

PIRCHEI SHOSHANIM SHULCHAN ARUCH LEARNING PROJECT©

Business Ethics

Lesson 1

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Anei Hamehapeich Becharara 1: One who Purchases an Object which is Being Pursued by Someone Else

Siman 237, Seif 1

Introduction

We will begin this series with a class of laws which serve as an excellent illustration of the divergence between **Torah** ethics and modern-day business practice. We will discover how business practice condones and perhaps, even admires the behavior of someone whom the **Torah** deems a *rasha* (a wicked individual). It is very important for us to be aware of this distinction since our behavior is so influenced by the environment in which we live that people often violate this prohibition without even being aware of their offense.

The topic is known as *Anei hamehapeich Becharara*, (literally, a poor person who was attempting to take possession of a cake). The setting for the prohibition is that one person (In the case described by the **Talmud** he is poor, but we will see that generally, this is not necessary) is on the verge of acquiring an object. At that stage, another

individual intervenes and attempts to acquire the very same object. This *chapter* teaches us that often the second individual is considered to be a evil person (*Rasha*) for acting in this manner.

Our approach will be to study the source of this Jewish Law (*halacha*) in the **Gemara** and record the key opinions of the earlier Sages (**Rishonim**)¹. We will then record the **Shulchan Aruch (Code of Jewish Law)** and explain it by bringing in the comments of the key commentaries. We will conclude with two practical applications.

The legal background for this Law (*halacha*) is that one who takes an object, which is owned by another individual (meaning any object that has been formally and legally acquired by someone by virtue of having performed an act of acquisition (*kinyan*) on it, is a thief. If, however, the object has not been legally acquired, one who takes it is not quite a thief. Nevertheless, this section teaches us that in many cases the second individual's actions are illegal.

The Commentaries are generally affectionally referred to by the name of the particular commentary they authored or by a shortened name often times derived through the use of the letters of their names, such as Rashi (R' Shlomo Yitzchaki) or Rabbeinu Tam (R' Shlomo ben Meir). They were all very Holy individuals who are revered and respected generations after their passing. Every word was well thought of before being spoken and all that they spoke is held in high regard whether or not the opinion is the one which is ultimately followed in determining the final law. As in secular law the facts of the case and the thought process in applying the proper law to the facts is the all important factor in determining the final legal conclusion. Therefore, the all important analysis is a critical factor in determining ultimate truth and thereby being able to compensate the wronged party.

The Oral tradition of the Talmud further elucidated through the Code of Jewish Law (**the Shulchan Aruch**) and its commentaries provide us with the guide to truth in righting the wronged. We will give a brief biography of the commentators that we refer to so all can appreciate the time frame and greatness of each of these distinguished individuals and the difficulty they faced in composing their great works. Many of their lives were in danger and in several instances they died for the furtherance of ultimate truth. Much of our secular law today has a basis in traditional Biblical or Torah law and the way of thinking should provide much needed light to an otherwise dark world.

¹ The Rishonim – guided the Jewish Nation from the tenth through the fifteenth centuries. They laid the cornerstone and created the structure for learning both the Scriptures and application of Jewish Law (Halacha) for all subsequent generations.

We will begin by studying the source for this Law, which is a brief section of Talmud in Tractate Kiddushin 59a.

Source

Rav Gidel was attempting to purchase a plot of land. Rav Abba pre-empted him and acquired the plot. Rav Gidel complained to Rav Zaira. Rav Zaira brought R. Gidel's complaint to Rav Yitzchak Nafcha.

Rav Yitzchak replied that he will discuss the issue with Rav Abba when the latter visits him on yom tov. When Rav Abba arrived, Rav Yitzchak indeed queried, "How does one view someone who pre-empts another person's attempted purchase?"

Rav Abba replied, "He is called a wicked person."

Rav Yitzhak queried, "In that case, why do you engage in such activity?"

Rav Abba replied, "I was unaware that another person wished to purchase the field."

Rav Yitzchak asked, "Perhaps, now you will sell it to Rav Gidel?"

Rav Abba replied, "I will not sell the field since it is a bad omen to sell the first field one acquires. However, I am prepared to give it as a present to Rav Gidel."

Rav Gidel said, "I don't want presents. The verse (posuk) says one who hates presents will live longer."

The Gemara describes how the Amoraim² finally reached an arrangement whereby neither rabbi used the field but rather it was made available to all the rabbis. It was dubbed: "*Ar'a Derabbonon* (the Land of the Rabbis)."

The conclusion that we draw from this incident is that one who purchases a field, which someone else had already negotiated to purchase, is classified as a wicked person (*rasha*).

