

ANI HA'MEHAPECH BE'CHARARAH

Talmudic Intrigue in: Real Estate, Party Brownies, Dating and Dream Jobs

We live in a world of finite resources, and it is inevitable that we occasionally end up at odds with others, each side vying for exclusive rights to certain resources. These disputes may be over a house, a car, employment, or even a spouse.

In the process of seeking to buy a dream home or dating a prospective spouse, we may find ourselves trying to outmaneuver others who have the same goal. This is called “competition.” When two or more people compete for a single resource, one of them will ultimately achieve his goal at the cost of the others. On the one hand, the Talmud (Bava Batra 21b) generally endorses competition, in spite of the fact that somebody will end up losing out. That's life.

On the other hand, not all competition is *fair competition*; not every “that's life” *ought to be* part of life. Judaism provides a framework for what competition is considered legitimate, and which crosses the “red lines.”

This *Thinking Gemara* shiur will examine a fascinating tenet of Talmudic law that addresses fair competition: the concept of *ani ha'mehapech be'chararah* (a pauper searching for bread), which implies concrete restrictions on what is considered fair competition.

KEY QUESTIONS

- When is competition considered fair, and when is it unfair?
- Are there any sanctions against unfair competing?
- Does the concept of unfair competition apply even to the acquisition of ownerless property?
- To which non-commercial fields does the concept of unfair competition apply?

CLASS OUTLINE

Section I. Ground Rules of Ani Ha'Mehapech Be'Chararah – Fair and Unfair Competition

Case 1: Negotiating to Buy the Weinsteins' Home

Section II. Ani Ha'Mehapech Be'Chararah in Acquiring Ownerless Property

Case 2: Swooping in on the Last Hot Brownie at the Paris JCC

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Case 3: Going out with Rachel who is Already Dating Someone Else

Section IV. Fair Competition in Finding Employment

Case 4: Applying for a Position when the Employer is Imminently Closing with Another Candidate

Note: This shiur is not intended as a source of practical *halachic* (legal) rulings. For matters of halachah, please consult a qualified *posek* (rabbi).

SECTION I Ground Rules of Ani Ha'Mehapech Be'Chararah – Fair and Unfair Competition

Case 1. *The Weinstains had their house on the market for three months for an asking price of \$500,000 and several bids arrived way below range. The Schwartzes then came along, very keen to buy. They offered \$480,000, which the Weinstains didn't formally accept. After three meetings and subsequent discussions, it was clear to all that a final resolution was near, and the price was decided at \$485,000. The night before the next scheduled meeting, the Weinstains received an unqualified offer for their asking price of \$500,000 from the Goldbars, who were prepared to sign the next morning at 8AM.*

What should the Weinstains do?

- Call the Schwartzes and offer them to buy the house for the \$500,000 and if not, close with the Goldbars?
- Go ahead and sell straight away to the Goldbars?
- Ask the Goldbars to wait and see if they close the deal with the Schwartzes in line with their ongoing negotiations?

Source 1. Talmud Bavli, Kedushin 59a

Rav Gidel was negotiating to buying a certain piece of land. Rabbi Abba went and bought it. Rav Gidel complained to Rabbi Zeira about what happened. Rabbi Zeira passed the complaint on to Rav Yitzchak Nafcha. Rav Yitzchak Nafcha replied, "Wait until Rabbi Abba comes to me for the holiday." When Rabbi Abba visited, Rav Yitzchak Nafcha asked him [the following case], "If one poor person is going after a piece of bread and another comes and takes it, what is the law?" Rabbi Abba replied, "He is called a 'rasha' (a wicked person)." "So why did the master [you] do such a thing?" asked Rav Yitzchak Nafcha. He answered, "I did not know [that Rav Gidel had been negotiating to buy]."

