

HALOCHOSCOPE



Congregation Shaaray Tefilla, Pittsburgh, PA

The problem raised in this issue of Halochoscope faces every one of us in some form. But it has fallen into neglect due to a shortage of well documented information (it does not appear in Shulchan Aruch.) We have, therefore, elaborated in our explanations and references, yet tried to keep it simple.

The question:

A broker shares an office with other semi-independent brokers. When a potential client comes in or calls on the telephone, whoever is free at the time may take the client as his own, creating a highly competitive situation. Now a new broker, a widow, has joined the group. Is there a problem with competing with her in a "normal business environment"? Should he try to give her an opportunity to answer first?

What are the issues?

There are two *Lavin*, negative commandments, specifically referring to widows:

(A) *Kol Almono Veyosom Lo Se'Anun* - There is a *Lo Sa'ase MideOraisa* a Scriptural negative commandment against applying undue pressure on a widow or an orphan. [See Parshas Mishpotim 22,21 and the Meforshim there] What constitutes undue pressure?

(B) *Lo Sachbol Baged Almono* - Do not take the blanket of a widow as collateral for a debt. [See Ki Setzei 24,17.] This is a perfectly normal business practice when anyone else is the debtor. Does this, therefore, mean that for a widow we must employ a different business standard?

(C) What is considered fair competition in Halacha?

(A) *Lo S'Anun*

To whom does this mitzva refer? It is generally accepted that this is a specific admonition regarding widows and orphans.

Although we are not allowed to verbally or financially abuse anyone, we must be exceptionally gentle and merciful to widows. This applies to both rich and poor widows alike. [R. Akiva in Mechilta Mishpotim 79 according to Rambam, Chinuch and Maharal. See Rambam Hilchos Dayos 6,10. Mogen Avrohom 156,2. Sefer Hamitzvos, Lavin 156, Chinuch No. 65. For the other view, see Rashi on Chumash and Maharal, Yereyim No. 182 (54) and SeMaG Lavin No. 8.]

Furthermore, even when constructive firmness is called for, e.g. a teacher

dealing firmly with an orphan student to help him learn, it must not be with the same firmness as with other students. [See Rambam there.]

The Mechilta also says, even *Inuy Mu'at* a small abuse is forbidden, i.e. any extra pressure.

It would follow that even in a normal business environment, extra care should be taken with a widow to give her the advantage where possible. [See Chinuch No. 65 according to Gittin 52a and 52b. For a detailed list of special treatment see Rambam, there. Minchas Chinuch points out: it is clear in the halacha that a widow is not always accorded the same preferential treatment as an orphan.]

How does one measure the degree of extra care? Before we answer this we should analyze the other parts of our Sheila.

(B) Lo Sachbol Beged Almono

This prohibition is more specific. It only forbids taking collateral from a widow. This mitzva, too, applies regardless of the widow's financial standing. [See Baba Metzia 115a.] It is generally agreed upon that this mitzva is limited to the collateral. This shows that although collateral is a fair practice with others, yet restricted with a widow, it does not mean that all otherwise fair practices are restricted. [See Choshen Mishpat 97,14; ShaCh 3; Pischei Teshuva 2; and Oruch Hashulchon, 14.]

Clearly, Lo Sachbol is not applicable in our case, but an understanding of its meaning will help resolve our case.

About whom are we commanded? Only a widow is specified in the Torah. There are, however, two views as to whether anyone else should be included.

According to some it applies equally to a divorcee, since she too is defenseless; some even extend it to include any single woman. [See Shulchan Aruch Choshen Mishpat 97,14. S'MA, 22 and TaZ.]

Others disagree saying that the Torah purposely limits this to a widow. [See Shach, there and Urim Vetumim.]

Upon a close inspection of the sources, we find that this dispute is based on two differing interpretations of the reason for Lo Sachbol. Is it because the widow is vulnerable and likely to be a victim of abuse, a real disadvantage, or is it because of her sensitivity? If it is because she is vulnerable and defenseless, we may extend it to other single women. If, however, her vulnerability is insufficient reason for special treatment, and it is only because a widow is sensitive and likely to weep, then we limit it to widows.

Ramban, in his Torah commentary, says that Lo S'Anun, too, is based on the sensitivity, rather than the vulnerability, of widows and orphans. [See Urim Vetumim, there.]