²The Amoraim – is derived from the word amar which means "to speak in hebrew". The Amoraim from the fifteenth century and onward recorded and guided the Rabbinic legislation and customs that have become binding upon the Jewish Nation worldwide. Their efforts guide us until today in understanding the Talmud and subsequently proper living. The Amoraim were great scholars and were fluent in Torah wisdom as well as being outstanding in both ethical and moral behavior.

Two Basic Opinions

There are two opinions concerning the underlying principle behind this Law (*halacha*). These opinions in turn lead to two schools of thought concerning the parameters of the Law (*halacha*). These two approaches form the basis for the two positions that are cited by the code of Jewish Law (**Shulchan Aruch**).

Rashi³ espouses one opinion. He maintains that the reason the second, pre-empting person is considered wicked is that he is interfering with the first person's efforts to succeed in his livelihood. Accordingly, the prohibition applies to any property whether it was owned previously or was ownerless.

Rashi's grandson, **Rabbeinu Tam**⁴, advances the second view.⁵ He maintains that the second individual is considered a wicked person (*rasha*) because he did not need to pre-empt the first person in order to acquire such a property. He could have acquired a property which no one else had been negotiating to acquire.

If one maintains that this is the cause of the prohibition, the prohibition applies only to property that is owned by someone and is being purchased. If the property in question is ownerless (*hefker*), one cannot fault someone for attempting to acquire ownership even by pre-empting someone else. The reason is that the property in question has a unique quality not found elsewhere, namely, that it is available for free.

Tosefos⁶ concludes with the following two deductions.

- 1) If a man hired a worker and did not express displeasure with his work, another worker may not offer to replace the first individual. The reason is that the second worker should just attempt to fill positions that are open. [The job is considered the “item” in this case.]

³ **R' SHLOMO BEN YITZCHAKI OF TROYES -RASHI - Born:** Troyes, France, 1040.

Died: Troyes, France, 1105. **Notes:** Traced his ancestry all the way to King David through Hillel the Elder and other Tana'im. He settled in Troyes as a respected scholar at age 25. He set out to write a commentary on the Bible focusing on the plain and exact meaning of the text, which is included virtually in all editions of the Bible (Chumash), as well as on Nevi'im and Kesuvim. His lucid and terse commentaries on the Talmud end with Makkot 19b and are included in all editions of the Talmud. He wrote his commentaries and taught while earning his livelihood as a wine merchant. He is of the greatest Biblical commentator of all times.

⁴ **R' YAAKOV BEN MEIR - RABBEINU TAM - Born:** Ramperupt, France, c. 1100.

Died: Troyes, France, 1171, **Notes:** “Our Perfect Rabbi” from the verse “Yaakov ish tam”. Halachist. A grandson and the most famous descendent of Rashi and one of the most quoted **Tosefists**. **He disagreed with Rashi** over the correct order of the verses in Tefillin which led to the custom of wearing two pairs.

⁵ See Tosefos, beginning words Ani Hamehapeich.

⁶ Tosefos – literally means to add on. Commentaries on the Talmud stretching over a two hundred year period; also known as the school of Tosefos. The early Tosefos consisted of the Grandchildren of Rashi.

- 2) If someone hired a teacher for his children and another person feels that this teacher is uniquely capable of teaching his own children, the second employer may attempt to hire the teacher away. This follows from **Rabbeinu Tam's** opinion that if other items are not readily available (in this case a similar quality teacher who can teach his child) then the one who lures is not called a wicked person (*rasha*). [In this case the teacher is the “item”]

These two opinions are the two opinions quoted by the **Shulchan Aruch**. The first opinion in the **Shulchan Aruch** is that of **Rabbeinu Tam**. The **Rama**⁷ feels this is the preeminent opinion. The second opinion is that of **Rashi**.

Within the opinion of **Rabbeinu Tam**, there is a secondary dispute. The **Radack**,⁸ authored by R' David Ben Yosef Kimchi who is quoted by the **Rama** in the **Darkai Moshe**, and apparently the **Mordechai**,⁹ maintain that **Rabbeinu Tam** extends his ruling to a sale at a cheap price as well. Thus, if an item is being sold cheaply and someone is on the verge of acquiring the object, someone else can pre-empt him since the item is usually not available at the cheaper price.

The **Ramban** opposes the **Radack**. He maintains that even according to **Rabbainu Tam** one may not pre-empt someone who has come to terms to purchase an item even if the item is on sale. His reasoning is that the reduction is not sufficiently large enough to justify allowing someone to pre-empt the first person's attempted purchase.

The Shulchan Aruch

Let us presently record the text of the **Shulchan Aruch**.

When one person is attempting to purchase or rent an object, whether immovable (that is, real estate) or movable, another individual who acquires it is called a

⁷ **R' MOSHE BEN YISRAEL ISSERLES - RAMA - Born:** Cracow, Poland, 1525.