רב גידל הנה מהפּיף בְּהֵיָא אַרְעָא. אָזל רבי אבא וּבִנְהָ. אָזל רב גידל קבליה לרבי זינא. אָזל רבי זינא וקבליה לרב יצחק נפחא. אָמר ליה, "המתן עד שיעלה אצלנו לרגל." כי סליק אשכחיה. אָמר ליה, "עני מהפּף בְּחֶרֶה וּבָא אַחֵר וְנִטְלָה הֵימֶנוּ מֵאֵי?" אָמר ליה, "נִקְרָא רָשָׁע." "וְאֵלָּא מִרְמָא טַעֲמָא עֲבַד הָכִי?" אָמר ליה, "לֹא הָנָה יִדְעָנָא."

Source 2. Rashi (Rabbi Shlomo ben Yitzchak), Kedushin 59a – The second person is threatening the first person's welfare.

He is called a wicked person – a rasha – because he takes away the other's livelihood.

נִקְרָא רָשָׁע - שְׂיוֹרֵד לְחַיֵּי חֲבִירוֹ.

Source 3. Tosafot, Talmud Bavli, Kedushin 59a

Rabbeinu Tam says that this prohibition is only applicable if the poor person wants to earn money by hiring himself out or if one wants to purchase something and another preempts him and buys it, similar to the Rav Gidel episode. The second person is called wicked – for why did he go after that which the first person is working hard at attaining? He should go and earn money somewhere else.

ואומר רבינו תם דאיסור
דמהפך דנקט הכא לא שייך
אלא דקא פשוטה העני
להרויח בשכירות או פשוטה
לקנות דבר אחד וחברו
מקדים וקונה והני דומיא
דרב גידל ומשום הכי קאמר
דנקרא רשע פי למה מחזר
על זאת שטרך בה חבירו ילך
וישתפר במקום אחר.

Source 4. Rema, Choshen Mishpat 237:1

[A person is considered a “rasha”] only when the terms have been agreed upon between the buyer and seller, and only the final act of transfer is lacking. However, if the price has not yet been agreed upon, because the seller wants a higher price and the buyer a lower price, it is permitted for someone else to buy the property.

וכל זה לא מיירי אלא כשכבר
פסקו הדמים שביניהם, ואין
מחוסרין אלא הקנין. אבל
אם מחוסרין עדיין הפסיקה,
שהמוכר רוצה בכך והקונה
רוצה יותר בזול, מותר לאחר
לקנותו.

Source 5. Shut Avnei Nezer, Choshen Mishpat 17

If the seller decides not to sell to the first customer, the halachah of ani ha'mehapech be'chararah does not apply. In fact, the seller can always retract amidst negotiations with the first buyer and decide to sell to someone else, in which case it is permitted for a third party to buy from him, since the seller wishes to sell to the third party and not to the original buyer. The prohibition only applies when a third party initiates an offer to the seller while the seller still intends to close the deal with the initial buyer.

כל זמן שאינו רוצה למכרה
לו אין דין עני המהפך
בחררה. ואם כן לעולם יכול
המוכר לחזור מהראשון
ולמכור לאחר, והאחר מותר
לקנות ממנו דכיון שהמוכר
רוצה למכור להאחר ולא
ללוקח ראשון, שוב אין
איסור להאחר ואין איסור רק
אם האחר התחיל עם המוכר
בעוד שרצה למכור להראשון.

Source 6. Ritva (Rabbi Yom Tov ben Avraham Asevilli), Kiddushin 59a

However, that which [Rabbeinu Tam stated elsewhere – quoted in Ramban, Bava Batra 54b] that whenever the second buyer is termed a rasha, beit din (the Jewish court) obligates him to return the money [and cancel the sale], is untrue...Rather, he is termed a rasha but is not obligated in any way to the original buyer.

מיהו מה שכתב הוא
זכרוננו לברכה דכל היכא
שנקרא רשע בית דין מחייבין
אותו להחזיר הדמים הא
ליתא ... אלא ודאי דרשע
מקרי אבל אינו חייב
בכלום לראשון.

