

PIRCHEI SHOSHANIM SHULCHAN ARUCH LEARNING PROJECT

# Choshen Mishpat

## Shiur 1

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## Oni Hamehapeich Becharoroh:

*Simon 237*

*One who purchases an object which is being pursued by someone else*

*These halochos are an illustration of the divergence between Torah ethics and modern-day business practice. Business practice condones and perhaps even admires the behavior of someone whom the Torah deems a rasha.*

Note: the first four *shiurim* are shorter than the later ones, to start slowly.

**1 (1) When one person is attempting to purchase or rent an object, whether immovable (that is, real estate) or movable, (2) if another individual acquires it he is called a 1) 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 rasha 2) since a similar (that is, likewise for free) object is not readily available elsewhere.**

RAMA **3)** *If the land in question borders on the field of the second individual then, even though the din of bar metzra (special rights for purchase granted to the owner of a neighboring property) does not apply, 4) the bar metzra (neighbor) can pre-empt the sale and he is still not called a rasha. The reason is that this case is equivalent to an 5) ownerless object (available for free) since this property has a unique relationship to the second individual. If someone wants to buy an object and (3) someone else comes to buy it because it is cheap, at a price that is unavailable elsewhere, it is like a found object and [the second person] may buy it as long as the first has not acquired legal title to it.*

**There is a second opinion that this prohibition applies even to a found ownerless object or its equivalent.**

*RAMA* The first opinion seems to be the main one. 6) And even according to the second opinion, it only applies to a poor person but if the first person is wealthy, in general there is no prohibition. Only if it is a rare object [that is, difficult to obtain at any price], then even if it is a wealthy person he is called a *rasha* [if he takes it away]. This entire prohibition refers only to cases in which the first individual has already come to terms with the owner and is only lacking formal acquisition of (made a *kinyan* on) the object. However, if terms have not yet been agreed upon, and the seller wants more money than the buyer says he is willing to pay, then this prohibition does not apply. 7) This law applies whether the seller is a Jew or a gentile. Some have written that Rabbeinu Gershon (at around the year 1000 CE) enacted a *cherem* (excommunication) against one who underbids to rent property which was previously rented by another Jew from a gentile. Similarly there is a *cherem* against one who attempts to divert a gentile borrower from another Jewish lender.

## Setting

The context of this *halacha* is as follows: In general, one who takes an object which is owned by another individual (meaning any time after it has been formally and legally acquired by someone who makes a *kinyan* on it) is a thief. If, however, the object has not been legally acquired but is still an ownerless lost object, then one who takes it is not a thief. Nonetheless, this *siman* states that in many cases it is prohibited to do so. It is not formal stealing but still prohibited.

We will take up the details of this *halacha* soon, but let us first study the source. The respective sources of the divergent opinions seen above will become apparent at the same time.

## Source

### Kiddushin 59A

Rav Gidel was attempting to purchase a plot of land. Rav Abba pre-empted him and acquired the plot. Rav Gidal complained to Rav Zeira. Rav Zeira brought the complaint to Rav Yitzchok Nafcha.

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

Rav Abba replied, "He is called a *rasha*."

**Rav Yitzchak** 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 sign 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 *posuke* says one who hates presents lives longer."

They finally reached an arrangement where neither rabbi used the field but it was made available to all the rabbis. It was called, "*Ar'a derabbanon* (the Land of the Rabbis)."

The conclusion that we draw from this incident is that one who purchases a field which someone else was negotiating to purchase is considered a *rasha*.

There are two positions about the principles underlying the *balacha* and hence to what kind of field the principles in the *gemora* apply to. These two approaches form the basis for the two positions in the *Shulchan Aruch*.

## The Two Opinions

The first view is that of *Rashbi*. It holds that the reason the second, pre-empting person is considered a *rasha* is that he is interfering with the first person's life or livelihood. Thus, this objection to his actions applies whether the property in question that the first person was attempting to acquire is *hefkeir* (ownerless property) or owned property.

The second view is that of *Rabbeinu Tam*. He says that one is considered a *rasha* because we say that instead of pre-empting the first person, he should rather acquire some other property, which no one else has been negotiating to acquire. However, this of course only applies to property that is owned by someone and is being purchased. If the property in question is *hefkeir*, then one cannot fault someone for attempting to get

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<sup>1</sup> Beginning words *Oni Hamehapeich Becharorob*

<sup>2</sup> See *Tosafos*, beginning words *Oni Hamehapeich*

ownership even by pre-empting someone else, since this particular property has a unique quality not found elsewhere: it is available for free.

