

FAIR COMPETITION: SELLERS

השגת גבול

In the previous learning session we explored the issue of competition in business, specifically in regards to encroaching on another's purchases or acquisitions (“אני מהפך בחררה”). We'll now proceed to turn to the other side of the coin: encroaching on another's sales.

On the one hand, everyone is certainly entitled to make a living for oneself. On the other hand, one needs to always take in to account the repercussions of his actions as it affects those around him. As it pertains to competition amongst businesses, there may indeed be a “red line” which is unwarranted given its detrimental financial effects on others. This topic is known in *halacha* as “השגת גבול” (literally ‘encroaching on borders’).

In this learning session we'll explore the following issues:

- **May one open a business in a locale in which that business already exists?**
- **What is the halacha regarding foreign company's that open local branches?**
- **Do we take in to account the improved product-quality, for the customers benefit, which results from competition?**
- **May one attempt to lure customers away from a competitor?**
- **What are the parameters of halachically acceptable advertising?**

1 – BASIC SOURCES: PROTECTING THE 1ST SELLER

Source 1. Bava Basra 21b

<p>Rav Huna said: There was a certain resident of an alleyway who set up a mill in the alleyway and earned his living grinding grain for people. Subsequently another resident of the alleyway came and set up a mill next to his. The halacha is that the first one may prevent him from doing so if he wishes, as he can say to him: You are disrupting my livelihood!</p>	<p>אמר רב הונא האי בר מבואה דאוקי ריחיא ואתא בר מבואה חבריה וקמוקי גביה דינא הוא דמעכב עילויה דא"ל קא פסקת ליה לחיותי</p>
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Rav Huna establishes a basic principle regarding encroaching on another’s business: once one has an established business in a particular locale, then others – even neighbours – are prohibited from establishing a competing business in that region. This is called “השגת גבול” (lit. encroaching on borders).

The *reason*, says Rav Huna, is, that if the 2nd seller would be allowed to do so, he’d be damaging the 1st sellers’ livelihood.

However, there are others that disagree, as the Gemara continues:

Source 2. Bava Basra 21b

<p>The Gemara raises an objection from a baraisa: <i>A MAN MAY ESTABLISH A SHOP ALONGSIDE THE SHOP OF ANOTHER, AND A BATHHOUSE ALONGSIDE THE BATHHOUSE OF ANOTHER, AND THE OTHER CANNOT PROTEST, BECAUSE THE NEWCOMER CAN SAY TO HIM: YOU OPERATE IN YOUR SPACE, AND I OPERATE IN MY SPACE.</i></p> <p>(The Gemara answers): This entire matter is a dispute between tanna’im, as it is taught in a baraisa: <i>THE RESIDENTS OF AN ALLEYWAY CAN COMPEL ONE ANOTHER TO AGREE NOT TO ALLOW AMONG THEM IN THAT ALLEYWAY A TAILOR, A TANNER, A TEACHER OF CHILDREN, NOR ANY TYPE OF CRAFTSMAN. THEY CAN BAR OUTSIDE CRAFTSMEN FROM PLYING THEIR TRADE IN THAT ALLEYWAY. BUT ONE CANNOT COMPEL HIS NEIGHBOR TO REFRAIN FROM PRACTICING A PARTICULAR OCCUPATION THERE. RABBAN SHIMON BEN GAMLIEL SAYS: ONE CAN EVEN COMPEL HIS NEIGHBOR NOT TO CONDUCT SUCH WORK IN THE ALLEYWAY.</i> Rav Huna holds in accordance with the opinion of Rabban Shimon ben Gamliel. [Rashi]</p>	<p>מיתבי עושה אדם חנות בצד חנותו של חבירו ומרחץ בצד מרחצו של חבירו ואינו יכול למחות בידו מפני שיכול לומר לו אתה עושה בתוך שלך ואני עושה בתוך שלי</p> <p>תנאי היא דתניא כופין בני מבואות זה את זה שלא להושיב ביניהן לא חייט ולא בורסקי ולא מלמד תינוקות ולא אחד מבני בעלי אומניות ולשכנו אינו כופיהו רשב"ג אומר אף לשכנו כופיהו</p>
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Although Rav Huna’s principle of “you’re damaging my livelihood!” is certainly legitimate – and, to that extent, all opinions agree that outsiders¹ may not encroach on ones previously established business – the dissenting opinion of the Rabbi’s maintain that there is an additional factor that must be taken in to account: “You do yours, & I’ll do mine!”

