

Competition in Halacha: Part II

HaRav Chaim Weg

YOM HASHUK (MARKET DAY):

In Part 1 of this series, we explained that someone who does not live in a particular city is not allowed to open a store there if it will infringe on the livelihood of local merchants, even if he will not be putting them out of business completely. There are, however, some exceptions to this rule.

The Gemara in Bava Basra (22A) speaks about a city that had a “*yom hashuk*”, a market day when many people gathered to buy and sell goods. On this day, merchants from surrounding cities would come as well to peddle their wares. The Gemara says that in such a case, it would be permitted for out-of-towners to sell their products and compete with the locals because many buyers also come from outside the city to make purchases, and the non-local sellers can sell to the non-local buyers, which will not have a negative impact on the local merchants.

The Poskim explain that it would be forbidden for a non-local vendor to peddle his wares door-to-door to the local residents, as this would be considered trying to attract the locals in a non-permissible manner; however, if the out-of-town vendor is selling in the marketplace to the general public, he is permitted to do so because we can assume that he is attracting non-local buyers. He does not have to ascertain the residency information of every purchaser to make sure they do not live locally, as he can assume that the majority of buyers on the *yom hashuk* are not local.

In contemporary times, we do not have a *yom hashuk* in this form; however, the world wide web, through which merchants target customers across the entire

world, bears much similarity to the *yom hashuk* format. The internet is a central location where people from all over gather to make purchases and merchants from all over gather to make sales. This would seemingly be comparable to a *yom hashuk*, where every merchant is permitted to sell to whichever buyers are attracted to him; therefore, online sellers would be allowed to advertise their wares for the general public and accept whatever orders they get, and local merchants would not be allowed to stop them from selling to locals or to stop locals from buying from them.

If an online vendor would want to advertise in local publications and specifically target local residents as potential customers, however, that would not be allowed, as that would be similar to going from door-to-door to attract local customers. As long as they are only advertising globally, local vendors cannot do anything to stop them.

NO LIMITS ON THE PURCHASERS:

From the halacha of *yom hashuk*, we see an important concept in the laws of competition. We see that there is no real limitation on where purchasers may buy from and no prohibition for them to deliberately take their business to non-local vendors.

The only limitation for a purchaser would be if someone would open a store in a local area in a way that transgresses halacha, it would be forbidden for locals to purchase from him. The explanation is that it is only forbidden for the buyer to purchase when they are facilitating the seller's breach of halacha. However, if a local would decide on his own that he wishes to

travel out-of-town to make purchases,, local vendors cannot do anything to stop him from doing so and he is not transgressing any prohibition, even though this may be harmful to local commerce.

The Pischei Teshuva cites a *machlokes haposkim* regarding whether locals can prevent outsiders from coming to their town to shop and make purchases, if they feel this will have a negative impact on the local economy by diminishing their supply of specific items. Since this is a matter of debate amongst the Poskim, one would not be permitted to take steps to block non-locals from coming to town to shop.

Thus, practically speaking, we see that if a local resident wants to shop out-of-town, local vendors can do nothing to stop him, and if non-locals want to come to a city to shop there, the locals can't do anything to force them out.

WHOLESALE VS. RETAIL:

Our entire discussion of competition until now has focused on retail selling. The Rosh and many other Poskim rule that there are no limitations when it comes to wholesale selling. Thus, even non-locals would be allowed to compete with locals and infringe on their business when it comes to wholesale. The Pilpulei Charifta explains that wholesale is always a global market and limiting wholesale sellers to one specific location would destroy the entire chain of commerce and be harmful to all buyers; therefore, it would be impossible to place such limitations on them.

This halacha, again, is based on the premise that the laws of unfair competition relate entirely to sellers, while buyers are not limited in what they may or may not do. Since wholesale selling is needed for the good of the purchasers, it cannot be limited and the market cannot be restricted in such a manner that will harm the buying public.

TOVAS HALEKUCHOS (WHERE COMPETITION BENEFITS THE BUYER):

This brings us to the concept of "*tovas halekuchos*", which means that competition is permitted if there is a clear benefit for the buyers.