Died: Cracow, Poland, 1572. **Notes:** Talmudic commentator and Halachist. Descendent of a wealthy and illustrious family from Cracow, he served as Rabbi of Cracow where in 1552 he founded a prestigious Yeshiva that he led until his death. Leader of Polish Jewry.

⁸ Responsa 31 - **R' DAVID BEN YOSEF KIMCHI - RADAK - Born:** Narbonne, Provence, c. 1160.

Died: Narbonne, Provence, c. 1235. **Notes:** Bible commentator and grammarian. Author of a commentary on the Bible, which covers Bereishit, Neviim, Tehilim, Mishlei, and Divrei Yamim, **Mikhlol/Compendium**, a Hebrew grammar, **Sefer HaShorashim**, an early Hebrew dictionary and **Vikuach**, a work of polemics against Christian theology, and translator of Chovot Levavot into Hebrew. In his late years he sided with the Rambam against his opponents, advocating the study of philosophy for those steadfast in their faith.

⁹ **R' MORDECHAI BEN HILLEL HAKOHEN ASHKENAZI - MORDECHAI - Born:** Germany, c. 1240. **Died:** Nuremberg, Germany, 1298. **Notes:** A relative of the Rosh, son-in-law of R' Yechiel of Paris, brother-in-law and student of the Maharan Rotenberg and a student of Rabbeinu Peretz. Died with wife and five children in the Rindfleisch Massacres. Author of **Mordechai**, halachic digest of the Talmud and early authorities following the format of the Rif.

wicked person (Rasha). The same is true if an individual is attempting to gain employment (and someone else snatches away the position). Some are of the opinion that if the object in question is ownerless or being obtained as a present then the one who snares it is not deemed a wicked person since a similar (ownerless) object is not readily available elsewhere.

Rama If the land in question borders on the field of the second individual even though the laws of *bar metzra* (special rights for purchase granted to the owner of a neighboring property) do not apply, the neighbor (*bar metzra*) may pre-empt the sale and he is still not called a wicked person (*rasha*). The reason is that this case is equivalent to an ownerless object since this property has unique relevance to the second individual. Similarly, if one attempts to purchase an object and someone else comes to purchase it because it is being sold at a price that is unavailable elsewhere, it is again comparable to a free object and [the second person] may buy it as long as the first person has not acquired legal title to it.

We will presently explain the rulings of the **Shulchan Aruch** that we just quoted.

What Claim Does the First Individual Have?

Obviously, the first person, who is after all only negotiating for the item, has not achieved any degree of ownership. If he would be an owner, the second person would be classified as a thief.

R' Yosef Caro also known as the **Bais Yosef**¹⁰ proves that the seller and the first individual must have reached an advanced stage in their negotiations. Specifically, the prohibition applies only if the two parties already settled on a fixed price, and the only detail that was lacking was the formal acquisition (*kinyan*). R' Moshe Isserlis in his commentary called the **Darkai Moshe**¹¹ agrees with this as well and in fact we notice that R' Isserlis also known as the **Rama** incorporated this ruling in his notes in the commentary to Jewish Law (**Shulchan Aruch**) that we recorded.

¹⁰ This is found on page 336 of the Shiras Devorah Edition of the Tur. The paragraph begins with the words *Kosav Mordechai*. **R' YOSEF CARO -Bais Yosef - Born:** Toledo, Spain, 1488. **Died:** Safed, Israel, 1575. **Notes:** Also known as the Mechaber (the Author). He is one of the most authoritative Talmudists and codifier of Halacha whose decisions have been accepted as binding in Jewish Law. Born in Spain just before the Expulsion, he was exiled with his family in 1492. He moved to Lisbon, Portugal, and then to Turkey, where he served as Rabbi of Adrianopolis and Nicopolis for many years. He moved to the land of Israel in 1536 where he settled in Safed.

¹¹ Note 1.

Applications of Rabbeinu Tam's Leniency

The **Rama** explicitly states that **R. Tam's** opinion is authoritative. He continues by formulating a lenient opinion in two cases, based on **Rabbeinu Tam's** authoritative opinion.

These cases are:

- 1) The property in question borders on the second person's property. Recall that according to **Rabbeinu Tam**, the second person is dubbed a wicked person only when the property does not have unique appeal to him. The reason is because whenever it has unique appeal one cannot tell the second individual that he should seek to obtain a different property. In this case, where the property in question borders the second individual's present property, the field is certainly unique, and, therefore, he may attempt to gain possession even by pre-empting someone else.
- 2) An item is being sold at a reduced price. Since the normal price is significantly higher, under these circumstances, the item has a unique attraction to the second purchaser.

We should recall from the introduction that this second case is not without controversy. The **Shulchan Aruch** is following the opinion of the **Radack**.¹² However the **Shach**¹³ maintains that one should follow the opinion of the **Ramban**¹⁴ who forbids this practice. The **Ramban** argues that since this item is being sold and not given away for free, it is still subject to this prohibition. The **Nesivos**¹⁵ concurs with the **Shach's** ruling.