➔ In other words, in so far as the 2nd prospective seller *also* lives in that local, he too is entitled to set up a competing business for his own livelihood.

¹ Regarding the parameters of what’s considered an “outsider”, see section 2 below.

To summarize:

**SETTING UP A BUSINESS IN A COMMUNITY WHERE THAT
BUSINESS ALREADY EXISTS:**

<u>Scenario</u> <i>Where is the competition coming from?</i>	<u>Halacha</u> <i>Can the 1st business protest?</i>
1) Outside	<u>Unanimous:</u> - The locals may drive him away
2) Inside	<u>Disagreement:</u> - The Rabbi's hold that the locals may not prevent the 2 nd seller - Rav Huna holds that the locals may drive him away

The Gemara proceeds to expand and clarify the parameters of the Rabbi's opinion:

2 – CLARIFYING PARAMETERS: DIFFERENT CITIES

Source 3. Bava Basra 21b

<p>Rav Huna, son of Rav Yehoshua, says: It is obvious to me that a resident of one town can prevent a resident of another town from establishing a similar business in the locale of the first individual. (However, if he pays taxes in that first town, he cannot be prevented from doing business there, as he too is considered a resident of the town.) On that other hand, the resident of an alleyway cannot prevent a resident of the <u>same</u> alleyway from practicing a particular trade there. In accordance with the opinion of the Rabbis in the baraisa, and contrary to the opinion of Rabban Shimon ben Gamliel. [Rashi]</p> <p>(With these conclusions in mind), Rav Huna, son of Rav Yehoshua, raises a question: With regard to a resident of one alleyway protesting about a resident of <u>another</u> alleyway conducting business there, what is the halacha?</p> <p>No answer was found, (and the Gemara states that the dilemma stands unresolved).</p>	<p>אמר רב הונא בריה דרב יהושע פשיטא לי בר מתא אבר מתא אחריתי מצי מעכב ואי שייך בכרגא דהכא לא מצי מעכב בר מבואה אבר מבואה דנפשיה לא מצי מעכב</p> <p>בעי רב הונא בריה דרב יהושע בר מבואה אבר מבואה אחרינא מאי</p> <p>תיקו</p>
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The inquiry of Rav Huna the son of R' Yehoshua (**not** to be confused with Rav Huna from source 1!) pertains to the precise parameters of the Rabbi's definition of an "outsider" (who is prohibited from encroaching on a local market): does this mean specifically from another city, or even someone from a neighbouring community within the same city??

Taxes

However, if the 'outsider' pays the local taxes, then he's actually considered a 'local'. The logic of this, of course, is in line with the Rabbi's general reasoning of "You do yours, and I'll do mine": in so far as he pays the local taxes, it's considered 'his' locale!

Final Ruling

The unanimous² halachic ruling of this disagreement is in accordance with the Rabbi's: although an 'outsider' may not encroach on a local pre-existing seller's market, ***an 'insider' is entitled to make a living for himself, even at the expense of a previously existing seller/business.***

That having been said, it's not quite so simple...

² רי"ף ורא"ש מטאם דרבים כנגד יחיד, ותוס' מטעמא דבתראי

3 – STRINGENCIES

The Gemara proceeds to describe several scenarios in which according to all opinions there exists of problem of גבול השגת:

#1 – Fish & Steady Customers

Source 4. Bava Basra 21b – Fish Traps [Rashi in small font]

Let us say that a *baraisa* supports the opinion of Rav Huna: *ONE MUST DISTANCE FISH TRAPS FROM FISH AS FAR AS THE FISH TRAVELS. And how much is this distance? Rabba bar Rav Huna says: Up to a parsa.* If a fisherman had cast his eye on a fish, and identified its location, the other fisherman must distance themselves from there. *We see from here* that even though the 1st fisherman does not yet have the fish in his possession, even still the other must distance themselves, for he's entitled to claim "you're damaging my livelihood!"

