

Competition in Halacha: Part III

HaRav Chaim Weg

ANI MEHAPECH BECHARA:

The Gemara discusses a case of "*ani mehapech becharara*", which literally means that a poor man is exerting effort in an attempt to get ahold of a cookie. The Gemara says that if a second person would jump in and grab the cookie before the first person can get it, he would be called a *rasha*, a wicked person.

Since the poor man has already made efforts to obtain this cookie, halacha requires others to desist from trying to get it and to let him have it. If someone does grab it before him, he is labeled a *rasha*.

The Gemara is obviously an analogy for any case where one person is trying to acquire a certain object and someone else grabs it first. If conditions are met to forbid him from doing so, he would be considered to be acting incorrectly and he would get the label of *rasha*.

PURCHASING OR TAKING FROM HEFKER?

The first question we need to discuss is how the poor man in the analogy was trying to obtain the cookie. Was he attempting to buy it, or was it an ownerless cookie that he was trying to pick up for free?

There are two cases in the Gemara in Bava Metzia that shed some light on this question. Both of these cases would seem to fall under the category of *ani mehapech becharara*, but the Gemara makes no mention of this prohibition.

The first case involves a person who sees an ownerless item in the street and lays down on top of it. Doing

so is not a halachically valid method of acquiring ownership of the item. While he is lying there, another man comes along and takes the item for himself. The Gemara says that the second man gets to keep the item. It makes no mention of the prohibition of *ani mehapech becharara* and does not say that the second man on the scene is a *rasha* for grabbing the item.

The second case discussed in the Gemara involves poor people who were collecting *peah* from a field. One poor man took his garment and threw it on top of some *peah* in an attempt to gain possession of it. Again, such an action does not constitute a valid *kinyan* and the Gemara says that someone else may come along and take this *peah* for himself. Once again, it does not say that he is considered a *rasha* for taking the *peah* away from the first man.

The Rishonim offer various answers to the question of why the Gemara does not mention *ani mehapech becharara* in these two cases.

1. Tosafos says that *ani mehapech becharara* only applies in the case of a purchase. If one person is exerting effort to try to buy an item, a second person is not allowed to interfere and usurp the deal. This is because he has the option of purchasing the same product elsewhere, so it is improper to obstruct someone else's purchase; however, if one person is trying to take control of an ownerless item, Tosafos says that a second person is not prohibited from grabbing the item away before he gets it. This is because there are no other opportunities to get this item for free, so the second person cannot be told to leave this specific item alone and get it from somewhere else.

2. Rashi argues and says that *ani mehapech becharara* applies even for ownerless items and says that it would be forbidden to grab away such an item from someone who has already exerted efforts to get ahold of it, and one who does so would be labeled a *rasha*. The Ramban agrees with Rashi and offers two separate answers to explain the two cases in the Gemara. He says that in the case of the lost object, the first man did not exert any real effort to get a hold of it, as lying down atop an object is not considered a genuine effort and does not require any real work. Since he did not truly exert any effort, when the second person grabs it is not considered to be taking it away from the first person and one who does so would not be called a *rasha*.

The Ramban explains the other case by explaining that all poor people have equal rights on the *peah* and everyone is equally trying to get it. Since the second man is also canvassing the field in search of *peah*, he is considered to be exerting as much effort as the first man, and has no less rights to any of the *peah* than him until one of them makes a valid *kinyan*; therefore, he is not considered a *rasha* for taking it.

What comes out from this *machlokes* is that if an item is ownerless, Tosafos would say there is no prohibition of *ani mehapech becharara* for someone to grab it away from a person who is trying to get it. Rashi and the Ramban say that *ani mehapech becharara* would apply, but only if the first person exerted a substantial effort and only if the second person was not exerting equal efforts to the first person.

The Shulchan Aruch cites both opinions. The Rama rules like Tosafos, that there is no prohibition of *ani mehapech becharara* when it comes to an ownerless item. Rav Moshe Feinstein writes that although this is the halacha, one who fears Heaven should be stringent and should not interfere when he sees someone else exerting effort to obtain an ownerless item.

WHAT ARE THE CONSEQUENCES OF BEING LABELED A RASHA?