¹² Responsa 31. The Darkai Moshe cites it.

¹³ Number 3. **R' SHABBETAI BEN MEIR HAKOHEN –The Shach -Born:** Amstibov, Lithuania, 1621. **Died:** Hollischau, Bohemia, c. 1663. Author of **Sifte HaKohen/Shach/Lips of a Kohen**, a major commentary on the **Shulchan Aruch Yoreh Deah** and **Choshen Mishpat**.

¹⁴ Bava Basra 54 B, beginning word: Nichsei. 15 **R' MOSHE BEN NACHMAN - RAMBAN - Born:** Gerona, Spain, c. 1194. **Died:** Israel, c. 1270. **Notes:** Also known as Nachmanides. Great Biblical and Talmudic commentator, Kabbalist, and Jewish leader. The Ramban participated in the famous debate of Barcelona in 1263 in the presence of King James I of Aragon. Banned from Spain in the aftermath of this debate, he settled in the Land of Israel in 1267. He spent the last years of his life trying to rebuild the Jewish life which had been devastated due to the Crusades.

¹⁵ Note 2 of Chidushim. **R' YAAKOV BEN YAAKOV MOSHE OF LISSA - Born:** Loberbaum, Poland, c. 1759. **Died:** Loberbaum, Poland, 1832. **Notes:** Author of **Derech HaChayim**, a prayer book with a compilation of laws about daily life, a commentary on the Codes as well as at least 15 other books. **Netivot HaMishpat** (The Paths of Justice, see Mishlei 8:20) is a commentary to **Choshen Mishpat**.

If the First Person is Rich

R' Isserlis (the Rama) continues by citing the ruling of **R' Nissin Ben Reuven of Gerona (the Ran¹⁶)** that even following the strict opinion of **Rashi¹⁷** often still there is no prohibition if the first individual is wealthy. The rationale of the **Ran** is that if the first individual is wealthy, often he may be able to purchase the item quite easily from someone else. Therefore, we allow the second individual to attempt to gain possession since the wealthy individual does not suffer in any way. However, in case it may be difficult for the wealthy person to acquire a similar object, a second person may not attempt to acquire it.

The **Gra¹⁸** points out that this ruling of the **Ran** explains why the **Gemara** refers to these Laws (*Halachas*) as *oni* (a poor person) *hamehapeich Becharara* when we see that these laws apply even in case the first individual is wealthy. The **Gra** says that based on this ruling of the **Ran**, the reason is because these are situations where the law does not apply if the first individual is wealthy.

Renting Property Which Was Rented

The **Rama** continues by citing the edict of **Rabbeinu Gershom Me'or Hagolah¹⁹** (the same person who prohibited marrying a second wife) prohibiting bidding on property which was already rented by a Jew from someone who wasn't Jewish.

We must understand why this additional edict is necessary if the **Gemara** already clearly prohibited *Ani hamehapeich Becharara*.

¹⁶ Comment to Kiddushin 24 A (in the Rif pages) beginning word: Nichsei. **R' NISSIM BEN REUVEN OF GERONA RAN - Born:** Gerona, Spain, c. 1290. **Died:** Barcelona, Spain, c. 1380. **Notes:** Talmudic commentator and Halachist. Royal physician, lived most of his life in Barcelona where he was Rav, Dayan, and Rosh Yeshiva. He was recognized as the foremost Legal authority of his time.

¹⁷ This is the subject of note 6 of the Sema's commentary on our siman. The **Gra** in note 8 and the **Nesivos** in note 3 of the **Chiddushim** concur with the **Sema**.

¹⁸ Ibid. **R' ELIYAHU BEN SHLOMO ZALMAN OF VILNA - THE VILNA GAON, GAON RABBEINU ELIYAHU - The GRA - Born:** Vilna, Lithuania, 1720. **Died:** Vilna, Lithuania, 1797. **Notes:** Of the greatest Torah scholar of the past two centuries and one of the most marking figures in halachic Judaism since the **Beit Yosef**. He is revered throughout the Jewish world for his vast knowledge and saintly character. He devoted every minute of his life to Torah study never having slept more than two hours a day. He never took any position as a Rabbi or Rosh Yeshiva.

¹⁹ **RABBEINU GERSHON BEN YEHUDA - MEOR HAGOLAH - Born:** Metz, France, c. 960. **Died:** Mainz, Germany, c. 1040. **Notes:** Known as Meor Hagolah/the Light of the Diaspora. Talmudist, Rosh Yeshiva in Mainz, he laid the foundation of the Ashkenazic tradition by establishing correct readings and providing commentaries on the Talmud, many of which are included in **Rashi's** commentaries. Many decrees regulating the life of a Jew bear his name, e.g. prohibition of polygamy, of divorcing wife without her consent, of shaming apostates returning to Judaism, etc. Author of **Peirush Rabbeinu Gershom**, commentary on the Talmud included in the traditional editions.

