

HALOCHOSCOPE

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Congregation Shaaray Tefilah, Pittsburgh, PA

Corrections to last week's issue: Section C, end of paragraph : Teves is not one of the variable months.

Also, besides the reason given, a Taanis is usually not rescheduled to a Friday so that the extra prayers will not diminish or delay *Kovod Shabbos*, preparing for Shabbos [See Tur Shulchan Aruch O.C. 686]

This week's question:

If there is toll-free number specifically for placing orders, it is permissible to call it for information? In a related case: May one go to a store to view a selection of goods while intending to buy the goods he chooses from a different store?

The issues to discuss:

- (A) *Ona'as Devarim*, taking advantage of others with words.
- (B) *Sho'el Shelo Mida'as*, borrowing without informing the owner.
- (C) Is there an issue of *Gezeilah*, stealing?

(A) Ona'as Devarim

There are two explicit commandments forbidding *Ona'ah*, exploitation, in the Torah. One is clearly referring to commercial transactions. This prohibits overcharging or underpaying for a product. The second commandment refers to using words to take advantage of someone. This is known as *Ona'as Devarim*. This can be in the form of outright insults or in more subtle ways. For example, one may not ask someone about a subject that he is unfamiliar with in order to embarrass him. One may not remind a person of his or his antecedents' irreputable past. Another form of *Ona'as Devarim* is giving someone a false expectation of earning some money. For example, if a salesman is looking to unload his wares, one may not direct him to someone who will definitely not buy them. One may not inquire about the price of an article with no intention of buying it. This is a *Mitzvah* that is *Masur Lelev*, dependent on the integrity of the individual- the seller may never know the original intent, but will think that the customer lost interest upon hearing the price. One opinion goes further: One may not even express interest in an article by staring at it, if he does not have the money with him to buy it. We do not follow this opinion, but it does show us the meaning of *Masur Lelev*.

Obviously, the prohibition only applies when one is misleading the seller into thinking he has a customer. If one reveals when inquiring that he is only curious, then the seller is not being misled and there is no Ona'ah. It could be argued that today, with the open market system, it is normal to price an article by inquiring from a number of vendors. However, if one walks into a store with some cash and asks about a specific article with no intention of buying, one is in violation of Ona'ah.

In our cases: the toll-free number is specifically for placing orders, and anyone calling is assumed to be ready to buy. Therefore, it would appear to be Ona'ah to call simply for information, particularly if the information desired is the price. If there is no other telephone number given for information, and the 800 number is manned rather than a recording, one may assume that the vendor expects people to ask for some information before placing an order. One may then call up and begin the conversation with a disclaimer: "I am not ordering now; I just want information..."

In the case of the store, the prospective customer is not asking about a specific item, but wishes to see a range of samples. Therefore, one might suggest that since the vendor realizes that he may not be satisfied with any of them, he cannot assume that the customer will buy. Thus, as far as the vendor is concerned, he is only misleading himself if he believes he has a customer. However, Ona'ah is Masur Lelev, and the customer knows even before he sees all the samples that he will not buy. If the samples are all on display, then presumably the vendor is advertising, which means that he expects inquiries from "window shoppers". However, if the samples are not on display, but need to be brought out by the salesman, the vendor probably thinks that the inquirer is more than curious, or he would not go through the bother. Again, if the inquirer is open before he asks and tells the vendor that he is not ready to buy, it might not be Ona'ah. Here, however, the buyer does want to buy, only not from this vendor. This, of course, he will not reveal. If the buyer has not ruled out buying here if he finds the right thing at the right price, or if he has not yet made up his mind to buy at all and is really only curious, the disclaimer would help. [See Baba Metzia 58b. Sh. Ar. Choshen Mishpat 228 commentaries.]

(B) Sho'el Shelo Mida'as

Here, especially in the case of the store, the inquirer is "using" the items belonging to the vendor. Usually the vendor is happy to let people look at his merchandise in the hope that he will sell something. However, in this case, the vendor would most likely not permit him to use it if he knew the real intention of the user. When one borrows an article to use is, one is a *Sho'el*, and using without permission is *Sho'el Shelo Mida'as* and considered *Gezeila*, robbery. However, in our cases, it is unlikely that they may be considered *Sho'el Shelo Mida'as*. Firstly, many authorities maintain that to attain the status of a *Sho'el*, a valid *Kinyan*, act of transaction, must take place and use is not sufficient.

Since the use is taking place on the property of the vendor/owner, these authorities could not consider the person a *Sho'el*. Secondly, although the vendor is issuing his permission under false illusions, he is not withholding permission and it is therefore *Mida'as*. There still could be another issue of one using an article for use other than that agreed upon by the owner, but this also seems unlikely; the "user" is not actually doing anything different than an interested customer, only his intentions are different. [See Baba Metzia 41a, 43a, 94b, etc. Baba Basra 88a. commentaries, e.g. Machane Ephraim, Sheila Upikadon 5.]

