משתות אסור לאנות את חבירו אם יש בו שוה פרוטה כיון שידוע שאין מקחו שוה כל כך. דרחמנא אמר אל תונו בכל דבר שיש בו שיווי ממון הזהירה תורה שלא יאנה את חבירו אלא שאמרו חכמים דעד שתות הוי מחילה לפי שכך דרך מקח וממכר לפי שהלוקח והמוכר אינם יכולין לכוין דמי המקח בצמצום. ודרך העולם למחול טעותם עד שתות. שאף אם יבא המתאנה לערער לא ישומו השמאין בשוה זה יאמר יש בו אונאה וזה יאמר אין בו אונאה הלכך מקבל עליו שתיקה ואין מערער ומוחל (המוכר). אבל אם המוכר בקי בערך מחבירו והלוקח אין בקי כל כך או אם הלוקח תגר ובקי בערך מקחו יותר מן המוכר אל יאנו זה את זה אם לא שיפרש. חוץ ממטבע כל זמן שלא הגיע לכדי אונאה מותר לכתחלה להוציאה ביפה. שגם אחר יקבלנה מידו ביפה ואין בו הפסד. כלל או שמא כיון דדרך מקח וממכר בכך דלפעמים הלוקח חפץ במקח זה ומוסיף עליו דמים יותר מכדי שווי ופעמים שהמוכר מזלזל בשומתו בממכרו לפי שאין חפץ זה ערב עליו או שהוא דחוק למעות הלכך עד שתות הוי בכלל דמי מקח ואין כאן שם אונאה כלל וצ"ע. וירא שמים יצא ידי כולם:

Additional Reading for Shiur 2

Article 1:

YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

HALAKHA: A WEEKLY SHIUR IN HALAKHIC TOPICS

Laws of Ona'a

Based on a shiur by Rav Shlomo Levi

"When you sell property to your fellow, or buy any from your fellow, you shall not wrong one another."
(Vayikra 25:14)

The Torah introduces here a prohibition against "wronging" one another in the commercial realm, a prohibition to which Chazal describe as "ona'a" (based on the terminology in the verse – "al TONU ish et achiv"). What precisely does this prohibition entail?

The Arukh Ha-shulchan writes (227:1):

"There are two types of ona'a. The first is ona'a regarding the actual merchandise, when one sells it as quality merchandise that comes from such-and-such place, when it actually comes from a different place, or it is somewhat defective, unbeknownst to the buyer... The second ona'a... applies when the storekeeper knows that this merchandise is now sold in all the stores at such-and-such price and no more, **and a certain buyer is not proficient [in the prices]**, so he takes from him an expensive price, more than the conventional price."

Thus, the prohibition of ona'a includes two halakhot. First, a seller may not conceal from the buyer important information concerning the item he sells, and secondly, the seller may not raise the prices inordinately. The first type of ona'a arises in many situations, for example, when a person sells a car and lies about its mileage. Needless to say, this violates an explicit Torah prohibition, and this applies as well to any item one sells, both new and old.

Raising Prices

The Gemara states that if a seller misleads the buyer and charges more than one-sixth above the standard sales price, the transaction is null and void. This halakha gives rise to the question posed by the Rosh as to whether there exists a prohibition against raising the prices even less than one-sixth. The Arukh Ha-shulchan (227:6) explains the Rosh's ambivalence as follows: Does a person violate the prohibition even by raising the prices less than one-sixth, only the transaction remains valid, or does the prohibition not apply at all when one raises prices less than one-sixth, as this constitutes standard commercial procedure? In any event, the Rosh concludes, "A God-fearing person should satisfy all opinions."

The basic question that arises regarding the second type of ona'a is, on what basis do we determine the standard price of a given object? Today, for example, one can find virtually any item in many different stores at many different prices. Therefore, in order to determine if a given retailer violates the prohibition of ona'a, we must first decide what is the "normal" price – a very difficult task given the differences in price between different stores.

To resolve this problem, let us bring several examples of different kinds of products. Some products are under price supervision, meaning, the law establishes fixed rates. Here, of course, the situation is very simple: whoever charges even a penny above the fixed price violates the prohibition of ona'a.

Other products have a recommended price, or a list price. On the one hand, one might equate these products with those in the first category, and claim that the list price determines the standard amount for the given product just like those established through legislation. On the other hand, however, many times prices are intentionally listed higher than the items' true prices so as to give the retailers the appearance of lowering prices. In these cases, the list price will not help us determine at which amount the seller violates ona'a. Clearly, however, one who sells for a price higher than the list price violates this prohibition.

One who sells a product for a much higher price than do the other stores, violates ona'a. But what if one sells an item for the price charged by the expensive stores? This will depend on whether or not he in fact charges a set price. A seller must establish consistent standards and prices. Often, retailers will inform consumers of a high price, but someone who asks for a discount can purchase the item for a cheaper amount, whereas those who do not ask will pay the full, listed price. **This, as we saw, is**

forbidden; one violates the prohibition of ona'a when he sells the item to those who do not ask for the discount, since he sells it for more than the actual price.

Unique Circumstances

According to one view in the authorities, the prohibition of ona'a does not apply on Erev Shabbat. For example, if on Erev Shabbat a person still has no wine for Shabbat, he is willing to pay more than the accepted price, and therefore one may sell him wine for a higher price. The Shulchan Arukh (227) cites different views concerning this issue.

This debate would impact upon the phenomenon of merchants who take advantage of the location where they sell their merchandise. The buyers understand full well that the price charged far exceeds the standard price, but they realize that this stems from the unique circumstances in which they currently find themselves. What is the halakha in this regard?

According to the view presented earlier, it would appear that the prohibition of ona'a would not apply, since this situation directly parallels the case of someone who desperately needs to buy wine on Erev Shabbat. Even under these circumstances, however, there is an accepted price for such situations, and if a given merchant raises his prices far beyond the amount charged by others who sell in those same locations, he violates the prohibition of ona'a.

We must emphasize that the prohibition applies even if the buyer knows that the seller overcharges but decides to purchase the item nonetheless. The Arukh Ha-shulchan (se'if 22) writes, "One who says to his fellow, '[I sell you] on condition that you do not accuse me of ona'a' – he may accuse him of ona'a."