The **Nesivos** asks the further question that whenever a person already rented property, he has certain rights to continue his contract. These rights are known as the *din of a neighbor (bar metzra)*. Therefore, it should be obvious that a second Jew may not attempt to rent property that had been rented the previous year to a different Jew?

The **Nesivos**²⁰ explains that the property in question was leased to the first Jew for only one year. The second Jew is not attempting to rent it for the first year when the first one has his agreement. The action that **Rabbaino Gershom** rendered illegal is placing a bid to rent it for the second year, after the first lease runs out.

In case the owner of the property is Jewish, then such behavior is perfectly permitted. The reason is that no agreement was concluded with the first Jew regarding the second year, and where the owner of the property is Jewish we are interested in fostering competition since we are interested in the benefit of the property owner as well. Even the laws of the neighbor (*bar metzra*) do not guarantee the first individual the rights to continue in case he does not match the second renter's bid. This is similar to the rule²¹ that one who wishes to claim the right to purchase a neighboring parcel of land must match the offer which was presented by the outsider.

Owner of the Property

However, when the property owner is not Jewish we are concerned about the advantage of the renter. Therefore, we do not permit other people to place bids for the property in question, even for the year after the lease runs out.

The **Nesivos**²² claims that if the second person goes ahead and violates the edict of **Rabbeinu Gershom** by signing a lease with someone who is not Jewish, the original renter can then at least force the second individual to defer in case the first renter is able to match the price which the second person negotiated. This is an application of the general law of the rights of NEIGHBORS (*din of bar metzra*).

²⁰ Biurim number 1.

²¹ See Choshen Mishpat, siman 175, seif 7.

²² See also Chiddushim number 4.

Rabbi Akiva Eiger²³ quotes the **Kol Bo**²⁴ who mentions that even if a Jew ceased to rent a property from someone who was not Jewish, another Jew may not rent that property until it has been vacant for an entire year. This is also part of **Rabbeinu Gershom's** edict.

R. Akiva Eiger notes an additional element in R. Gershom's ruling is that in case the original renter informed the person who was not Jewish of his desire to continue renting the property if he would be granted a deduction in the rent, a second individual may rent it at the original rate.

An Application to Matrimonial Goals

A practical case which utilizes much of what we learned in this lesson pertains to matrimonial situations. Suppose one man was meeting a girl for matrimonial goals, may another man begin meeting her? Do we consider the second man to be in violation of the prohibition of taking advantage of a Poor person (*Anei hamehapeich Becharara*) or not?

We saw earlier that according to **Rabbeinu Tam** one may hire someone else's teacher since he can argue that his child is unusually successful in studying with this particular teacher. It would seem obvious that one can apply the same argument when one deals with a wife. Every person is different and, therefore, according to **Rabbainu Tam**, the second person would not be acting in violation of these laws. The issue would seem to be confined to the opinion of **Rashi**.

We will see in the ensuing discussion that in fact some **Acharonim** including the **Aruch Hashulchan**²⁵ maintain that the issue is questionable only according to **Rashi**.

²³ In his notes on the margin of the Shulchan Aruch. This is recorded by the Pischai Teshuva in note 4 in the name of the Chasam Sofer as well. **R' AKIVA BEN MOSHE EIGER - Born:** Eisenstadt, Austria, 1761 **Died:** Posen, Poland, 1837 **Notes:** Great halachic authority, Torah leader of his generation, and fierce opponent of secular education and reform ideas.

²⁴ Chapter 116. **R' AHARON BEN YAAKOV HAKOHEN OF LUNEL - KOL BO - Born:** Narbonne, France, 1280. **Died:** Majorca, Spain, 1330. **Notes:** Halachic codifier. Exiled from France to Spain in 1307. Author of **Orchot Chaim/Paths of Life**, a compilation of the opinions of earlier authorities on the laws of prayer, Shabbat, marriage, divorce, and kashrut etc.

²⁵ Even Hoezer, siman 35, seif 29. **R' YECHIEL MICHEL BEN AHARON HALEVI EPSTEIN - ARUCH HASHULCHAN - Born:** Bobroysk, Bielorussia, 1829. **Died:** Navardok, Bielorussia, 1908. **Notes:** Rav of Navardok. Author of **Aruch HaShulchan**, a halachic compendium following the order of the Shulchan Aruch, which analyzes the issues through the perspectives of the Rishonim. This work is complemented by **Aruch HaShulchan HaAtid**, which covers the sections on vows, agriculture and ritual purity. He is regarded as one who holds by more lenient views. He was the father and teacher of the Torah Temimah.