The Gemara responds that this is no proof: Perhaps fish are different, as they look around. The fish turn their attention, and scurry towards the place where they see food, so, since the 1st fisherman has already identified a particular location and has placed a net and food, and it's therefore certain that the fish will become trapped, it's considered as if they're already in his possession. Therefore, the subsequent fisherman is damaging him. Here, though, "whoever comes to me will come, and whoever goes to you will go!"

לימא מסייע ליה מרחיקים מצודת
הדג מן הדג כמלא ריצת הדג וכמה
אמר רבה בר רב הונא עד פרסה
צייד שנתן עיניו בדג עד שהכיר חורו מרחיקין שאר
ציידין מצודתם משם אלמא אע"ג דלא זכה ביה ולא
מטא לידיה מרחיקין משם דא"ל קא פסקת לחיותי

שאני דגים דיהבי סייארא נותנין עין
בהבטם להיות נוהגים לרוץ למקום שראו שם מזונות
הילכך כיון שהכיר זה חורו ונתן מזונות בתוך מלא
ריצתו בטוח הוא שילכדנו דה"ל כמאן דמטא לידיה
ונמצא חבירו מזיקו אבל הכא מי שבא אצלי יבא ומי
שבא אצלך יבא

Since the nature of fish (and, perhaps, animals in general) is that once they've detected food, they will inevitably come to the traps, this situation is viewed as if the 1st fisherman has already obtained the product/customer. In this sort of situation, everyone – even the Rabbi's – agree that there is a violation of גבול השגת.

What can be extrapolated from this Gemara is a larger, and common grand principle: *steady customers*.

- When a customer or client is steady and unwavering in his patronage of a particular store or service provider, a different proprietor or service provider may *not* attempt to persuade that customer/client to abandon his first loyalty and switch to him.³
 - This sort of loyal relationship is common with a physician, lawyer, insurance broker, local grocer, and even a barber.

³ כ"כ בפירושו בספר שערי משפט שער השגת גבול סי' לה-לט, ויצא מדברי הרמ"א סי' קנ"ו ס"ה, מרדכי ב"ב סי' תקט"ו בדין "מערופי"א" (מלשון יערוף כטל, דהיינו הכנסה בטוחה שאין הגוי רגיל אצל אחרים כלל), וע"ע חת"ס חו"מ סי' ע"ט

#2 – Taking Away His Entire Livelihood

Nearly 500 years ago, a question was presented to one of the preeminent *ashkenazic* halachic authority's of the day, Rabbi Moshe Isserles, the "Rema". One of the other great sages of the era, R' Meir from Padwa, undertook to print a new version of Maimonides magnum opus, the "Mishna Torah", for public sale. As the project was nearing completion, after investing much time and resources, another individual, who happened to be one of the wealthiest individuals in the land, decided to publish the books himself, but sell them for much less! The question was: is this allowed?

The Rema proceeded to explain that according to Halacha, this sort of competition is entirely prohibited, for 4 reasons all firmly rooted in talmudic sources and reasoning. The 1st of those 4 reasons, which is pertinent to our discussion, is as follows:

Source 5. Halachic Responses of the Rema [שו"ת הרמ"א סי' י']

The 1st and most simple principle comes from the Gemara in Bava Kamma 21b: "*Rav Huna said: There was a certain resident of an alleyway who set up a mill in the alleyway and earned his living grinding grain for people. Subsequently, another resident of the alleyway came and set up a mill next to his. The halacha is that the first one may prevent him from doing so*" – this Gemara implies that even if the 1st seller is aware, even still he can prevent him. What emerges in front of us, regarding our scenario, is that the 2nd printer is not allowed to print whatsoever...

Now even though the Rif and Rosh have already ruled *not* like Rav Huna (since he's the minority opinion), even still I can resolve the matter, for behold, The Mordechai brings a halacha in the name of Aviasaf: "*An alleyway which is enclosed on 3 sides, and open only on 1 end, and Reuven lives on the inside towards the closed end. Then, Shimon comes to live at the edge at the open end of the alleyway, thereby creating a situation whereby customers cannot enter the alleyway without passing by Shimon's store – the halacha is that he's prohibited from doing so, like Rav Huna.*" Apparently, it seems from here that the halacha is like Rav Huna, in so far as a proof was brought from him!