According to this rule, if local residents want a competing store in their town, it would be permitted

to bring in a non-local to open such a store. The Rema (Choshen Mishpat 196:7) rules that a non-local merchant cannot be blocked from opening a competing store if he is offering better prices or higher quality merchandise. Since this is a "*tovas halekuchos*", the prohibition of competing with local stores does not apply.

There is a *machlokes* between the Poskim if the cheaper price the competing store is offering must be significantly less than what the existing store charges or even a bit less is sufficient; however, the Pischei Choshen points out that if the quality of goods is better, even a slightly superior quality would be enough to allow a non-local to compete with local stores. (One needs to ascertain that his items are actually better quality, it is not up to him to make that determination.)

This rule would apply to a service provider as well. If a lawyer, plumber, painter or any service provider from out-of-town wants to offer services in a city and compete with the locals, he would be allowed to if he is offering better prices or better-quality work in any way.

The Pischei Choshen adds one caveat and indicates that it would still not be permitted for a non-local to put a local completely out of business, even if he is offering better quality. For example, if a town has one pizza shop, and the quality of their pizza leaves much to be desired, local residents would be allowed to open a new pizza shop to compete with them, and he would even be allowed to put them out of business, as they have the ability to shape up and remain in business by offering the same quality as the new shop. An out-of-towner, however, would only be allowed to open a second shop if he is merely causing a loss to the existing shop, but not if he will be putting them out of business.

LOBBYING TO KEEP THE COMPETITION OUT:

If someone wants to open a competing store in a permitted manner, it is obvious that the existing stores would not be allowed to lobby the local authorities to prevent him from opening. Nonetheless, the Chazon Ish, based on a Maharik, understands that it is permitted to prevent someone from obtaining the necessary halachic status to open the store.

To illustrate, if a local resident, who has the right to open a competing store, wishes to open for business, it would be forbidden to lobby the authorities to stop him. If a non-local resident wishes to open a competing business in a way that is forbidden by halacha, all steps can be taken to prevent him from doing so. If this non-local person wishes to move to town in order to make it permissible for him to open and then to open his competing business, it would also be permitted to use the authorities to prevent him from moving to town. Since he has not yet attained the status of one who is permitted to open a competing store, it would be permitted to do what is possible to stop him from gaining that status.

Similarly, the Chazon Ish discusses a case where an employer laid off workers in a permissible manner and then hires new workers. The fired workers are angered by this turn of events and want to form a picket line outside the business to keep the new workers and the customers from entering. The Chazon Ish rules that since the employer was acting within the framework of halacha, it would be forbidden to make such a picket line and it would also be forbidden to use the authorities to prevent the business from operating. He concludes that anyone who uses authorities to harm someone who is acting fully within the parameters of halacha is a thief; however, if one has not yet attained the status of being halachically allowed to do something, it would be permitted to prevent him from earning that status.

TOVAS HA'IR (FOR THE GOOD OF THE CITY):

In this vein, it is important to note that when our batei din operated at their full authority and autonomy, they would often make *takanos l'tovas ha'ir*, decrees for the good of the city. Today, bais din does not have the power to operate this way, but the community can use their influence to lobby authorities to do the things that bais din would have done if they had the strength to do so. The Chasam Sofer says that such decrees were made to allow basic commerce to survive, and when bais din cannot make such *takanos*, the public has the right to use whatever means they have at their disposal to enact the same type of decrees.

The same would apply for safety issues. The Bais Shmuel speaks of a story where a man was producing and selling gunpowder in a building that was not properly fireproofed. He says it would be permitted to alert the authorities, as this represents a clear danger and if bais din would have the power, they would shut him down.

Obviously, before such steps are taken one would have to ensure that he is being intellectually honest and is not allowing his personal interests to cloud his judgment. When someone stands to personally gain or lose from a certain business action, he often cannot make impartial decisions; therefore, he would need to speak to others to get a clear perspective before tasking drastic steps like involving the authorities.



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