

Competition in Halacha: Part I

HaRav Chaim Weg

WHY MUST WE WORK FOR OUR LIVELIHOODS?

In Sha'ar Habitachon, the Chovos Halevavos discusses a fundamental question: Why did Hashem create the world in such a way that man must work for his basic needs? In the animal kingdom, all creatures are provided with what they need to survive, and no animal must "work for a living". Only man was made lacking many things and, therefore, he needs to work and toil in order to earn money to sustain himself. Why is this so?

He answers that the need to work for one's livelihood is a test of our *bitachon*. The real truth is that the amount of money one will earn in a year is decreed on Rosh Hashana; however, there is an obligation of *hishtadlus*. One must work for a living to fulfill this obligation and Hashem is testing us to see how we undertake this challenge. If one does his *hishtadlus* within the parameters of halacha, he has passed the test. If he does his *hishtadlus* in a forbidden manner, he has failed.

When it comes to the laws of *hasagas ge'vul*, one has a prime opportunity to express his *emunah* and *bitachon*. There are many people who would never steal anything or sell defective merchandise, but when it comes to competing, they believe in the capitalistic concept of open and free markets and assume they can do whatever they feel to get ahead. They fail to recognize that they are bound by halacha, which dictates how and when one may compete with others.

If a person would have true *bitachon*, he would realize that all of his profits are decreed on Rosh

Hashana, and he would accept the fact that he gains nothing by engaging in acts of *hishtadlus* that are forbidden by the Torah. He would know that even if it seems that he is losing out by not competing more vigorously, he is, in fact, not losing a thing by sticking to the laws of the Torah.

The Chazon Ish writes that when one is halachically permitted to compete, competing can be part of his *hishtadlus*. However, where halacha dictates that it is forbidden for him to compete, anything he does to that end borders on the prohibition of stealing. This may be a difficult concept to accept, as a competitor is not openly stealing and may not feel like a thief, but if one has proper *bitachon* he will be able to recognize that this is the mandate of halacha and he will not lose by obeying it.

THREE CATEGORIES OF COMPETITION:

Competition can be divided into three categories: instances where it is 100% permitted to compete, instances where it is 100% forbidden to compete, and instances where it is halachically permitted to compete but righteous people are encouraged to be stringent and avoid competing. Regarding the third category, the Rambam says that a "*talmid chochom*" should not do business in such cases, and the Shulchan Aruch Harav says it is "*midas chasidus*" not to compete.

1. TACTICS THAT ANYONE CAN DO:

It is completely permitted for existing stores to

engage in practices that all of their competitors could do as well should they so choose. This means that it is permitted to entice customers to one's store through moderate sales, promotions, door prizes or any other tactic that one's competitors could technically do as well. Since this is 100% permitted, it is not even a *midas chasidus* to avoid such practices. Extreme sales and promotions, such as below the cost or exclusive to given sellers, can pose halachic questions, since their competitor can't possibly match such a tactic. A competent halachic authority should be contacted in such cases.

2. LOCALS AND NON-LOCALS:

From the Gemara in Bava Basra (21B), we learn that one is permitted to open a new business in the same town that a business of the same kind already exists, even if he will be causing that business a loss in profits. The Gemara adds that only one who lives in the same city may open a competing store that will cause a loss of profits to a local store. Someone who does not live in that town may not open a competing store if he will be causing any loss to an existing store. The Chasam Sofer writes that violating these laws would be a transgression of the Biblical commandment against theft.

To illustrate, if someone is practicing law in a certain city and a lawyer who lives out-of-town wants to open a law practice in the same town; if there is a need for a second lawyer in that town so that he will not be infringing at all on the business of the existing lawyer and is not expected to be causing him any loss, then it would be permitted for the out-of-towner to open. If he will be infringing upon the existing lawyer and causing him any loss, he would not be allowed to open. The same would apply to any other service, such as a painter, repairman or any kind of store.