By force, we have to make a distinction and say that when loss is inevitable, such as in the case of the alleyway where he'll certainly ruin Reuven's business, then everyone agrees that the halacha is like Rav Huna.

Therefore, in our case as well, the loss is inevitable: since the 2nd printer is capable of announcing that he will sell his books at a greatly reduced price than the great sage (since he's one of the wealthiest people in the land), and whoever sees this will certainly come to buy from him.

היסוד הפשוט הראשון הוא בפרק לא יחפור (דף כ"א): אמר רב הונא האי בר מבואה דאוקי ריחיא ואתא בר מבואה חבריה וקא מוקים גביה דינא הוא דמעכב עליה ומשמע מדקאמר ואוקי גביה שעשה דבר זה מידיעתו ואפ"ה יכול לעכב עליו, אם כן הרי לפנינו שמדינינו אין לו ליעניטלומר שני לדפוס זה כלל...

ואע"ג שהרב אלפסי והרא"ש פסקו דלא כרב הונא דקים ליה כיחידאי מכל מקום אומר אני שיש להתיישב בדבר שהרי המרדכי מייתי בשם אביאסף וז"ל מבוי הסתום משלשה צדדים רק בצד אחד הוא פתוח לבנות בו ודר ראובן אצל סופו הסתום ובא שמעון לדור כנגד הצד הפתוח שאין כותי יכול ליכנס למבוי אם לא שיעבור על פתח שמעון דינא הוא דמעכב עליו **כדרב הונא** עכ"ל, א"כ משמע שהלכתא כוותיה דרב הונא מדמייתי ראייה מיניה, אלא ע"כ צריכין אנו לחלק בדבר דרב: **היזקא** כגון הכא גבי מבוי שבודאי יזיק לא כ"ע **מודו דהלכבא כרב הונא** ואם כן בנדון דידן נמי בריא היזקא הוא כי היעניטלומר השני נתן להכריז שכל ספר יוזיל זהוב טפי מהגאון ומי ראה זאת ולא יבא אליו לקנות ממנו ויכול הוא להוזיל כי הוא מעשירי הארץ

The Rema introduces a principle called "ברי היזקא" – clear & inevitable damage. Although the Rabbi's maintain that there is no violation of השגת גבול so long as one is a resident of that locale, however, if by doing so the previously existing business will be shut down entirely⁴, then *everyone* agrees that this is prohibited.

⁴ גדר זה של "ברי היזקא" מצאתי בספר שערי משפט שער השגת גבול סי' ל"ג ע"פ החת"ס בסי' ע"ט, וכן שמעתי ממור"ר הגרש"מ שליט"א

4 – LENIENCIES

The Gemara proceeds to provide a number of lenience's, where there is no violation of גבול השגת גבול:

#1 – Advertising

Source 6. Bava Basra 21b

Ravina said to Rava: Shall we say that Rav Huna spoke in accordance with the opinion of Rabbi Yehuda? As we learned in a mishna (Bava Metzia 60a): *RABBI YEHUDA SAYS: A STOREKEEPER MAY NOT HAND OUT TOASTED GRAIN AND NUTS TO CHILDREN WHO PATRONIZE HIS STORE, DUE TO THE FACT THAT HE THEREBY ACCUSTOMS THEM TO COME TO HIM AT THE EXPENSE OF COMPETING STOREKEEPERS. AND THE RABBIS PERMIT DOING SO.* This indicates that according to the opinion of Rabbi Yehuda, all forms of competition are prohibited, which would include the scenario concerning the mill. [Rashi]

(The Gemara answers): You may even say that Rav Huna holds in accordance with the opinion of the Rabbis. The Rabbis disagree with Rabbi Yehuda only there (in regards to advertising), as the storekeeper can say to his competitor: "If I distribute walnuts, you can distribute almonds!" But here (in the case of encroaching on another business), even the Rabbis concede that the owner of the first mill can say to him: You are disrupting my livelihood, as beforehand whoever required grinding came to me, and you have provided them with another option.