R' Moshe Feinstein²⁶ claims, however, that this issue applies at certain times according to both **Rashi** and **Rabbeinu Tam**.

The Three Phases

R' Feinstein begins by stating that one must break up this question into three components. The three components are determined by the three phases in the relationship between the first boy and the girl. If their relationship were only in the preliminary phase, where the parties have not even agreed to become engaged, then even according to **Rashi**, the second boy would not be violating the prohibition of *oni bamehapeich Becharara*. The rationale is based on what we learned earlier that the prohibition applies only after the two sides concluded negotiations on price, etc. Since they have not agreed to become engaged the prohibition does not yet apply.

The second phase occurs when the first boy and the girl agree in principle to become engaged but have not taken any action to formalize their engagement. Since deliberations have been concluded they are at the stage where the prohibition can apply. As we mentioned before, the question whether the prohibition applies to matrimonial matters depends on the dispute between **Rashi** and **Rabbeinu Tam**.

R' Feinstein's feels that activation of this Law applies at the third phase which is entered once the engagement has been formally announced. How one actually announces an engagement depends on custom. Some people formalize an engagement by means of verbal agreements (**Tena'im**)²⁷. Others merely publicize their engagement in the newspaper, or distribute candies, etc.

Rabbeinu Tam Agrees in the Third Phase

Rabbi Feinstein claims that even **Rabbeinu Tam** agrees that in this phase the prohibition applies. **Rabbi Feinstein's** argument is that the rationale of **Rabbainu Tam** is that one must always weigh the loss that is suffered by the two competing parties. When there is nothing especially attractive about the particular object, Our

²⁶ Even Ho'ezer volume 1, siman 91. **R' MOSHE FEINSTEIN -REB MOSHE - Born:** Uzda, Russia, 1895. **Died:** New York, 1986. One of the most important Talmudic and Halachic scholars of the 20th Century in the US. His legal decisions are considered binding by many. He answered questions from all over the world and distinguished himself by the ability to apply eternal Torah principles to modern life.

²⁷ a) **SHIDUCHIN** - In anticipation of the marriage, the man may formally agree to marry the woman. This is known as "Shiduchei" (Kiddushin 12b). None of the Laws of marriage apply to them at this point, although they may obligate themselves to each other monetarily to guarantee that the marriage takes place (see Tosfos 8b end of DH Manah). Also, the families of the bride and the groom may promise the young couple specified sums, upon the realization of the marriage (see Kiddushin 9b and Tosfos). These written agreements are also known as "Shetarei Pesikta" (ibid.) or, nowadays, "Tena'im." (Kollel Iyan Hadaf – Background of the Daf)

Sages (**Chazal**) favor the first individual because he already put forth the effort to obtain the object and the second individual is not suffering any loss. In case the object was ownerless, etc, **Rabbeinu Tam** rules that there is no prohibition on the second individual since his loss of opportunity weighs equally with the loss suffered by the first individual who worked in vain.

R. Feinstein brings into play the fact that there is a *cherem*²⁸ (ex-communication from the community) on a person who breaks an engagement without the agreement of the second party. Since the girl may not break her engagement once it has been formalized, even **Rabbeinu Tam** agrees that we do not consider the second person's loss. The reason is that he may not cause the girl to break her engagement even if he suffers from lost opportunity. Therefore, at this stage according to all opinions the second boy would violate the prohibition of *Anei hamehapeich Becharara* if he were to cause the girl to break her engagement and become engaged to him. (This is besides the ex-communication (*cherem*) which the girl would be guilty of violating.)

Explaining a Difficult Rambam

Rav Feinstein uses his rationale to explain a difficult opinion set forth by the **Rambam**.²⁹ The respective approaches of the **Aruch Hashulchan** and **R. Feinstein** in explaining the **Rambam** are an exhibition of their different approaches to the entire prohibition of *Anei hamehapeich Becharara*.

The **Rambam** was discussing³⁰ a case where a person commissioned an agent (*shaliach*) to bring a girl Anei, etc. in order to betroth the specific girl on his behalf (similar to what Yitzhak did with Eliezer in order to acquire Rivka). The **Rambam** rules that in case the agent or representative (*shaliach*) was unfaithful and proceeded to betroth the girl for himself he is considered a wicked person (*rasha*).

The problem with the **Rambam** is that there does not seem to be a source for his ruling that the agent is a wicked person (*rasha*). **Our Sages of Blessed Memory** are

²⁸ This cherem is mentioned in the Sema in siman 245 of Choshen Mishpat; end of note 2 and by the Bais Shmuel in note 10 of his commentary to siman 51 of Even Hoezer.

²⁹ **R' MOSHE BEN MAIMON - RAMBAM - Born:** Cordova, Spain, 1135.