(C) Gezeila

In dialing an 800 number, one is immediately causing a monetary loss to the subscriber, who is obviously agreeable to this in return for the added business. If, however, this line is not for information, the investment is evidently only worth his while if the caller places an order. Presumably he takes some non-order calls into account when calculating his investment; nonetheless the caller may not actively cause this loss. This is not outright *Gezeila*, yet it is a form of damage, called *Garmi*, where indirect loss will definitely result, and is forbidden. As mentioned earlier, if the company leaves no other telephone number for information and the 800 number is manned, it may be presumed that they accept inquiries on this number, too. [See Sh. Ar. C. M. 386.]

In the case of the samples, where the inquirer is "using" the samples for his own ends, there is a more difficult issue. Obviously, floor samples lose value and are sold for less because of their handling by prospective customers. Nonetheless, this, too, is a loss the vendor willingly absorbs. The problem here is that he would not agree to let someone handle his samples only to take their business elsewhere. Even if the use is less than a *Shaveh Pruta*, the minimum monetary value considered *Gezeila*, it is unethical because ultimately, if everyone uses this excuse, the item will lose its value without having served its purpose. [See Sh. Ar. C.M. 359:1 commentaries.]

There is another issue applicable to both cases. In answering his inquiries, the salesperson is using the time he is paid for by his employer. A *Sachir*, a hired laborer paid for his time, is not allowed to waste his time doing things that his boss does not need done. He is allowed to spend time eating, but not too long. If he sees a lost article which he wishes to take and keep for himself, he may do so but must deduct from his wages the time he spends getting it. Others also may not distract him from his job, although if they do, often he is not to blame. Presumably, a salesman is expected to engage his customers in small-talk to befriend them, it is not a waste of time even if the customer does not end up buying anything; again, this is a worthwhile investment for the employer. However, the "buyer" here never intends to buy, and although the vendor will never find this out, he would not agree if he knew. It is therefore up to the "buyer" not to waste the salesman's time.

We find a case in the Talmud: Someone seizes his friend's servant and

has him do a job for him. If the servant's owner loses out because in that time the servant was supposed to be working for him, the one who seized him must pay the wages of a laborer to the owner. In our cases, as far as the 800 number is concerned, it is impossible for the caller to know that he is not taking the operator away from sales, and therefore, he may not dial the number. In a store, if it is clear that no other customers will be coming in during this time, one is not causing the owner any loss. However, this, too, is difficult to ensure. In conclusion: In both cases, one should not take advantage, unless he can be sure that there is absolutely no concern on the part of the vendor. [See Baba Metzia 89b, 10a, Rashi. Berachos 45b etc. Baba Kama 97a. Sh. Ar. C.M. 363:4-5.]

[Note: Regarding Ona'ah, the victim is the person being "teased", regardless of whether he is the owner or not. Ona'as Devarim does not apply to a gentile victim according to some Poskim, but *Genevas Da'as*, a closely related prohibition, does apply. Therefore, since one cannot always be sure of the distinctions between them, one should avoid both. Besides, the prohibitions of Gezel do apply to stealing from a gentile.]

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ANNOUNCEMENTS

SCHEDULE:

SHABBOS SHACHARIS	9:00 am
SHABBOS MINCHA	4:40 pm
SHACHARIS SUNDAY	8:00 am
SHACHARIS MON - FRI	7:00 am
MINCHA SUN - THURS	4:55 pm
CANDLE-LIGHTING VA'EIRA	4:51 pm
MINCHA EREV SHABBOS	5:00 pm

SHIURIM:

GEMORA MAKOS-	
SUNDAY	7:15 am
HALACHA B'TYUN-	
MONDAY	8:30 pm
HILCHOS SHABBOS	
SHABBOS	8:15 am

- Junior Minyan for boys on the third floor beginning at 9:00.
- Playgroup with refreshments for preschoolers and first-grade girls on the second floor.
- Shalosh Sudos is being sponsored by Rabbi Binyomin Nadoff in memory of his father-in-law whose Yorzite is on the 24th of Teves.

This issue of HALOCHOSCOPE has been sponsored by Mrs. Abe Dunn and Rabbi and Mrs. Binyamin Nadoff in memory of Reb Avrohom Abba ben Aharon Tzvi Dunn whose Yorzite is on the 24th of Teves.

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Comments and suggestions are welcome and can be addressed to :

Rabbi Shimon Silver
 Congregation Shaaray Tefilah
 5741 Bartlett Street
 Pittsburgh, PA 15217 (412) 521-5419/9911