Wholesalers

Halakhic literature speaks of a "nosei ve-notein be-emuna" (literally, "who buys and sells on trust") – the middleman, or wholesaler, who buys merchandise from manufacturers and then sells it to retailers. He offers to sell it at, for example, a one-percent profit, without assuming any responsibility for the merchandise he sold. At times, the wholesaler may have purchased the items at a higher price than what is accepted in the market. Nevertheless, if he then sells it for an even higher price to the retailers, he does not violate the prohibition of ona'a, because he charges a reasonable one-percent profit, and the retailer is aware of the original price and the middleman's profit. Indeed, the Arukh Ha-shulchan (se'if 30) writes:

"We can extract from what has been explained that those middlemen who sit in large places and purchase merchandise on behalf of stores from cities throughout the country, and they take a specified profit – such as two or three percent, they are not subject to claims of ona'a, for this is precisely the case of 'nosei ve-notei be-emuna.'"

Later in his discussion, the Arukh Ha-shulchan explains that the retailers themselves must be aware of the nature of the merchandise, and the wholesaler bears no responsibility in this regard.

Needless to say, this assumes that the wholesaler deals honestly. If, for example, half of his merchandise is at one standard, and the other half is of a lower quality, then when determining the price he must take into account the lower quality of half the merchandise. If he sells this half based on half the price he paid for the entire stock, then he undoubtedly violates the prohibition of ona'a, since he sells lower quality items at the price he would sell the higher quality merchandise.

Salaries/Service Fees

The Gemara establishes that the prohibition of ona'a does not apply to the sale of real estate, nor does it apply to the sale of servants, which are halakhically equated with real estate (through a "hekesh"). Obviously, however, one should refrain from overcharging for real estate, as well.

What is the status of workers with regard to ona'a? Do we equate them with servants, such that the laws of ona'a would not apply to rendering services?

The poskim distinguish between two types of workers: a day-worker, and someone hired for a specific project. If a person works a day-job, he commits his time to his employer, since their arrangement requires that he work for specific hours. He therefore has the status of a servant, towards whom the prohibition of ona'a does not apply. A contract worker, by contrast, who did not commit to specific hours of work, differs from a servant and therefore the laws of ona'a apply. For example, a community's head of security commits himself to do his work whenever his services are needed; he does not commit specific hours to the town. Therefore, even if he receives a monthly salary, he would have the status of a contract worker, and the laws of ona'a would not apply.

Canceling a Transaction

As we saw, when the price exceeds the standard price by more than one-sixth, the transaction is null and void. Does this halakha have a statute of limitation? For how long after the unfair sale can the buyer demand its revocation?

The Gemara establishes, and this is indeed the accepted halakha, that the buyer has the period of time necessary to go immediately after the transaction to an expert to inquire whether he paid a fair price. Clearly, this is not a very long period of time. This then gives rise to a problem, given the fact that people generally trust sellers and do not run immediately after a purchase to ask if they overpaid. People usually discover this only sometime later.

In any event, it would appear that if as part of the price negotiations the seller gave the impression that he charges the standard market price, then the transaction is null and void regardless of how much time transpires. In such a case, we would consider this misinformation one of the conditions of the sale. Since the buyer agreed to the transaction under a misconception, the sale is automatically null and void, no matter when the buyer comes forth to demand his money in return.

Shiur 3: Advertising and Geneivat Da'at

רמב"ם הלכות דעות פרק ב הלכה ו

... ואסור לגנוב דעת הבריות ואפילו דעת הנכרי, כיצד לא ימכור לנכרי בשר נבילה במקום בשר שחוטה, ... ולא יסרהב בחבירו שיאכל אצלו והוא יודע שאינו אוכל, ולא ירבה לו בתקרובת והוא יודע שאינו מקבל, ולא יפתח לו חביות שהוא צריך לפותחן למוכרן כדי לפתותו שבשביל כבודו פתח וכן כל כיוצא בו, ואפילו מלה אחת של פיתוי ושל גניבת דעת אסור, אלא שפת אמת ורוח נכון ולב טהור מכל עמל והוות.

And it is forbidden to deceive someone even a non-Jew. How is this done? Don't sell non-kosher meat to a non-Jew on the premise that it is kosher...don't invite someone to dine with you when you know he wont accept or open a bottle of wine for sale and deceive someone that it is in their honour...

רמב"ם הלכות מכירה פרק יח

(א) אסור לרמות את בני אדם במקח וממכר או לגנוב את דעתם, ואחד עובד כוכבים ואחד ישראל שוים בדבר זה, היה יודע שיש בממכרו מום יודיעו ללוקח, ואפילו לגנוב דעת הבריות בדברים אסור.
It is forbidden to deceive someone in your business dealings with them...if you know there is a defect in a product you must let them know as this is likewise in other areas of deceit.

(ב) אין מפרכסין את האדם ולא את הבהמה ולא את הכלים הישנים כדי שיראו כחדשים, אבל מפרכסין החדשים כגון שישוף ויגהץ ויפה כל צרכיו.

One may not improve the appearance of one's older stock so that it looks new, but one may improve its appearance and make it look it's best.

(ג) אין משרבטין את האדם במים של חזרין וכיוצא בהן כדי שיתפח ויראו פניו שמנים, ולא צובעין את הפנים בשרק וכיוצא בו, ולא נופחין את הקרביים ולא שורין את הבשר במים, וכן כל כיוצא בדברים אלו אסורין, ואין מוכרין בשר נבילה לנכרי בכלל שחוטה אע"פ שהנבילה אצלו כשחוטה.

One may not feed a man water in which bran was cooked which causes his body to swell making his face appear larger. One may not paint his body with rouge. One may not soak meat in water...one may not sell treyf meat to a goy if he wants kosher even though to him treyf is the same as kosher.

(ד)...מותר לחנוני לחלק קליות ואגוזים לתינוקות ולשפחות כדי להרגילן לבא אצלו, ופוחת משער שבשוק כדי להרבות במקיפין ממנו, ואין בני השוק יכולין לעכב עליו ואין בזה גניבת הדעת.

It is permissible for a storekeeper to distribute roasted seeds and nuts to children and maidservants in order that they frequent his store. One may lower the price of his items in order to draw people towards him and this is not considered deceit.

(ה) אין מערבין פירות בפירות אפילו חדשים בחדשים, ואין צריך לומר ישנים בחדשים...

One may not mix fruit- new with old...

(ו) אין מערבין מים ביין, ומי שנתערב לו מים ביינו לא ימכרנו בחנות אלא אם כן מודיעו...

One may not dilute wine with water, if he does so he must inform the customer

(יב) ואין כל אלו הדברים אמורים אלא במקום שאין להם מנהג אבל במקום שיש להם מנהג הכל כמנהג המדינה.

All that has been said above is only referring to a place that has not custom but where there is a custom all goes according to the custom.