Source 7. Rabbi Yechiel Michel Epstein, Aruch Hashulchan, Choshen Mishpat 237:2

If the second buyer was not aware of the first buyer's negotiations towards purchase – and he therefore bought it – he is not termed a rasha. Nonetheless, it is considered an act of piety to permit the first buyer to buy the purchase, even in this case.

אם האחר היה שוגג שלא ידע
שהראשון מהפך בדבר זה
לקנותה, וקנה, אינו רשע,
ומדת חסידות להניחה לפני
הראשון גם בכי האי גוונא.

Rabbi Moshe Feinstein, however, writes that even if the second buyer entered the competition inadvertently, the full prohibition applies.

Source 8. Rav Moshe Feinstein, Igrot Moshe, Choshen Mishpat 1:60

The Shulchan Aruch makes no mention of the distinction between the second buyer knowing or not knowing about the efforts of the first buyer to buy the purchase or to hire himself out. Rather, the halachah is stated without qualification, implying that even if the second buyer was unaware, if he doesn't wish to be termed a rasha he must sell the purchase back to the first buyer, or give the job to the first person.

הנה בשלחן ערוך חושן
משפט סימן רלז לא הזכיר
חלוק בין ידע השני
שהראשון החזיר אחר הדבר
לקנותה או להשפיר עצמו
או לא ידע דסתמא נאמר
הדין, משמע שאף בלא ידע
יש עליו חיוב אם אינו רוצה
להקרא רשע להחזיר ולמוכרו
להראשון ולמסור השכירות
לראשון.

SECTION II Ani Ha'Mehapech Be'Chararah in Acquiring Ownerless Property

Case 2. *The Paris JCC is holding an open house Chanukah party for university students and the Maccabee Beer has been finished off. But, there remains one steaming hot brownie with melting vanilla ice cream left over, which Daniel is making a full-steam-ahead maneuver to enjoy after a most rigorous game of spin the dreidel. He makes an Apache helicopter swoop with his right hand and just as he is about to grab the dessert, he notices someone to his immediate right who had actually started for the dessert before him, but had slower reflexes.*

What should Daniel do?

- Enjoy the dessert by himself?
- Share it with the other guest?
- Give it to the other guest?
- Return the dessert to where he found it?

Source 9. Rashi, Kedushin 59a

A poor person going after bread – he's either trying to acquire something ownerless or trying to get someone to give it to him as a donation.

עני המהפך בחררה - מחזר
אחריה לזכות בזה מן ההפקר
או שיתננה לו בעל הבית.

Source 10. Tosafot, Talmud Bavli, Kedushin 59a

Rabbeinu Tam says that this prohibition is only applicable if the poor person wants to earn money by hiring himself out or if one wants to purchase something and another preempts him and buys, as in the Rav Gidel episode. He's therefore called a wicked person – for why did he go after that which the other person is working hard at attaining? He should go and earn money somewhere else. But if the bread was ownerless there is no prohibition, for if he doesn't acquire this one he will be unable to find another.

ואמר רבינו תם דאיסור
דמהפך דנקט הכא לא שייך
אלא דוקא בשרוצה העני
להרויח בשכירות או בשרוצה
לקנות דבר אחד ויחברו מקדים
וקונה והוי דומיא דרב גידל
ומשום הכי קאמר דנקרא רשע
כי למה מחזר על זאת שטרח
בה חבירו ללך וישתפר במקום
אחר אבל אם היתה החררה
דהפקר ליכא איסור שאם לא
זכה בזאת לא ימצא אחרת.

Source 11. Sema, Choshen Mishpat 237:2

According to Tosafot, the restriction on unfair competition applies only where the item can be purchased elsewhere, even if this entails making an effort. Those who argue [Rashi] maintain that even with regard to a gift and to acquiring ownerless property [which cannot be gained elsewhere] he is called a rasha, because another person is trying to acquire it, and it is considered as though the second person is taking it from the first.