א"ל רבינא לרבא לימא רב הונא
דאמר כרבי יהודה דתנן רבי יהודה
אומר לא יחלק חנוני קליות ואגוזין
לתינוקות מפני שמרגילן אצלו
וחכמים מתירין

אפילו תימא רבנן עד כאן לא פליגי
רבנן עליה דרבי יהודה התם אלא
דאמר ליה אנא קמפלגינא אמגוזי
את פלוג שיוסקי אבל הכא אפילו
רבנן מודו דא"ל קא פסקת ליה
לחיותי

A store owner is allowed to engage in tactics to attract customers, such as offering candies to children, giving out balloons with the purchase of a pair of shoes, or selling some items at a very low price to woo clients⁵, and his competition are not entitled to object. Similarly, he may offer bonuses such as credit, gifts, and coupons. These practices are permitted even to a new storeowner.

⁵ But not to the extent that will cause the 1st business to shut down, as explained previously.

#2 – Torah Education

Source 7. Bava Basra 21b

<p>Rav Yosef said: Rav Huna concedes with regard to those who teach children that one cannot prevent him from working</p> <p>(The Gemara challenges): But let us be concerned lest the teachers will thereby come to be negligent!</p> <p>He answered: Jealousy among teachers increases wisdom. The teachers will be more diligent with their trade in so far as they'll be cognizant of the other teachers. [Rashi]</p>	<p>אמר רב יוסף ומודי רב הונא במקרי דרדקי דלא מצי מעכב</p> <p>וניחוש דילמא אתי לאיתרשולי</p> <p>אמר ליה קנאת סופרים תרבה חכמה שמתוך כך יזהרו באמונתן שיראו זה מזה</p>
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This Gemara presents us with somewhat of an anomaly: even in scenarios where גבול השגת should seemingly apply, Torah education for children has its own separate parameters.⁶

Why? Because, although in other realms of business, healthy competition typically raises the quality of the product for the customers, the prohibition of גבול השגת teaches us that this is not justified if it comes at the expense of the 1st seller's livelihood. However, **higher quality Torah learning is so important, and of such paramount value, that it trumps the 1st individual's livelihood!**⁷

The Chazon Ish [R' Avraham Yeshaya Karelitz], in his classic book on ethics and halacha, *Emunah v'Bitachon*, elaborates on the profundity of this concept:

⁶ Nonetheless, as we mentioned earlier, a Torah teacher may *not* offer his services as a private tutor if as a result he will dismiss the present teacher, nor to the principle of the school, if consequently, the principle will fire the current teacher.

⁷ כן הסביר לי מו"ר הגרש"מ שליט"א, והוסיף דהואיל והתורה מורשת קהילת יעקב אין לצמצמה בשום אופן. עוד אמר לי בשם האג"מ זצ"ל דדין זה של קנאת סופרים תרבה חכמה הוא דוקא אם בודקין את המלמדים החדשים לברר אם באמת הם מעולים יותר מן הראשונים ע"כ, אבל זה חדוש ולהלכה לא אזלינן הכי ולעולם כל הרוצים להתחיל בית ספר חדשה מתירין להם.

5 – MORALITY & HALACHA

Chazon Ish, Emunah U'Bitachon Chp. 4

Halachic rulings sometimes have ramifications in the realm of morals, and it is the halacha that sometimes in effect sets moral standards. For instance, in Bava Basra 21b it says that when it comes to schoolteachers, there can be no claim of infringement on ones livelihood. If there are teachers working in a certain city, and suddenly other teachers come from another place and start teaching there, it is the nature of people not to be satisfied with the old and familiar, and everyone starts sending their children to the newcomers, impinging on the livelihood of the local teachers.

The injured teachers begin to hate the newcomers who are threatening their livelihood, and that hatred causes them to think up all matters of pretexts, faults and libels to use against them, until they get used to speaking ill of them. Things deteriorate to the point that they begin to libel the newcomers falsely, and to awaken the feelings of mercy of the townspeople against their seeming cruelty; quarrels and fights follow, and sometimes the locals take revenge on the newcomers to the best of their ability.