Truth In Advertising-

Translation of Mishp'tei HaTorah

Question:

Reuven, who owns a store, is interested in launching a major advertising campaign to attract new customers. He would like to clarify which advertising and publicity tactics are permissible according to Halacha, and which are forbidden.

For example:

A. Is he permitted to use "loss leaders", i.e. drastically lower the price of certain items, in the hope that buyers will come to his store to purchase these items, and also purchase other items for their full price, earning him a handsome profit?

B. Is he permitted to try to persuade customers to purchase a certain item in his store, when he knows that a newer model of this item with a higher quality is available in a competitor's store for the same price?

C. Is a store owner permitted to polish his merchandise so that it shines, in order to attract customers?

D. Is he permitted to use mirrors and decorations to catch customer's eyes, so as to entice them to purchase an item that they may not have otherwise, or in a quantity that they may not have purchased otherwise?

Answer:

A. We should preface our answer by quickly summarizing the prohibition of Geneivas Da'as - misleading another person (literally - "stealing their knowledge", which we discussed in depth in last week's class):

*** The Torah forbids us from misleading anyone, whether Jew or non-Jew, as it says (Vayikra 19:11) "Lo Signovu - you shall not steal".**

*** This prohibition applies in any situation in which a person misleads his fellow human being, whether in business or in any other situation.**

It is forbidden to mislead them by telling them something, acting in a certain way, or placing misleading advertisements in newspapers or in public areas.

*** It is forbidden to mislead someone even if you do not stand to gain monetarily from this deception. It is considered Geneivas Da'as even if the person thinks that you have honored them or done them a favor, when you actually have not.**

*** Even in situations where a merchant has transgressed the prohibition of Geneivas Da'as, if the merchandise sold did not cost 16% more than what an identical item is sold for in other stores in that area, the sale is not considered void. If it has been sold on credit, the buyer is still obligated to pay the entire amount that he agreed to pay to the merchant, despite the fact that the merchant may have transgressed this prohibition.**

We will now discuss the answer to our specific questions:

B. A. A store owner is permitted to advertise to convince customers to purchase his merchandise. He may use any means that he wishes to attract their attention, such as loud noises, lights, colors, and music, as long as the information that he is telling them is accurate and true.

This is permitted even if it is clear to everyone that the customer only purchased the item because he was attracted by the loud advertising, even though he may have been able to get the same item of better quality at a cheaper price in a nearby store.

C. Similarly, a store owner, manufacturer, or importer may convince buyers to buy a certain item from themselves by extolling its

features to them, despite the fact that he knows that his competitor sells a better item for a cheaper price. However, he may not say something that is not true, such as "This is the best item on the market!", or that his competitor's item is inferior to his.

A merchant must inform a potential customer of any defect that he is aware of in an item, if it is possible that the customer would not purchase the item if he were aware of the defect.

- D. A merchant may not advertise that his prices are the lowest in town, if this is not true. Similarly, a merchant may not claim that he is making less profit on an item than he actually is, in order to convince the customer that he is getting the rock bottom price.**
- E. A store owner is permitted to discount certain items to attract customers to his store, in the hope that they will also purchase items that are not on sale. However, the store owner cannot advertise that his store is the cheapest in town, and everything is on sale, and present these certain discounted items as an example, if other items that are being sold in his store are not cheaper than anywhere else.**

However, as we state above, if a store owner did improperly advertise in the above mentioned manner and mislead the customers, the sale is not void, unless the customer specifically stipulated that he is only purchasing the item on condition that all information presented by the store owner is accurate. In such a case, the sale would be void.

- F. E. Merchants are permitted to distribute samples of their product to entice customers to buy from them. However, under no circumstances are they permitted to advertise, or even hint, that their competitor's product is inferior to their own.**
- G. F. A merchant may not polish a pre-used item to make it look as if it is new. However, he obviously may do so if he informs the customer that it is used, and charges accordingly. He may, however, polish a new item to a shine in order to attract the eye of the customer. This is permitted even if the merchant knows that if not for the polish the customer would not have purchased the item.**

Additional Reading for Shiur 3

Article 1: Price Shopping With No Intent To Buy

Question:

A. Reuven has listed his home in a certain neighborhood for sale. Shimon also has a similar home in the same neighborhood that he is interested in selling, but is unsure of what price he can reasonably request for his home. He would like to call Reuven and, posing as a potential buyer, ask Reuven how much he is requesting for his home. Is Shimon Halachically permitted to do so?

B. Reuven and Rachel received a wedding present from a relative, Leah. Leah is now getting married, and they would like to purchase a gift for her of equal value to the gift that they received from her. Are they permitted to call the store where their gift was purchased to find out how much their gift cost, if they have no intention to purchase this item from that store? otherwise?

Answer:

- A. A. It is prohibited by the Torah to ask someone who is interested in selling or leasing something, how much he or she is charging for that item, if the person asking has no interest in purchasing the item and is only interested in knowing the price for other reasons. Similarly, a person may not ask a worker who is interested in a job, how much his fees are, if the employer has no intent to hire this worker to work for him.

A person who does ask in the manner stated above, transgresses the prohibition of (Vayikra 25:17) "V'Lo Sono Ish Ess Amiso - And a man may not oppress (by misleading) his friend." By asking the price, he is raising his friend's hopes that he has a potential customer, only to be disappointed when he realizes that his hopes were raised for nothing.

This is forbidden even though the person asking has no intent to disappoint the merchant or salesman. (1)

If you were to inform the merchant or salesman at the beginning of the conversation that you are only calling to price an item but have no intention to purchase it, it would be permitted.

- B. B. It is permitted to price shop if your intention is to determine which merchant has the item you wish to purchase for the cheapest price.
- C. C. According to what we stated above, it is forbidden in both situations (Questions A and B) to ask the seller the price of the home or item, unless it has been previously made clear to the seller that there is no interest in actually purchasing the items being asked about.
- D. D. If a person is interested in purchasing a home for a lower price than is being asked, he may not call first or send other "potential customers" to haggle with the owner over the price, and then refuse to buy it because of the "exaggerated price", in the hope that the owner will then accept his lower bid.

This is forbidden even if the homeowner is actually asking an exaggerated price for his home, and the lower bid that will be offered is the actual market value.

Sources:

(1) The Gemara in Bava Metziah (58b) explains the Possuk of "V'Lo Sono Ish Ess Amiso" to be referring to Ona'as Devarim, verbally causing someone to suffer. The Gemara points out that such Ona'ah is more grave than financial Ona'ah, since there is no way to really compensate the person for physical, mental, or emotional suffering, whereas it is possible to compensate a person for financial suffering. This is also stated in the Shulchan Oruch, Choshen Mishpat (228:1-4).