The Chinuch, however, distinguishes between the two mitzvos. He explains Lo Sachbol by the fact that a widow is brokenhearted [See No 591], whereas Lo S'Anun, he says, is because they are weak and defenseless. Accordingly, all single women would be included in Lo S'anun. [See Minchas Chinuch, there.]

Similarly, if Lo S'Anun is only because of extra sensitivity, this may also limit the scope of the prohibition to real abuse. But if it is because of vulnerability, we must go out of our way to give them the advantage; "more than we would have done had their father been living." [See Chinuch No 65.]

Rambam, though his reason for Lo S'Anun is like that of Ramban, holds

like the Chinuch in practice, giving preferential treatment to widows. [See Hilchos Dayos 6,10...because their spirit is low ...]

In summary: According to Ramban, outright abuse, verbal or financial, is forbidden. Normal business practice is allowed, provided no undue pressure is placed on the widow. According to Rambam and Chinuch, normal procedures, such as collection of a debt or the imposition of a vow, are allowed. But in a competitive situation, where the widow is at a possible disadvantage, one must make allowances for her. The alternative amounts to taking advantage of her. Also, this mitzva applies equally with regard to any single woman. We will follow this view.

The only way to judge a possible disadvantageous situation would be to imagine oneself "in the other person's shoes". Unfortunately, it is difficult to generalize.

(C) Unfair Competition

The Talmud allows fair competition. [See Mishna Baba Metzia 60a.] However, there are various limitations on how one may compete. [See Baba Basra 21b; Kiddushin 59a.]

Whereas it may be permissible under certain circumstances to set up shop near another business, one may only attract customers who have not yet decided to shop next door. One may not lure customers from the competition, and certainly not enter the neighboring store to take his customers away. [See Teshuvos Chasam Sofer Choshen Mishpat No. 79, where he forbids taking a customer who had already agreed verbally to a deal but had not fixed a price. But he also adds to this: anytime the first vendor is sure of the patronage of the customer, the second vendor may not compete.]

In our case, since it is not unfair competition under the Torah's law, and each broker has a chance at any potential client, the only issue is: does she feel vulnerable? If she does, we are obligated to give her the advantage.

NOTE:

The following real-life situation occurred: A person had spoken to a selling agent about buying a house, without committing himself to this agent on paper. He then called the real estate brokerage, and was answered by another agent, a widow. She said that she wished to be the selling agent. The wouldbe buyer insisted on working with the original selling agent. The widow was obviously upset.

Is there a case here to go with the widow? It would seem that in this case it is in order for the client to insist on his previously agreed selling agent. If, however, it is common practice in the real estate brokerage business to take away other people's clients, then the widow is entitled to feel disadvantaged. Also, if the house itself has a designated selling agent, a third person, even if he would not insist on his rights, then the first agent may not have any more rights to this client than the widow.

ANNOUNCEMENTS

Shacharis, Shabbos	9:00 am
Mincha Shabbos	5:10 pm
Shacharis Sunday	8:00 am
Shacharis Monday-Friday	7:00 am
Mincha Sunday-Thursday	5:30 pm
Candlelighting Parshas B'Shalach	5:25 pm
Mincha Erev Shabbos B'Shalach	5:30 pm

Shiurim:

Gemoro Makos	Sunday 7:15 am
Halocho B'iyun: Avoda Zora	Monday 9:00 pm
Hilchos Shabbos:	Shabbos 8:15 am

This issue of HalochoScope is sponsored by Yussel Zipris in memory of his grandmother, Chana Bas Mordechai Steinbeck z"l, whose Yortzite is this Shabbos. Shalosh Seudos is also sponsored in her memory.

We are privileged to have the company of the Biala Rebbe, Shlita, in our shul this Shabbos. He will ly"n conduct a TISH on Friday night at 8:30 in the shul. Please feel welcome; it is sure to be an inspiring Shabbos experience.

Anyone interested in a subscription to HALOCHOSCOPE, please call 521-5419.

Any and all comments and suggestions are welcome and can be addressed to:

Rabbi Shimon Silver
Congregation Shaaray Teffillah
5741 Bartlett Street
Pittsburgh, PA 15217