While it is permitted for a local resident to open a competing store that will negatively affect existing businesses, there is a *midas chasidus* not to do so if it will negatively affect the existing stores income. If one wishes to be stringent like this *midas chasidus*, he will only open a store if he knows there is enough business to go around and the existing stores will not suffer a loss. Even if his opening forces them to work harder, advertise better, or offer better service in order to avoid losing some of their income, that is

not considered infringing on their business at all, and there is no *midas chasidus* not to open in such a case.

THE EXCEPTION: TALMUD TORAH:

The teaching of Torah is an exception to the general rule that a non-local is not allowed to compete with local businesses if he is harming them in any way. The Gemara clearly says that when it comes to teaching Torah, competition is always permitted due to the dictum of "*kinas sofrim tarbeh chochmah*", competition increases the quality of everyone's learning. Hence, anyone is allowed to offer a service related to teaching Torah, even if he lives outside the city and even if he will be putting existing Torah teachers in the city out of business completely.

Regarding this rule, the Chazon Ish states his dictum that one must know the halacha before taking action against a competing business one views as a threat. While he acknowledges that if someone from out-of-town would open a store to compete with locals and harm their business, he would be in the wrong and it would be permitted to take action to shut him down, he notes however, that if someone from out-of-town would open a new school to teach Torah and the locals would shut him down, they would be the ones acting inappropriately and they would be considered thieves.

3. PUTTING YOUR COMPETITOR OUT OF BUSINESS:

Although as mentioned, it is permitted for a local resident to open a competing store that will cause a loss in profits to an existing store, there is a notable exception to this rule. If one would completely put the existing store out of businesses by opening a competition, it would be forbidden to open.

The Aviasaf gives an example of someone that opens a new business further up a one-way street from an established business. Anyone who walks on this street will encounter the new store first, and, therefore, there is no reason why anyone would make the effort to walk further to go to the existing store. This is his illustration of a case where an existing business will be completely ruined by the opening of a competing store, which is forbidden by halacha even for someone living in the same city.

Gedolei Acharonim, including the Chasam Sofer, accept this position. Rav Moshe Feinstein also accepts this position in two of his teshuvos. Therefore, before one opens a business, he must determine whether he will be putting an existing store out of business or whether there's enough business for both of them to survive. He will need to speak with competent experts who can determine if the new store will be ruining the existing business or will only be taking away some of its profits.

Rav Moshe discusses an instance where there is not enough business in one town to support two of the same genres of stores. For example, if a small town has one existing sefarim store and someone wants to open a competing store, it would only be permitted if there is enough business in town to support two stores and give them both enough profits to remain sustainable.

A similar situation to putting someone out of business would be to undercut his prices to the extent that he can no longer compete and remain viable. A teshuva was sent to the Rama regarding a new printing house that had unlimited resources and was willing to sell sefarim at a loss in order to close the competition down. The Rama wrote that it would be forbidden to buy from this person, as he would take away all the sales from the competition and be putting him out of business completely. That would be another example of completely destroying an existing business.

The same may apply if an existing business sells many products and the new competitor is only taking away all his sales in one area, it still is forbidden, even though the existing business will still be able to earn profits in other areas.

RECAP:

One who lives locally may open a competing business even if it will cause a loss to an existing business; however, there is a *midas chasidus* not to do so if the existing business will suffer a loss of profits. If one would be ruining the existing business and forcing him to close, or partially close, it would be forbidden even for a local to open a competing business. It is forbidden for a non-local to open a competing business if he will be causing existing local businesses any loss in profits.

It is interesting to note that when one looks at the *haskamos* of older sefarim, they often contain prohibitions for anyone to print the same sefer for a certain number of years. This was done in order to protect the investment of the original printer so that his business should be able to remain open. The aforementioned teshuva of the Rama went so far as to prohibit anyone from buying a sefer that was printed in transgression of this prohibition, which indicates that if a business is acting out of the realm of halacha, it is forbidden to support such a business.



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