*Tosefos* concludes with the following two deductions.

- 1) If a man has hired a worker and has not expressed displeasure with his work, then another worker may not compete for this position. The reason is that the second worker should just try for positions which are open. [The job is considered the "item" in this case.]
- 2) Also, if someone has hired a teacher for his children and another person feels that this teacher is uniquely capable of teaching his children then he 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 *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 Oruch* is that of *Rabbeinu Tam*. The *Rama* feels this is the pre-eminent opinion. The second opinion is that of *Rasbi*.

## What Claim Does the First Individual Have?

Obviously, the first person, who is after all only negotiating for the item, does not have full possession or ownership. If he did, then the second person would be a thief. The *Beis Yosef*<sup>3</sup> proves that the seller and the first individual must have reached an advanced stage in their negotiations such that they had already settled on a fixed price, and the only detail that was lacking was the formal acquisition (*keinyan*). The *Darhei Moshe* agrees with this as well.

## Applications of Rabbeinu Tam's Leniency

The *Shulchan Aruch* is lenient in a number of circumstances, based on *Rabbeinu Tam's* opinion.

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<sup>3</sup> Machon Edition, Page 336, beginning words *Kosev Mordechai*

<sup>4</sup> Note one

- 1) The first case mentioned is where the property in question borders on the second person's property. According to *Rabbeinu Tam*, the only time the second person is called a *rasha* is when the property does not have a special attraction or appeal to him. However, in this case of property which borders his present property, the field is certainly unique and therefore he may attempt to gain possession even by pre-empting someone else.
- 2) The second case mentioned by the *Shulchan Aruch* is where 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. Thus once again the *Shulchan Aruch* holds that he is not a *rasha*.

It should be noted that this second case is not without controversy. The *Shulchan Aruch* is following the opinion of the *Radake*<sup>5</sup>. However the *Shach*<sup>6</sup> maintains that one should follow the opinion of the *Ramban*<sup>7</sup> who forbids this practice. The *Ramban* argues that since this item is being sold and not given away for free, it is therefore subject to this prohibition. The *Nesivos*<sup>8</sup> concurs with the *Shach*.

## If the First Person is Rich

The *Ran*<sup>9</sup> holds that if the first individual is wealthy, then often he may be able to purchase the item quite easily from someone else. Therefore, we cannot fault the second individual for attempting to gain possession. However, where the property in question may have unique appeal to the wealthy purchaser then a second person may not attempt to acquire it.

## Renting Property Which Was Rented to a Jew

The *Rama* states that **Rabbeinu Gershon Me'or Hagalah** (the same person who prohibited marrying a second wife without the first wife's agreement) prohibited bidding on property which was already rented by a Jew from a gentile.

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<sup>5</sup> Responsa 31, alluded to by *Darhei Moshe*.

<sup>6</sup> Number 3

<sup>7</sup> *Baba Basra* 54b, beginning word: *Nichsei*

<sup>8</sup> Number 2 of *chiddushim*

<sup>9</sup> Comment to *Kiddushin* 24a (in the Rif pages) beginning word: *Nichsei*

We must understand why this additional edict is necessary if the *gemora* already clearly prohibited *oni hamehapeich becharorob*.

### If a Jew Owns the Property

The *Nesivos*<sup>10</sup> explains that the property in question is under a lease to the Jew for only one year. The second Jew does not want to rent it for the first year when the first one has his agreement. He wishes to place a higher 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.

### If a Gentile Owns the Property

However, when the property owner is a gentile our sole concern is the benefit of the renter. Therefore, we do not permit other people to place bids for the property in question, even for after the lease runs out.

*The Nesivos*<sup>11</sup> claims that if the second person goes ahead and violates the edict of **Rabbeinu Gershon** by signing a lease with the non-Jew, then the first person can force him to allow the first person to rent the property at the price which the second person negotiated. This is an application of the *din* of *bar metzra* which we will study later on.

*Rabbi Akiva Eiger* quotes the *Kol Bo*<sup>12</sup> who mentions that even if a Jew ceased to rent a property from a gentile, another Jew may not rent that property until it has been vacant for an entire year. This is also part of **Rabbeinu Gershon's** edict.

The next *shiur* will continue with this subject and study further applications.

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<sup>10</sup> *Bi'urim* number 1

<sup>11</sup> See also *Chiddushim* number 4

<sup>12</sup> Chapter 116