מה שאין בן כְּשָׁבָא לְקִנּוּת דְּבָר
דִּיכּוּל לְהַשְׁתַּדֵּל לְקִנּוּתוֹ גַּם
בְּמָקוֹם אַחֵר אִף שִׁיְהִי לוֹ
טְרַחַא בְּזָה. וְהַחֲלִיקִים סְבִירָא
לְהוּ דְּאִף בְּמִתְנָה וְהַפְקֵר נִקְרָא
רָשָׁע דְּכִינּוּן דְּזָה כְּבָר בָּא לְקַחְנוּ
וּלְקַבֵּלָהּ הֲרִי זֶה הַשְׁנִי כְּנוּטִל
בְּמָה שְׂכָבֵר זָכָה בּוֹ הֲרֵאשׁוֹן.

Source 12. Shulchan Aruch, Choshen Mishpat 237:1

Some say [Tosafot] that if a person wishes to make an acquisition of an ownerless item, or to receive a gift from somebody, and another person comes and beats him to it, he is not called a rasha, because the item is not available elsewhere. The same principle applies to something that is being sold inexpensively, and cannot be obtained for the same price elsewhere; this is similar to an ownerless object, and it is permitted to buy it until it is actually purchased by a buyer. And some say [Rashi] that this does not make a difference. [The Rema adds:] **The first opinion is the principle halachic ruling in this matter.**

וַיֵּשׁ אוֹמְרִים שְׂאֵם בָּא לְזָכוֹת
בְּהַפְקֵר אוֹ לְקַבֵּל מִתְנָה מֵאַחֵר,
וּבָא אַחֵר וְקִדְּמוֹ, אֵינּוּ נִקְרָא
רָשָׁע, כִּינּוּן שְׂאֵינּוּ דְּבָר הַמְּצוּי לוֹ
בְּמָקוֹם אַחֵר. [...] וְכֵן אִם קוֹנֶה
דְּבָר אֶחָד וּבָא חֲבִירוֹ וַיּוֹכֵל
לְקִנּוּתוֹ בְּזוּל שְׂאֵינּוּ מוֹצֵא
לְקִנּוּתוֹ כִּף בְּמָקוֹם אַחֵר, הֲרִי
כְּמוֹ מַצִּיאָה וַיּוֹכֵל לְקִנּוּתוֹ כָּל
זְמַן שֶׁלֹּא זָכָה בּוֹ הַקּוֹנֶה. וַיֵּשׁ
אוֹמְרִים דִּלָּא שְׂנָא: הֵגָה -
וּסְבָרָא הֲרֵאשׁוֹנָה נִרְאָה עֵיקָר.

Source 13. Sema, Choshen Mishpat 237:6

This means to say that even the latter opinion [meaning Rashi], which maintains that he is called a rasha even for ownerless items, agrees that if the person originally trying to acquire the item is rich, and another person comes to take it ahead of him – whether the item is ownerless or it is given as a gift – he is not considered a rasha, because [the rich person] will be able to attain the item elsewhere, though he might have to spend money on it. This is not significant, because he is wealthy – unless the item cannot be gained even for money, in which case the rich and the poor are equal.

פִּירוּשׁ לְסִבְרָא זוֹ הָאֲחֵרוֹנָה
דְּסְבִירָא לִיה דְּאֶפְלוּ בְּמַצִּיאָה
וְהַפְקֵר וּכְיוּצָא בְּזָה נִקְרָא רָשָׁע
מוֹדִים דָּאֵם זֶה הֵבֵא לְזָכוֹת
אוֹ לְקִנּוּת תַּחֲלָה הֲרִי עֲשִׂיר
וּבָא אַחֵר לִישׁוּל מִלְּפָנָיו הֵן דְּבָר
הַפְקֵר אוֹ שְׂאֵר דְּבָרִים הִנְקֻנִּים
בְּמִתְנָה אֵינּוּ נִקְרָא רָשָׁע בְּכָף
כִּינּוּן דְּעֵדִין לֹא זָכָה בָּהּ לְגִמְרִי
וַיּוֹכֵל לְהַשְׁתַּדֵּל עֲנֵן בְּזָה מִמָּקוֹם
אַחֵר אֶלֶּא שְׁצָרִיף לְהוֹצִיא עָלֶיהָ
דָּמִים אֵין בְּכָף כָּלוּם כִּינּוּן דְּעֲשִׂיר
הוּא אִם לֹא שֶׁהוּא דְּבָר שְׂאֵין
הָעֲשִׂיר יָכוּל לְהַשְׁתַּדֵּל אֶפְלוּ
בְּדָמִים דְּבָזָה הָעֲשִׂיר שְׁוָה לְעָנִי.