The situations discussed in Answers A and B are explicitly discussed in the Gemara and Shulchan Oruch there.

However, if the person inquiring about the price is really interested in purchasing the item in question, and each store that he calls has an equal chance of receiving his business if they can quote a price that is right for him, we can not say that he is causing suffering to the merchant or salesman, since he is offering them the opportunity to receive his business if the terms are right. This is what business is all about! A merchant can not argue that he is only willing to provide prices to people if they will buy for him. However, he can argue that he has no interest in providing prices to people just calling to price, since this takes up much of his precious time that could be used for generating actual sales.

Article 2: Defect Disclosure by Rabbi Dr. Asher Meir, JCT Center for Business Ethics

When do I have to let customers know about defects?

Q. If I tell a customer the whole story when he first comes to look at a property, he may lose interest before he becomes aware of its advantages. How far can I put off disclosing some details?

A. One thing is certain: any flaws in a purchase item must be made known to the customer before closing the agreement. The Talmud teaches explicitly that any attribute of the item that is material to the seller must be made known to him, and the seller needs to take the initiative to disclose this information. Maimonides writes: "It is forbidden to cheat people in commerce or mislead them... If he knows of any defect in the sale item, he must disclose it to the buyer."⁽¹⁾ We see that Jewish law categorically rejects the norm of *caveat emptor*, "let the buyer beware," which places all responsibility for a satisfactory purchase on the buyer. The seller has to volunteer information that he knows is material for the buyer.

But our law also avoids the opposite extreme of placing the entire burden on the seller. The seller is not expected to be a fiduciary or agent for the buyer; it is perfectly legitimate for him to promote his own interest by trying to persuade the buyer to buy. While he may not mislead the customer into thinking that the product has qualities that it really lacks, the seller does have the right to present the genuine characteristics of the merchandise in a flattering way, which maximizes the customer's interest.

One way the merchant can do this is by giving the merchandise an attractive appearance. The Mishna states that it is forbidden to paint old utensils so that the buyer is misled into thinking that they are new, but by the same token we learn that painting them to make them more attractive, without passing them off as new, is permissible.⁽²⁾ So painting a house before putting it up for sale is okay, as long as the paint is not used to disguise defects such as decay.

Another legitimate selling tactic is to give the product an attractive name. The Talmud tells of an unusual case where the kosher butchers in a particular city had only non-kosher meat to sell. Since customers would normally assume the meat is kosher, the defect must be revealed to all customers, even non-Jewish ones, to avoid misleading them. However, the butchers are

not required to announce in a coarse way that the meat is "*treif*," meaning "carrion." Rather, they may use a more delicate expression, stating that this is "meat for the soldiers." ⁽³⁾ Any reasonable buyer will get the hint. When dealers sell "pre-owned cars" or computer sellers market "out of the box" items, they are taking advantage of this leniency. These expressions are more delicate than "used," but they definitely get the message across.

Finally, the seller is allowed to use some judgment in deciding when to reveal defects. The Talmud tells of a fellow who found it difficult to find a match because some people disdained his family background. The leading sage, Rav, advised him to go to another city where his background would not be known. As a consequence, people would not prejudice him as a marriage prospect based on this one characteristic. In other words, it would be permissible for him to put off disclosure until the "buyer" would have chance to evaluate his positive qualities.⁽⁴⁾

So if you are selling a beautiful property but some of the plumbing needs replacement, you don't have to disclose this fact immediately. You can allow the customer to be impressed by the positive aspects of the home first, and disclose the flaws afterwards when the customer will be able to consider them in the total context of the property's characteristics.

However, we have to be careful not to cross the line into bargaining in bad faith. If you wait until the closing to disclose the property's flaws, then you are taking advantage of the fact that the customer has already invested time and money in pursuing this particular home; to some extent you have him over a barrel. This is definitely a misleading and exploitative sales tactic. Rather, as soon as you feel that the customer has obtained a fair impression of the property's advantages, you should advise him of any material disadvantages.

SOURCES:

(1) Maimonides Mishneh Torah Laws of Sale 18:1. (2) Mishna end of fourth chapter of Bava Metzia. (3) Babylonian Talmud Chullin 94b (4) Babylonian Talmud Yevamot 45a.

Shiur 4: The Laws of the Land דינא דמלכותא דינא

תלמוד בבלי מסכת בבא קמא דף קיג עמוד א

...אמר שמואל: דינא דמלכותא דינא...

Shmuel said the laws of the kingdom are the law

רש"י מסכת בבא קמא דף קיג עמוד א

דינא דמלכותא דינא - וזה שקיבל את המכס מן המלך בדבר קצוב כך וכך לשנה אין גזלן.

This one that receives the tax from the king for a fixed amount is not a thief.

רשב"ם מסכת בבא בתרא דף נד עמוד ב

והאמר שמואל דינא דמלכותא דינא - כל מסים וארנוניות ומנהגות של משפטי מלכים שרגילים להנהיג במלכותם דינא הוא שכל בני המלכות מקבלים עליהם מרצונם חוקי המלך ומשפטיו והלכך דין גמור הוא ואין למחזיק בממון חבירו ע"פ חוק המלך הנהוג בעיר משום גזל.

All the taxes, rates and customs of the kingly laws that they regularly impose upon their kingdoms are halachically binding, since all citizens accept them upon themselves willingly the laws and rules of the king and therefore they become binding and the person who receives or takes the tax is not considered a thief.

ר"ן מסכת נדרים דף כח עמוד א

דינא דמלכותא דינא מפני שהארץ שלו ויכול לומר להם אם לא תעשו מצותי אגרש אתכם מן הארץ אבל במלכי ישראל לא לפי שא"י כל ישראל שותפין בה...

The law of the land is law because the land belongs to him and he could potentially say to someone 'if you don't uphold my laws I will exile you from my land', but this rationale is not relevant for Jewish kings since all Jews are partners in the land.

שולחן ערוך חושן משפט סימן שסט

[ה] נטלו מוכסין כסותו והחזירו לו אחרת, הרי אלו שלו, מפני שזו כמכירה היא וחזקתה שנתייאשו הבעלים ממנה, ואינו יודע בודאי שזו גזילה. ואם היה ותיק ומחמיר על עצמו, מחזירו לבעלים הראשונים. (יד) ובידוע שלא נתיאשו הבעלים, צריך להחזירו לבעלים בחנם) (מרדכי ר"פ הגוזל בתרא).