As we said, one who transgresses this prohibition and grabs an item away from an *ani mehapech becharara* is called a *rasha*. What are the consequences of this label?

The Sm"a says that it can be announced publicly that he is a wicked man. Most Acharonim learn that this is the entire consequence and *bais din* cannot force him to give the item to the other party. His only punishment is that he will be publicly shamed and called a *rasha*. If he does *teshuva* and returns the item, people will have to stop calling him a *rasha*. The Pischei Teshuva discusses whether returning the item is sufficient or if he also has to express remorse for what he did in order for him to lose the label of *rasha*.

GRABBING AWAY UNINTENTIONALLY:

What if the second person on the scene grabbed the item without realizing that someone else was trying to purchase it before he came along?

The Pischei Teshuva says that his act obviously cannot be labeled wicked, as he had no idea that he was doing something wrong. He says that, therefore, he has a right to keep the item and cannot be called a *rasha*. He does say that it would be a "*midas chasidas*" to give the item back to the other party. Rav Moshe Feinstein disagrees and says that even if someone took the item inadvertently from another person who was trying to buy it, he still will be called a *rasha* if he doesn't give it back.

A UNIQUE SALE:

We explained that the halacha is that there is no problem of *ani mehapech becharara* in the case of an ownerless item because the second party has no other opportunity to obtain this item other than to grab it. Would the same apply in an instance of a unique, special sale, when one would have no other opportunity to buy this item at this price other than here and now?

The Rama does, in fact, rule that a unique sale has the same status as an ownerless item, and the prohibition of *ani mehapech becharara* would not apply. The Shach disagrees and says in the name of the Ramban that the Rabbanim forbade one to grab away an item in any case of a purchase, and a unique sale is not an exception. The Avnei Nezer rules like the Rama, while the Aruch Hashulchan rules like the Shach.

HIRING WORKERS:

The rule of *ani mehapech becharara* also applies when hiring workers. If someone is trying to hire a worker, a second person would not be allowed to jump in and lure the worker away with a better offer.

What if the worker is uniquely skilled and this quality of work is not available elsewhere? For example, what if good cleaning help is hard to come by, and someone wants to hire away a quality maid from his friend?

It would seem that this would hinge on the abovementioned *machlokes* between the Rama and the Shach. Although hiring is considered a “purchase”, the Rama would still say that *ani mehapech becharara* would apply whenever the same product is not available anywhere else. The Shach would seemingly hold that *ani mehapech becharara* would still apply, as he applies this rule to all cases of sales, regardless of if the item is available elsewhere or not.

BUYERS AND SELLERS:

The rule of *ani mehapech becharara* only applies when one buyer tries to take away a deal from another buyer. A seller, however, may look for another buyer even if he already is in negotiations with one potential buyer who has already exerted efforts to make the purchase. If he feels he can get a better deal elsewhere, he is allowed to try to find another customer. Similarly, a buyer is not beholden to the seller even after negotiations began, and if he wants to look for a cheaper deal, he may do so freely.

The prohibition only applies in cases where one

buyer is trying to usurp a deal by offering more money or where one seller tries to usurp a deal from another seller by mixing in and offering the customer a cheaper price.

WHAT IS CONSIDERED “EFFORT”?

We said that one may not grab away a purchase once another person has exerted effort to purchase an item. But what exactly constitutes an “effort”?

The Rema states that once a price has been agreed upon between buyer and seller and all that is missing is the *kinyan*, another buyer may not mix in and offer a higher price. If they are still haggling over the price, there is no prohibition for someone else to come along and break up the deal by offering a better price.

The Prisha disagrees and says that if two people are negotiating a deal and are still haggling over the price, but it is quite clear that they just have to iron out the details and will eventually reach an agreement, it is forbidden for someone else to interfere, even though a final price has not been agreed upon yet.

A common scenario where this would be relevant is when a contract is in the stage of attorney review. In the state of New Jersey, after a real estate contract has been signed, the attorneys for both sides have three days to work out the details and try to raise or lower the price slightly based on various factors. This would be similar to the Prisha’s case where it is clear that an agreement will be reached soon and the two sides are simply haggling over the details. According to the Prisha, *ani mehapech becharara* would apply at this point.



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