SECTION III Ani Ha'Mehapech Be'Chararah in Dating

Case 3. Several people independently had approached David over the past few months suggesting that he date Rachel. They all praised her and described her as having the attributes he has been searching for in a wife. David decided to go for it, but then heard back that Rachel is presently dating someone else. In fact, he heard that the relationship has been moving forward nicely over the past couple of weeks. A few days later, David received an email inviting him to the Mostein's, coincidentally cousins of Rachel, for Shabbat. They would like the couple to meet informally during Friday night dinner, and perhaps take a walk after dessert. David is in a quandary. He would like to meet Rachel, but is it appropriate under the circumstances, knowing she is dating someone else?

What should David do?

- Make a decision about meeting Rachel after she either becomes engaged or stops seeing the other fellow?
- Go ahead and meet Rachel anyway?

Source 14. Rambam (Rabbi Moshe ben Maimon), Mishneh Torah, Hilchot Ishut 9:17

If someone appoints an envoy to betroth a wife on his behalf, and the envoy goes ahead and becomes engaged to the woman himself, she is betrothed to the envoy. Yet, it is forbidden to do so, and whoever does so, or a similar action in the realm of commerce, is termed a rasha.

העושה שליח לקדש לו אשה
והלך וקדשה לעצמו, הרי זו
מקודשת לשליח - ואסור
לעשות כן, וכל העושה דבר זה
וכיוצא בו בשאר דברי מקח
וממכר נקרא רשע.

Source 15. Aruch Hashulchan, Even Ha-Ezer 35:29

The Tur and the Shulchan Aruch do not write that he is called a rasha, because they maintain that for gifts and finds he is not called a rasha, and marriage is no worse than this. The Rambam, however, maintains that he is called a rasha for all matters [of unfair competition]... If he did not appoint him as an envoy, but only told him that when you go there [for your own reasons] betroth a certain woman on my behalf, and he went and betrothed her for himself, this remains deception, because he relied on him... yet it seems to me that in this case where he did not appoint him as an envoy, even the Rambam will concede that he is not termed a rasha, and only a fraud.

והטור והשלחן ערוך לא
כתבו דנקרא רשע דאזלו
לשיטתיהו בחושן משפט סימן
רלז דבמתנה ומציאה לא נקרא
רשע, עיין שם, וקדושין לא גרע
מזה. והרמב"ם סבירא
ליה דבכל ענין מקרי רשע ...
אם לא עשא שליח אלא אמר
לו כשתלך לשם קדש לי אשה
פלוגית והלך וקדשה לעצמו
סוף סוף הרי זה מנהג רמאות
כיון שזה סמך עליו והוא רמה
אותו ... ויראה לי דבכי האי
גונא גם לדעת הרמב"ם לא
נקרא רשע אלא רמאי.

Source 16. Yam Shel Shlomo, Kiddushin Chap. 3, no. 1

Even according to Rashi, who explains that the bread is ownerless – even so we can distinguish and say that concerning betrothal there is no restriction, because of [the mitzvah] of [getting married for the purpose of] reproduction.

וְאֶפִּילוֹ לְרֹשׁ"י, שֶׁפָּרַשׁ חֲרָרָה
שֶׁל הַפֶּקֶר, אֶפִּילוֹ הֵכִי נוֹכַל
לְחַלֵּק, דְּבִקְדֻשָּׁה שְׂרִי, מִשּׁוּם
פְּרִיָּה וּרְבִיָּה.