Died: Cairo, Egypt, 1204. **Notes:** Also known as Maimonides. Great Talmudic commentator, Halachic codifier and philosopher. Born in Spain, he had to flee right after his Bar Mitzvah and lived most of life in Egypt. A physician to the Caliph. Possibly the most important halachic authority among Rishonim and the greatest Jewish scholar ever. His epithet reads "From Moses to Moses there is no one like Moses", the first Moses referring to Moses our Teacher.

³⁰ Hilchos Eeshus (9, 17).

very careful with handing out epithets.³¹ Therefore, the **Rambam** would not call someone a rasha unless he had a basis for his ruling.

Both the **Aruch Hashulchan** and **R' Moshe Feinstein in his works called Igros Moshe** agree that the **Rambam** based his ruling on the fact that the agent is guilty of violating the laws of *Anei hamehapeich Becharara*. Recall, that the **Gemara** ruled that one who violates the prohibition of *Anei hamehapeich Becharara* may be publicly acclaimed as a wicked person (*rasha*).

The point where the **Aruch Hashulchan** and **Igros Moshe** diverge is why the agent is guilty of violating the prohibition of *Anei hamehapeich Becharara*. The **Aruch Hashulchan** does not distinguish between stage two and stage three. Therefore, he hypothesizes that the **Rambam** agrees with **Rashi**.³² **R' Feinstein** disagrees and uses his rationale to maintain that the **Rambam's** ruling is universal.

R' Feinstein's argument is based on the **Talmud**³³ which dubs a messenger who violates his mission and acquires for himself the object he was supposed to acquire for someone else, a **CHEAT** (*ram'ey*). **R' Feinstein** argues that if he is a cheat that means that he is not allowed to acquire the object, regardless of the general availability of this type of object, even according to **Rabbeinu Tam**. Therefore, everyone agrees that he is in violation of the prohibition of *Anei hamehapeich Becharara*.

One other interesting ruling of **R. Feinstein** is that he rules that one should try to avoid relying on **Rabbeinu Tam**. This is interesting since the **Rama** explicitly rules that **Rabbeinu Tam's** ruling is authoritative.

An Application to a Sale

The **Mishpat Shlomo**³⁴ discusses a case of *Anei hamehapeich Becharara* that was ruled upon by the Jewish Court he presided over (*bais din*). It involves one of the more typical cases of *Anei hamehapeich Becharara*.

³¹ See Kiddushin 28 A where the Talmud discusses the punishment that is accorded to one who calls someone else a wicked person when the recipient is undeserving of this epithet.

³² We will learn in the next lesson that this is controversial. Among those who understand that the Rambam agrees with Rabbeinu Tam is the Nesivos in Note 2 of his commentary on our chapter (Siman).

³³ Kiddushin 59 A.

³⁴ Volume 4, siman 28.

The situation involved A who offered his two hundred fifty thousand dollar apartment for sale at two hundred thousand dollars. B came to terms with A to purchase the apartment for the price A was asking.

Before formally signing the agreement, A's relative and friend, C, got wind of what was transpiring and offered to match B's offer. The question was whether this violated the prohibition of *Anei hamehapeich*.

We have already studied most of the background information that served as the basis for **Mishpat Shlomo's** ruling. There are actually two disputes that are involved in this situation. The first dispute again involves **Rashi** and **Rabbeinu Tam** since the apartment was being sold at a significant discount. Therefore, according to **Rabbeinu Tam**, it is possible that there is no violation, but according to **Rashi** the violation certainly applies.

We mentioned earlier that in the case of a sale there is the additional dispute between the **Ramban** and the **Radack** whether **Rabbeinu Tam** was lenient or not.

The **Rama** ruled that one can follow **Rabbeinu Tam** and the **Radack**. Therefore, he would maintain that C may purchase the apartment.

According to **R' Yosef Caro** the **Mechaber** (His rulings are authoritative for *Sephardim*), the situation is less clear. The **Mechaber** does not explicitly rule on the dispute between **Rashi** and **Rabbeinu Tam**. In fact, there is a major dispute amongst the **Acharonim** concerning the issue of whose opinion the **Mechaber** follows. We earlier mentioned that the **Nesivos** maintains that he agrees with **R. Tam**. The **Aruch Hashulchan** and many others³⁵ maintain that he follows the opinion of **Rashi**.

The **Mishpat Shlomo** rules that those who follow the **Mechaber** should be strict. (I.e. If C is a *Sephardi*; he must avoid purchasing the apartment.) He claims that there is *sefeka sefaiko* (a double doubt) that one should be strict. His argument is that we are uncertain whether **Rashi** or **R. Tam** is authoritative. Secondly, even if one is lenient like **Rabbeinu Tam**, the **Ramban** rules that **Rabbeinu Tam** agrees that one must be strict in the case of a sale.