The tax-man took his cloathes and gave him others, they become his because it is considered as if it was sold and the original owner has given-up of ever getting it back and doesn't know that this is considered stealing. But if the original owner is old and is strict regarding his possessions, the good should be returned. (So too if you know who the original owner is.)

[ו] בד"א שהמוכס כלסטים, בזמן שהמוכס עובד כוכבים, או מוכס העומד מאליו, או מוכס העומד מחמת המלך ואין לו קצבה אלא לוקח מה שירצה. אבל מוכס שפסקו המלך ליטול דבר קצוב, (ואפילו צוה שישראל יתן יותר מעובד כוכבים, מכל מקום מקרי דבר קצוב לכל איש) (מהרי"ק שורש קצ"ה /קצ"ד/), והעמיד מוכס ישראל לגבותו למלך, ונודע שאדם זה נאמן ואינו מוסיף כלום על מה שגזר המלך, אינו בחזקת גזלן, משום דדינא דמלכותא דינא. ולא עוד אלא שהמבריא ממכס זה, עובר (על לא תגזול) (ויקרא יט, יג), מפני שהוא גוזל מנת המלך, בין שהיה מלך ישראל בין שהיה מלך עובד כוכבים.

What are we referring to? Only in a case that the tax-man functions as a thief, he is an idol worshipper or is a self-established tax man (the mob), but if the tax man was implemented by the king to collect a fixed amount (even if the amount for Jews is higher than that for non-Jews) and a Jew has been appointed to collect the tax and he is a trustworthy individual and won't add onto that amount is not considered a thief since the law of the land is law. More than this anyone who evades tax transgresses 'thou shalt not steal' since he is stealing from the king's portion-whether he is a Jewish king or not.

Practical Applications

- **A story regarding Rabbi Yaakov Kamenetsky captures the spirit which the Jewish person is supposed to have regarding paying taxes. Rabbi Kamenetsky was one of the most prominent Rabbis in America until his passing away in 1985. Once an appreciative congregant gave Rabbi Kamenetsky a silver kiddish cup for a present. Subsequently, it was discovered that Rabbi Kamenetsky took this cup to a silver smith for appraisal. It seemed unusual that such a distinguished person receives a gift and was preoccupied with determining its value. However, later was discovered Rabbi Kamenetsky's true intention in seeking the appraisal. The cup was received for performing Rabbinical services, therefore, Rabbi Kamenetsky decided that its value was taxable income. Rabbi Kamenetsky's diligence must be attributed to his giving intrinsic value to paying taxes. Fear of Internal Revenue Service citations could not motivate such extraordinary dedication.**
- **Paying or received payment off the books (Cash transactions)**
 - **Car Repairs, Tradesmen**
 - **Flea Markets**
 - **Second Hand Car Sales-Stamp Duty**
- **Fringe Benefits**
 - **Receiving presents in lieu of services**
- **Government Concessions/Benefits**
- **Paying casual staff**
- **Lying regarding income earned of tax return from overseas**

Additional Reading Shiur 4:

Article 1:

TAX AVOIDANCE VS. TAX EVASION

Q. A group of siblings are partners in a family business founded by their father. In order to avoid taxation, some advocate a complex tax scheme involving an offshore tax haven. One brother wants to know if this is ethically sound, and if not, how he should relate to the other siblings who are anxious to go through with the deal.

A. The basic distinction to be made is between "tax avoidance" and "tax evasion", between exploiting the law and flouting it. In this context, tax avoidance means minimizing taxes by taking advantage of legitimate provisions of the tax law; this can include taking a defensible position on an unresolved question of law. The line is crossed into tax evasion, which is a criminal activity, when clear tax obligations - including reporting requirements - are not met, without any sincere claim of legality.

How can the average citizen, who is not a tax expert, distinguish between a clever and prudent plan to save the family money, and a tax scam which is illegal, immoral, and may ultimately be extremely expensive? One way is to ask a reputable tax adviser. If such a professional is willing to advise you plainly that you needn't declare sheltered income, the adviser probably believes this action is clearly legal or at least solidly defensible. Conversely, an evasive answer such as "Nothing will happen to you if you don't report the income" or "I know that many people employ these methods" is a sign of danger.

Another guide is to consider the degree of secrecy advised. While discretion regarding assets and income is always modest and prudent, it is a bad sign if this crosses the line into "cloak and dagger" activities. Some examples: a scheme which requires wiring small amounts repeatedly instead of moving all the money at once; moving cash; using way stations in moving money from place to place, etc.

ADDITIONAL CONSIDERATIONS

In some countries or circles tax avoidance is perfectly acceptable; in others it is seen as something shady. If a person's personal instincts or social milieu frown on tax avoidance, then it is praiseworthy to avoid even legal schemes, but in this case it is best not to stand in the way of other family members who want to take advantage of legitimate ways of reducing their tax bill.

It is worth remembering that most tax loopholes are eventually closed. This means that the immense effort and expense involved in setting up a tax shelter may ultimately provide only a few years of tax savings. Furthermore, when these assets do become taxable the investor may have left himself with no arrangement to provide liquid income for tax payments. In addition, the sudden closing of a tax loophole may create a powerful and dangerous temptation to flout the law - a temptation worth avoiding.

Shiur 5: Contracts, Handshakes and Verbal Agreements

שולחן ערוך חושן משפט [רא: א-ב]

מכר לו בדברים בלבד, ופסקו הדמים, ורשם הלוקח רושם על המקח כדי שיהיה לו סימן ידוע שהוא שלו, אף על פי שלא נתן לו מהדמים כלום, כל החוזר בו אחר שרשם מקבל מי שפרע. ואם מנהג המדינה הוא שיקנה הרושם קנין גמור, נקנה המקח ואין אחד מהם יכול לחזור בו, וחייב זה ליתן הדמים.

If someone buys something, they determine the price and the purchaser puts a sign on the purchase for identification, even though no money has been given, anyone who reneges on the deal receives a 'Mi She'Parah'. If the custom of the place is that the person who places an identifying sign on the item acquires it and no-one can renounce the deal and he is obligated in the money.

וכן כל דבר שנהגו התגרים לקנות בו, כגון על ידי שנותן הלוקח פרוטה למוכר, או על ידי שתוקע לו כפו...

Likewise any manner that is used by merchants to do deals such as giving the supplier a token payment or a shake of the hand...etc. [This is only referring to merchant sales and not private sales.]