Now, all of these actions would be clean of any sin or transgression, if according to halacha the locals were indeed allowed to hinder the newcomers; if so, the newcomers would be the sinners, as they would be going against the halacha that was told to Moshe Rabbeinu on Har Sinai. Under such circumstances, there would be no prohibition against conducting such a struggle against them; the hatred would not be causeless, the prohibition against slander would not apply, and indeed it would be a sacred battle – a legitimate, even halachically commendable battle aimed at setting things right religiously.

But now that halacha has decreed that “competition between scholars increases wisdom [in both parties],” and this principle takes precedence over the livelihood of individuals, the newcomers are acting in accordance with the law; and those who impose them are attacking innocent people; when they hate them in their hearts, they are transgressing the prohibition against hating ones fellow Jew, and when they speak evil of them, they are transgressing the prohibition of slander; when they congregate people together for the purpose of quarrelling, they are transgressing the prohibitions of not being like Korach [who congregated people in opposition to Moshe Rabbeinu and Aharon HaKohen], and when they take revenge on them by refusing them favors, they are transgressing the prohibition against taking revenge.

When it says in the Gemara that Rav Huna agrees that in the case of schoolteachers one cannot hinder the competitors, many moral rules are included in this halacha, and result from it.

One of the obligations of morality is that a person should try to instill in his heart the great principle: in any case in which one finds oneself in opposition to a fellow Jew, one has to weigh the matter in accordance with halacha, in order to define the persecutor and the persecuted. The study of perfecting ones character traits [mussar] instills in one love and pity for the persecuted, and severe condemnation of the persecutor; how terrible is, then, the danger of misidentifying the persecutor as the persecuted and vice versa! The only way to know the truth is to study the books of the halachic authorities – those books of rulings that we have received from the great sages of the past.

All the diligent study and efforts to acquire good character traits will be of no help if one has not acquired this principle; for when one disagrees with his fellow, one is certain to decide the matter in accordance with ones natural tendencies, and even if these have been refined and perfected, often they will not be in accordance with the halacha that was handed down from Heaven.

Examples

1. Mr. Klein has a small “mom ‘n pops” grocery store, “Zeidy’s Struddles,” with a steady local clientele. A much larger chain store called “Kosher King” is engaging to open a competing store in the same plaza as Zeidy’s Struddles. *Is this potentially a violation of גבול השגת? If yes, is there anything that Savours could do to justify themselves (i.e. offer a compensation plan, etc...)?*
2. For years, Mrs. Oldheimer’s quaint little house down on Old Pine boulevard has been the address where parents entrust their precious little children for daycare. One of the younger ladies in the community, Mrs. Adlestein, has been dreaming of opening her own daycare, but has been reluctant to do so, so as to avoid any issues of encroaching on Mrs. Oldheimer’s livelihood. Finances are getting tight in the growing Adlestein home, though, and she has her own livelihood to manage now. *What considerations will Mrs. Adlestein need to take in to account in order to not violate גבול השגת?*
3. Rafi owns a successful accounting firm, with a number of loyal customers. Ziffmen’s accounting firm would very much like to lure some of these clients away. *What methods of attracting customers would be acceptable, not acceptable, or questionable?*
4. Reuven drives by a bus stop in his car and notices Shimon waiting there for the bus. *Is he allowed to pick up Shimon and drive him to his destination, if as a result of his gesture the bus company will lose the anticipated income from Shimon?*
5. In some schools, students must purchase textbooks at their own expense, and these textbooks are often quite costly. In recent years, free book-lending *gemachim* have formed in many Jewish communities (particularly in Israel), either privately run or under the aegis of the schools, which organize second-hand sales and exchanges of these textbooks. This wonderful service provides significant relief to large families on a tight budget, for whom the textbook expense was always daunting. The question is: *In denying business to the textbook publishers, do these gemachim violate any of the prohibitions of גבול השגת?*⁸

⁸ Examples 4 & 5 adapted from “Money in Halacha” by R’ Yitchok Silver, with the authors permission.