He adds that even if C is *Sephardi*, and he bought the apartment the Jewish Court (*bais din*) would not publicly announce that he is a wicked person (*rasha*) since it is possible

³⁵ Among the Acharonim who rule this way are the Tzedek u'Mishpat, the Shearis Yosef and the Yaskil Avdey among others. Their argument is buttressed by the fact that the Mechabair recorded both R. Tam and Rashi as "Some may" and he recorded Rashi last. The general rule is that the second opinion is authoritative in this case.

that **Rabbeinu Tam** and the **Radack** are correct. When in doubt, the Jewish Court (*bais din*) does not publicly announce that the second individual is a wicked person (*rasha*³⁶).

The next Lesson will continue with this subject by studying chapter (*Seif*) 2 and will introduce further applications.

Conclusions

- 1) One who acquires something, which someone else already had settled on purchasing, violates the prohibition is known as *Anei hamehapeich Becharara*.
- 2) One who defies 1) is dubbed a wicked person (*rasha*) by Our Sages (**Chazal**).
- 3) There is a major dispute between **Rashi** and **Rabbeinu Tam** why **Chazal** prohibited this practice. **Rashi** maintains that the issue is loss of livelihood. Therefore, it is not important whether the item is standard or rare. **R. Tam**, on the other hand, understands that the problem is that the second individual is acting improperly by selecting to obtain an object that someone else had settled on acquiring. The aspect of his action that is improper is that he had no reason to select this object over objects of a similar nature. Based on this view, his actions are proper if the object is not readily available. An example of such an object is an ownerless object that can be acquired for free. The **Rama** rules that **Rabbeinu Tam's** opinion is authoritative. There is a dispute whether the **Mechaber** agrees. The **Nesivos** claims that he does, but others maintain that he maintains that **Rashi's** approach is correct.
- 4) There is a dispute concerning **R. Tam's** opinion in case one may purchase an object cheaply. The **Ramban** maintains that in that case **Rabbeinu Tam** agrees with **Rashi** since the customer must pay for the object in any case. The **Radack** and seemingly the **Mordechai**, disagree and maintain that **Rabbeinu Tam** permits trying to obtain an object that was offered for sale at a cheap price to someone else, just like he permits acquiring an ownerless object. The **Rama** rules like the **Radack** but the **Shach** seems to side with the **Ramban**.

³⁶ This is based on a ruling of the Maharshach.

- 5) The entire setting for the prohibition known as *Anei hamehapeich Becharara* is where the first person has not yet acquired the object but has come to basic terms that will enable him to acquire the object.
- 6) The prohibition applies to hiring workers as well. One worker may not attempt to take away another person's job unless the employer has already shown that he wishes to replace the first worker. Whether an employer may woo away someone else's employee depends on the dispute we described in 3). According to **Rabbeinu Tam**, it is permitted in case it is otherwise difficult to find such a worker and the employer will suffer a loss of income, etc. because of failure to hire this employee. According to **Rashi**, however, this leniency does not exist.
- 7) Even according to **Rashi**, if the first individual is wealthy and he will not encounter difficulty in locating the object elsewhere there is no prohibition of *Anei hamehapeich*. The **Gra** mentions that this is the reason why the **Talmud** described the prohibition in case the first person is poor even though the general law (*halacha*) applies to where the first person is rich as well.
- 8) **Rabbeinu Gershom** prohibited a Jew from offering a higher rental price to a non-Jewish landlord for a property whose lease was due to expire. In case the owner is Jewish, such an offer is permitted.

Rabbeinu Gershom even prohibited a Jew from renting property which had been rented previously by a Jew from a non-Jew until after a one-year cooling off period when the property is vacant.

- 9) **R' Moshe Feinstein** rules that concerning the issue of whether one may attempt to engage a girl who is already in a relationship with someone else; there are three phases depending on how advanced a relationship she developed with her first suitor. If the two sides have not even agreed to become engaged, the second suitor is permitted to attempt to become engaged with her. If they agreed to become engaged but did not yet formalize their engagement, whether another person can still attempt to become engaged with her is the subject of the dispute between **Rashi** and **Rabbeinu Tam** that we described in 3). He says that it is preferable that one should act strictly on this matter. In phase 3), **R' Feinstein** derives that in addition to the ex-communication (*cherem*) that applies to the girl in case she would break her engagement, the suitor violates the prohibition of *Anei hamehapeich*, even according to **Rabbeinu Tam**.

- 10) The **Mishpat Shlomo** handed down a ruling in case a friend attempted to purchase an apartment that was being sold for a cheap price to someone else. He rules that according to *Ashkenazim*, who follow the **Rama**, the second person's behavior is permitted but for *Sephardim* it is prohibited since based on a double doubt (*sefek sefaika*) one must act strictly.