שולחן ערוך חושן משפט סימן רד:

כיצד מקבל מי שפרע, אוררין אותו בב"ד ואומרים: מי שפרע מאנשי דור המבול ומאנשי דור הפלגה ומאנשי סדום ועמורה וממצרים שטבעו בים הוא יפרע ממי שאינו עומד בדבורו. (וי"א שאומרים לו: הוא יפרע ממך אם אינך עומד בדיבורך (טור בשם הרא"ש). וי"א שאומרים לו ברבים.)

How does Mi She'Parah work? We curse him in the Beit Din and say "He who exacted retribution from the generation of the flood (of Noah) and for the generation of the Tower of Babel and from the people of Sodom and Ammorah and the Egyptians who drowned in the sea, He should exact retribution from one who doesn't stand by his word". (Some say that one should say "He should exact retribution from you because you didn't stand by your word. Some say this should be done in public.)

Can you ever renege on a deal?

שולחן ערוך חושן משפט סימן רד:ב

נתן דמי המקח ונאנס קודם שיקחנו, ואמר ליה: תן לי מקחי או החזר לי מעותי, אף על פי שיש עדים שאבד באונס ולא היה כח במוכר להצילו ולא נתרשל בדבר, הרי זה מחזיר הדמים ואין כאן מקום למי שפרע. וי"א דהוא הדין למי שחוזר בו מפני שהוא ירא להפסיד כל המקח.

The money has been given and there is a uncontrollable mishap before the deal is finished, the party can say "Give me my product or return my money", even though the seller is totally blameless he has to return the money. Some say that the law is the same from the purchaser's point of view if he is scared of losing the item.

שולחן ערוך חושן משפט סימן רד

(ז) הנושא ונותן בדברים בלבד, הרי זה ראוי לו לעמוד בדבורו אף על פי שלא לקח מהדמים כלום, ולא רשם ולא הניח משכון. וכל החוזר בו, בין לוקח בין מוכר, אע"פ שאינו חייב לקבל מי שפרע ה"ז ממחוסרי אמנה ואין רוח חכמים נוחה הימנו.

One who does business through verbal agreements should stand by his words even though he has received no financial compensation at all, nothing has been written down and no deposit left. If one does go back on the deal even though he is not obligated in "Mi She'Parah" he is considered untrustworthy and the sages are not pleased with such behaviour.

Imposing a discount

שולחן ערוך חושן משפט סימן רמב: א
הנותן מתנה מחמת אונס שאנסוהו ליתן אינה מתנה, ואפילו קיבל עליו אחריות נכסים בשטר... אי ידעינן באונס אינה מתנה.

Someone who is forced to give a present, it is not considered a present. Even if he accepted the responsibility contractually...if it is under duress it is not valid.

Paying for work done without an estimate

אהבת חסד
מצוי מאד שאחר הפעולה יש ויכוח בין האומן והבעה"ב בענין שילום השכר ואף לאחר ההסכמה חושב בנפשו שהוא נגזל מהבעה"ב, רק שאינו רוצה לריב עמו, אבל אינו מוחל בלב שלם. ובכה"ג מדינא ראוי לקבע את שכר הפעולה...

It is regularly found that after a tradesman has done his work there is an argument between the tradesman and the ba'al habayit regarding payment. Even after a solution has been reached, he (the tradesman) feels that he has been robbed by the ba'al habayit but he doesn't want to start a fight with him, but he doesn't forgive him completely in his heart. With cases like this it is fitting to try wherever possible to set a fee before the work has been done.

Additional Reading Shiur 5:

Article 1: Fishy Fine Print- Rabbi Asher Meir

Q. When a distant store had a sale on tuna, I made a special trip to stock up. But when I arrived, they showed me the fine print of the ad stating "limited quantity." Shouldn't this have been more prominent?

A. A well-known Talmudic discussion will provide the precise answer to your question.

Nowadays we know if the meat bought in a supermarket is kosher by the stamp of the supervising agency. But in the time of the Talmud, most meat was sold fresh and unpackaged. One method of "kosher certification" was to announce to the public any day there was any unkosher meat in the stores; the kosher customer knew not to buy meat from a regular store on these days.

The question arose how to word this announcement. The most effective way would be something with punch, like "Carrion today!" But such an offensive description would deter even non-Jewish customers who ordinarily buy non-kosher meat. Conversely, if the wording is too subtle it may fail to get the message across; then the customer is being misled.

In the end the agreed-upon wording was, "Meat for the soldiers today!" Any reasonable customer would figure out that meat for the soldiers in ancient Babylonia was probably not kosher; the Talmud tells us that if there are isolated individuals who can't figure this out they have only themselves to blame.

We can make a direct parallel to your case. The most effective way to communicate the quantity limitation would be to boldly state, "Up to six cans at a bargain price!" But this description bears an air of stinginess, which could put off the customer. At the other extreme, a vague statement like "Some restrictions apply" is just too vague. What is called for is something that is adequately informative for any reasonable consumer.

If the vast majority of those seeing the ad would suspect a quantity restriction (after all, these are fairly common) or would be likely to notice the fine print, then the merchant has taken reasonable means to inform the consumer without blunting his message. In this case, you have only yourself to blame for your haste. But if there is a significant minority of readers who are likely to be misled, then the merchant hasn't properly fulfilled his responsibility to be open with his customers.

The exact adjudication of such a case depends on the details of the case. How common are quantity restrictions in your area? How sophisticated are the shoppers? How small was the fine print? And so on. But the basic criterion remains the same: any substantive limitation in the advertiser's product has to be communicated in a way that is understandable to the large majority of reasonable customers.

SOURCE: Babylonian Talmud Chullin page 94.

Article 2: Let's Shake on It- Rabbi Asher Meir

Q. Recently I shook hands with a client who wants to lease some commercial space that has been vacant for a while, thus entering into an informal agreement. Days later a current tenant with an adjacent lease asked to rent the same space to expand her business! What do I do now?

A. You certainly have a perplexing ethical dilemma. On the one hand, you don't want to go back on even an informal agreement. On the other hand, you would like to be loyal to your current tenant, and garner the additional advantage of reduced paperwork and knowing that you have a reliable occupant.

Both of these dimensions are emphasized in Jewish tradition. One who goes back on an agreement, even when the agreement is not formally binding, is deemed untrustworthy. Yet at the same time, Jewish law gives neighbors conventional or even formal legal right to "first dibs" on adjacent properties.