Source 17. Rav Moshe Feinstein, Igrot Moshe, Even Ha-Ezer 1:91

But if they have already decided to complete the shidduch, yet have not yet gone through the formal procedures with which the shidduch is completed, the halachah will depend on the law of ownerless property and gifts... It is proper for a God-fearing person to heed the last opinion, which is the opinion of Rashi.
If the acquisition or the writing of the *tena'im* [a formal declaration of betrothal] was made, it is forbidden for the sides to retract [without legitimate cause], and it is certainly forbidden for others to court her.

אָבֵל אִם כָּבֵר הֶחֱלִיטוּ לְגִמּוּר
הַשְּׂדוּךָ, אַף שֶׁעַדִּין לֹא נַעֲשֶׂה
הַקִּנְיָן שְׁנוֹהֵגִין לַעֲשׂוֹת בְּגִמּוּר
שִׂידוּכִין וּכְדוּמָה, תְּלוּי זֶה בְּדִין
הַפֶּקֶר וּמִתְנָה ... מִן הָרְאוּי לִירָא
ה' לְהַחֲמִיר לְחוּשׁ לְסִבְרָא אַחֲרֵי
נָה שֶׁהִיא שִׁטַּת רֹשׁ"י. וְאִם כָּבֵר
עָשׂוּ קִנְיָן אוֹ פְּתִיבַת תְּנָאִים ...
כָּבֵר חָל הַחֲרָם שֶׁלֹּא לְחַזֹּר
וְאִסּוּר לְאַחֲרִים לְהַשְׁתַּדֵּךְ לָהּ.

SECTION IV Fair Competition in Finding Employment

Case 4. *Nathan has been searching for a job for almost a year, without success. He recently saw an advertisement for a computer programming position at a large international company, and submitted his application. The company replied that he has called at the very last moment, because they were planning to close with another applicant that same night – but there's still time to come over for an interview, and the company is interested in seeing as many applicants as possible before closing. Nathan wants to know what to do: Is it permitted for him to apply for the job, knowing that the company is about to close with somebody else?*

Source 18. Shulchan Aruch, Choshen Mishpat 237:2

It is forbidden for a teacher to hire his services to an employer who already has another teacher in his home, unless the person tells him: I do not wish to continue to engage the teacher.

אִסּוּר לְמַלְמֵד לְהִשְׁכִּיר עֲצָמוֹ
לְבַעַל הַבֵּית שֶׁיֵּשׁ לוֹ מַלְמֵד אַחֵר
בְּבֵיתוֹ, אִם לֹא שִׂיאָמַר בְּעַל הַבֵּית:
אֵין רְצוֹנִי לְעַכֵּב הַמַּלְמֵד שְׁלִי.

Source 19. Shulchan Aruch HaRav, Hefker 12

The same ruling applies for an employer who has not yet engaged a teacher, but another teacher has already offered his services. This is like the case of ani ha'mehapech be'chararah, and therefore it is forbidden to take the job from him.

הוא הדין אם אין המלמד
בביתו של בעל הבית אלא
בשכר בקש מבעל הבית
תחלה אף שעדיין לא
הבטיחו הרי זה כעני המהפך
בחררה שאסור לאחר לטלה
ממנו.

Source 20. Sema, Choshen Mishpat 386:10

A non-Jew made a business deal with a Jew to buy from him a certain amount of whiskey for a specified price. The deal was struck, and as a sign of its completion, they shook hands as customary. Following this, the non-Jew went to another Jew who lives in the same neighborhood, and asked him to make the same deal, without revealing that he had already spoken with the first Jew. The non-Jew's intention was that if the second Jew should offer a cheaper price, he would take the deal and retract from his original agreement.

The first Jew understood that something was afoot, and therefore sent a message to the second Jew, requesting that he not sell the non-Jew any whiskey, because he had already come to an agreement with him. The second Jew took no notice, and went ahead with the sale, at which the non-Jew retracted his agreement with the first Jew.

It appears clear that if the judges see no deception in the matter [on the part of the Jew], then the second Jew is not punished for his actions. This is because even if there is a prohibition against usurping another's business, this applies only to a non-Jew who is a regular client of a Jew, and the second Jew makes an effort to steal away the first Jew's client. Even though the first Jew sent the second Jew a message to refrain from selling whiskey to the non-Jew, the first Jew does not have the right to do so.

מעשה אירע שבא עכו"ם ועשה
מקח עם ישראל לקח ממנו כף וכף
מדות יין שרוף, כל מדה בכף וכף,
ונגמר המקח ביניהן כדן התגרים
שומכים כף אל כף. אחר כך הלך
העכו"ם אל ישראל אחר הדר
בשכונתו של ישראל הראשון,
ורוצה לעשות עמו גם כן מקח,
ולא גילה שבכר דבר עם ישראל
הראשון - והיה כונתו שאם יזיל
לו ישראל השני המקח, שיקח
ממנו, ויניח הראשון.
וישראל הראשון הרגיש בדבר,
שלכף הלך בבית ישראל השני,
ושלח אל ישראל זה ובקש ממנו
שלא ימכור לו יין שרוף, כי כבר
עשה עמו מקח. ולא השגיח
ישראל השני על זה, ועשה מקח
עם העכו"ם, ולקח העכו"ם מידו
היין שרוף - ומכר זה לא קנה
העכו"ם מישראל הראשון.
נראה פשוט דאם אין ערמה בדבר
לפי ראות הדינים, דאין עונשין
לישראל השני על זה, מאחר
שהעכו"ם מעצמו בא אליו לקח
ממנו יין שרוף, דאף למאן דאמר
דאסור לקח מערופיא של חבירו
היינו דוקא בעכו"ם הרגיל להיות
עסק עמו וישראל השני מהדר
אחר העכו"ם שישראל הראשון
עסק עמו והשתדלהו לעסוק עמו.
ואף ששלח אליו יהודי הראשון
ובקש ממנו שלא יעשה עמו מקח
לאו כל כמיניה לעשות לנפשו הנזק
עבורו.

Source 21. Rabbi Yosef Fleischman, Alon Ha-Mishpat no. 13

A worker who is unable to find another job in the city is permitted, according to the majority of authorities, to offer an employer his services, even when the employer has already made up with another worker.

The reason for this is that the work, under such circumstances, is considered as ownerless property, which cannot be obtained elsewhere. According to most authorities the prohibition of ani ha'mehapech be'chararah therefore does not apply.

עובד שאינו יכול למצוא
עבודה אחרת בעיר, לדעת רוב
הפוסקים מותר לו להציע את
עצמו לעבודה אף אצל מעביד
שקבר ספם עם עובד אחר.
כיון שבאופן זה נחשבת
העבודה כדבר הפקר שאי
אפשר למצוא אחר, ודעת רוב
הפוסקים שאין בזה איסור של
עני המהפך בחררה.

Source 22. Shulchan Aruch and Sema, Choshen Mishpat 237:2

Shulchan Aruch: However, if an employer employed a teacher, it is permitted for a different employer to hire the same teacher [by making him a better offer].

Commentary of Sema: This is not similar to the cases of a [purchase or] rental, because for matters of renting a house or item all are the same, whereas in education, each teacher is different, and therefore is considered as something that is uncommon.

אבל אם שכר בעל הבית מלמד
אחד, יכול בעל הבית אחר
לשכור אותו מלמד עצמו.

סמ"ע: אינו דומה לשכירות
הנ"ל דלעיל בשכירות בתיים
או בליים כולם שוין הן מה
שאין בן בהסברת הלמוד
ועיונו אין מלמדים שוין והנה
ליה כדבר שאינו מצוי הנזכר
לעיל וקל להבין.