Your first avenue should be to try and seek an equitable compromise, one advantageous for all concerned. Here is one possible direction: Keep in mind that the new tenant may not really insist on the specific lot he seeks to rent; a similar property may be just as acceptable to him since he is just starting out.

By the same token, the advantage of proximity may mean that your current tenant is willing to invest time and money in acquiring the abutting area.

Why don't you suggest that your current tenant look around for a comparable alternative property for the new client, perhaps throwing in an incentive like paying a month or two of rent? Then explain the situation and present the suggested compromise to the newcomer.

One of three outcomes may occur:

- 1 . If you are lucky, the newcomer will find the offer advantageous and agree to release you from your agreement. Now all sides are satisfied.
- 2 . Perhaps the newcomer will convince you that he has a decisive need for exactly the property you agreed to; the substitute is just not acceptable. In this case, you need to take your handshake very seriously. It is true that retracting an informal agreement is not necessarily untrustworthy if the situation is significantly altered, but an ethical businessperson should invoke this exception only on rare occasions. Consider very carefully if your situation justifies this.
3. One awkward possibility is that the newcomer rejects the offer but you feel that he is acting in bad faith; he really would be happy to accept a compromise but pretends to need your exact space in order to extract concessions. Even in this case you shouldn't retract your commitment frivolously, but given the combination of changed circumstances (that is, the new offer from your tenant) and evidence of bad faith on his part you can be a little more flexible than you otherwise would be. You don't have to let others exploit your desire to be trustworthy and to go beyond the letter of the law, as if they have you over a barrel.

We need to take our business commitments most seriously, even when we have legal loopholes to evade them. But with a bit of creativity it is often possible to find "win-win" solutions, or to provide a more solid ethical basis for retraction.

Send your queries about ethics in the workplace to jewishethicist@aish.com

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Shiur 6: Competition and Hasagat Gevul

תלמוד בבלי מסכת יבמות דף עח עמוד ב

ויאמר ה' אל שאול ואל בית הדמים על אשר המית הגבעונים...וכי היכן מצינו בשאול שהמית הגבעונים? אלא מתוך שהרג נוב עיר הכהנים שהיו מספיקין להם מים ומזון, מעלה עליו הכתוב כאילו הרגן.

And Hashem said to Saul and the House of Blood regarding having killed the Gibeonites...but did Saul kill the Gibeonites? Rather since he destroyed the Priestly city of Nov that provided them with food and water it is as if he killed them.

דברים פרק יט

(יד) לא תסיג גבול רעך אשר גבולו ראשונים בנחלתך אשר תנחל בארץ אשר יקוק אלהיך נתן לך לרשתה:

Don't encroach on your neighbours boundary that was established when you inherited the land that Hashem has given you.

תלמוד בבלי מסכת בבא בתרא דף כא עמוד ב

עושה אדם חנות בצד חנותו של חברו, ומרחץ בצד מרחצו של חברו, ואינו יכול למחות בידו, מפני שיכול לומר לו: אתה עושה בתוך שלך ואני עושה בתוך שלי!

A person can open his stores next to his friend's store, his bathhouse next to his friend's bathhouse and no-one may protest because he can say to him "You work in your area and I'll work in mine".

שולחן ערוך חושן משפט סימן רלז: א

המחזיר אחר דבר לקנותו או לשכרו, בין קרקע בין מטלטלים, ובא אחר וקנאו, נקרא רשע...וכל זה לא מיירי אלא כשכבר פסקו הדמים שביניהם, ואין מחוסרין אלא הקנין. אבל אם מחוסרין עדיין הפסיקה, שהמוכר רוצה בכך והקונה רוצה יותר בזול, מותר לאחר לקנותו...

A person who is about to hire or purchase something and someone else comes and jumps in front of him, he is called a wicked individual...this is only referring to when the actual money has been settled between them and all that needs to be done is the actual acquisition. But if no price has been fixed then someone else can do the purchase...

Stealing Customers

שולחן ערוך חושן משפט סימן רכח סעיף יח

מותר לחנוני לחלק קליות ואגוזים לתינוקות, כדי להרגילם שיקנו ממנו. וכן יכול למכור בזול יותר מהשער, כדי שיקנו ממנו, ואין בני השוק יכולים לעכב.

A shop-keeper may distribute sweets and nuts to kids in order to persuade them to come to his shop. A shop-keeper may likewise lower his prices in order that people purchase from him and no-one may protest.

ש"ת אגרות משה חושן משפט ח"ב סימן לא

הנה בדבר הטענות ... שראובן היה לו חנות של ספרים ותשמישי קדושה משנת תשי"ז ועתה שכר שמעון חנות סמוך לו ורוצה ג"כ לפתוח חנות של ספרים ותשמישי קדושה, וכאשר בשכונתם אין באפשריות להחזיק שני חנויות של ספרים ותשמישי קדושה, וכן נתברר לי ע"י אנשים משם היודעים מזה, ולכן יצא מאתי איך שיש בזה האיסור של יורד לאומנות חברו ואסור לשמעון לפתוח חנות בשכונה זו לספרים ותשמישי קדושה, אבל ראובן צריך לשלם לשמעון מה ששילם כבר בעד החנות...

Regarding the case where Reuven owned a Jewish book store and Shimon came and rented a store alongside him with intention to likewise open a similar store and it is not possible for the community to support two stores...I have ruled that it is forbidden for Shimon to open the store as it will take away the livelihood of Reuven, but Reuven has to pay for the outlay that Shimon has already put down...

Negative/Competitive Advertising

ספר חפץ חיים - הלכות אסורי לשון הרע - כלל ה

ז. וְדַע דְּכַשֵּׁם שֶׁאֲסוּר לְהוֹצִיא דְבָרָה עַל חֲבֵרוֹ - בְּן עַל חֲפָצָיו (י) אֲסוּר לְהוֹצִיא דְבָרָה (רַבֵּנוּ אֱלִיעֶזֶר מִמִּיץ בְּסֵפֶר יְרָאִים). וְזֶה מְצוּי מְאֹד, בְּעוֹנוֹתֵינוּ הַרְבֵּים, שֶׁחֲנֻנֵי אֶחָד מוֹצִיא דְבָרָה עַל נְכֵסֵי חֲנֻנֵי אֲחֵר וְכָל כֹּהֲאֵי גִּוְנָא מִפְּנֵי הַקְּנָאָה, וְזוֹ הִיא לְשׁוֹן הָרַע גְּמוּרָה מִדְּאוּרֵיתָא:

You should know that just as there is a prohibition of speaking badly about one's neighbour the prohibition exists with their possessions too. This is very prevalent, that one shop-keeper will spread slander about another shop-keeper's merchandise and so forth because of jealousy. This is a Torah prohibition of Lashon Harah.

Additional Readings Shiur 6:

Article 1: Rabbi Tzvi Spitz - Competition and Free Entry

Question:

Is it permitted to open a store in a neighborhood that already has a similar store, if by doing so a loss of revenue will be caused to the owner of the original store?

Answer:

- A. It is permitted for a person to open a store across from another store even though it will be selling the same products as the first store. This applies likewise to any service provider, such as a law office, a travel agency, etc. The owner of the store that was there first is not permitted to take any action that is not Halachically permitted to try to put the newcomer out of business.
 - B. A store owner is permitted to take steps to attract customers to his store, such as having sales, to offer free gifts to new customers, and to launch a major advertising campaign, even though it is clear that the new customers will come at the expense of the competing store. The reason this is permitted is because the other store owner is capable of doing the same.
 - C. It is prohibited for a merchant to try to put his competition out of business by offering goods or services at prices that other merchants are unable to match without going bankrupt. However, if the store is known to cater to a certain element of society that specifically only buys bargains, and the other stores cater to a different clientele, the merchant does not have to be concerned about this.
 - D. If the competing stores offer a similar product but are known to have different qualities of the same product, and some people prefer one brand over the other, one need not be concerned that the competition is unable to reduce their prices to match his.
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Sources:

The Gemara in Bava Basra (21b) states that there is no prohibition of Hasagas Gvul (lit. removing a neighbor's landmark, but understood by our Rabbis to also mean depriving another of their livelihood) to open a store in a neighborhood that already has an existing store selling the same items. Rashi explains that as long as the consumer is not obligated to patronize the second store, the owner of the first store can not accuse him of depriving him of his livelihood, because he can reply "Whomever chooses to come to me may do so, and whomever chooses to come to you may do so!" Although ultimately the consumers may decide to patronize the second store, since it is not clear that this will happen, we can not prevent the second merchant from opening on the basis that he is indirectly damaging his competition.

Although this ruling is not so simple regarding free entry for foreign competition, this would only be a problem if the foreign competition were not paying local taxes. In this situation, the local merchants would be permitted to argue that it is unfair that the out of town merchant benefit from the local infrastructure without paying taxes. However, in most societies today out of town merchants also pay local taxes, and the local merchants could not prevent him from opening his store on this basis. This is stated in the Shulchan Oruch (Choshen Mishpat 156:5), and is also discussed in the Pischei Teshuva there (3).

However, if it is clear that the customers will now only patronize the new store, we prevent the second store from opening based on the fact that he is indirectly damaging the competing merchant (Garmi). This is stated by the Teshuvos HaRema in the name of the Aviasaf, and is quoted by the Chassam Sofer (Choshen Mishpat 79), and in the Igros Moshe (Choshen Mishpat Vol. 2 , Siman 31). Therefore, we do not allow a merchant to put his competition out of business by lowering his prices to the extent that it is not feasible for the competition to remain in business. However, if he wishes to slash the prices in a manner that others can compete with if they wished, thus ultimately benefitting the consumer, "May he be blessed!", as is stated by the Chachamim in the Mishna in Bava Metzia 4:12.

Article 2: Costly Competition- Rabbi Asher Meir

Q. We found a way to attain an overwhelming cost advantage over our competitors. Is it ethical for us to lower prices so much that they are left with almost no business?

A: The issue of fair business competition is an ancient one, which is extensively discussed in the Jewish sources.

The most prominent insight we observe is that "fair" competition does not only mean that the rules are fair, but means above all that the rules apply equitably to all players. The Mishna states: "Rebbe Yehuda says, a storekeeper should not distribute treats to children, since this accustoms them to buy from him; but the Sages permit it. And [Rebbe Yehuda says] that he shouldn't undercut the going price; but the Sages said this is praiseworthy."

The Talmud explains why the authoritative majority opinion -- that of the Sages -- finds no fault with such inducements: "He can say, I give out nuts, you can give out prunes." (1)

In other words, attracting customers by providing an advantage in merchandise or price is permissible and even praiseworthy, provided the merchant is not exploiting any unfair advantage unavailable to competitors.

In your case, all producers are constantly seeking ways to cut costs, and so you can say to your competitors, "I saved money on raw materials; you go ahead and save money on payroll." The fundamental ability to compete is common to all sellers in your market.

Yet many authorities added a caveat to this principle: it is appropriate to draw customers, but not to the extent of depriving a competitor of his livelihood entirely. (2) The Jewish sages throughout the generations were passionately concerned to maintain each individual's ability to support himself at some minimal level.

This approach isn't in complete harmony with some modern ideologies. Free-market advocates inform us that the growth and development of the market necessarily involves business failures, and that ultimately the entire system works more efficiently when there is no interference in this process. And there is much truth in this insight, and much to be gained from the action of the "invisible hand" of competition.

But practically speaking, there are some individual instances where the hardship of a business failure really outweighs the economic benefits to the market. Consider this: Almost any economics professor will tell you that keeping an inefficient business in operation by limiting competition amounts to no more than a tax on consumers. Perhaps the gross income of this inept firm is a million dollars a year; ten percent of this is just a de facto subsidy paid by customers in the form of inflated prices for the firm's product. Result: \$100,000 of consumer money wasted. This is undoubtedly correct, and as an economics professor myself I teach the same thing.

But sometimes we need to ask ourselves what the alternative is. Perhaps right now there are no employment opportunities in the region of the failing plant. If the company goes out of business the burden on the dole will be five hundred thousand dollars a year! Result:

- \$500,000 wasted, instead of one hundred thousand.
- A tax imposed on all citizens, instead of one that applies only to those who voluntarily choose to buy this firm's product.
- Scores of frustrated and idle unemployed who feel they are not contributing to society, instead of scores of busy workers who are proud of their work, even if they are aware that there are other, competing firms which may do a better job.

Now the fact remains that in today's business environment, drawing the line at driving a competitor out of business is *not* in the "rules of the game", and in most cases people *can* find an alternative livelihood.

So in all probability is it not unethical for you to fully exploit your cost advantage, thus providing a substantial benefit to your workers and to the consumers in your market.

But before you adopt this approach, take a minute to look at the bigger picture. If you can make a similar return with more gentlemanly competition, which does not deprive your competitor of his livelihood, this is a praiseworthy and ethical course of action -- one you should carefully examine and consider.

SOURCES: (1) Babylonian Talmud Bava Metzia 60a. (2) Bava Batra 21b.