

Competition in the Teaching of Torah

Rambam, Mishnah Torah, Hilchos Talmud Torah, Perek II

Rabbi Dovid Rosenbaum, Young Israel Shomrai Emunah

Halacha VII

“...And similarly a teacher of children whose friend came and opened a school next door in order to attract other students or his friend’s students may not object as it says, ‘The Lord is well pleased for His righteousness’ sake; He will magnify the Torah, and make it glorious.’”

A number of questions come to mind regarding this passage from the Rambam:

- What would be the halachic implications if someone attempted to open a secular business next door to his competitor? Is the halacha different because this involves a spiritual pursuit?
- If this halacha is unique, would it be the same regarding other competitions dealing with spiritual matters, or is the teaching of Torah unique even in the realm of mitzvos?
- Is there any limitation at all to competition in such matters?

There is an extensive discussion in Meseches Baba Basra (21b) regarding rights of the individual to bar a competitor from operating in close proximity. One of the comments is by Rav Huna, who says that an individual operating a mill in a *mevuah* (similar to a courtyard) may bar another individual from operating a mill next to him. Even so, the gemora states later on that Rav Huna would agree that a Torah teacher of children may not bar another from opening a school nearby, as it is said that jealousy between scribes leads to greater wisdom (*kinas sofrim tarbeh chochmoh*). Rashi explains the gemora’s rationale is that a rebbe will be motivated to do his best if there is competition next door, and that will only be for the benefit of the Torah study of his students.

Though the halacha does not allow the barring of competition to the extent of Rav Huna’s position, there are definitely contexts in which a business can be barred, such as if a competitor who lives in another area presents competition to someone who lives locally. Additionally, there are numerous halachos regarding the residents of a *mavuy* barring different types of business activity for the sake of peace and quiet¹. Based on the gemora, there is clearly a greater allowance for a rebbe to establish himself in a given locale than for a regular proprietor to do so.

The Shulchan Aruch (Y.D., 245, 22) codifies the statement of the Rambam regarding competition in teaching Torah to children. The Rema expands upon the idea, permitting a rabbi who has settled in a community², when appropriately qualified, to perform rabbinic functions there even though another individual is already serving in that capacity. The Rema allows the second rabbi to function even if he causes a slight loss of income to the first rabbi. The Shach, s”k 15, explains the receipt of income to be permissible because the practice of paying a rabbi for officiating at specific events is questionable to begin with. The Pischei Teshuva, s”k 11, cites the Chasam Sofer who states that there has been a change over time in our approach to a rabbi’s compensation. In modern times when a rabbi moves to a community to assume a position the community truly is employing him, thereby committing itself to a certain level of compensation³. If the understanding between the rabbi and community is that

1 See Rambam, Hilchos Shechenim, perek VI and Shulchan Aruch, Choshen Mishpat, siman 156.

2 Per the explanation of Shach, s”k 16

3 In contrast to a distinguished scholar who was already living in a given town and, in recognition of his stature, is appointed to be the spiritual leader of the town. When he is compensated for religious

individuals will pay for the rabbi's performing of specific functions on their behalf then that is the rabbi's basic income. In such a circumstance it would clearly be prohibited for another individual to accept such payment for performing a task, which is the rightful domain of the individual hired for that position. R' Moshe Feinstein (Igros Moshe, Choshen Mishpat, 1, 38) clarifies that the Chasam Sofer's distinction is a comment on the nature in which rabbis have come to be hired by their communities. Once it became the norm for a community to select a rabbi and bring him to their neighborhood, the problem with infringing upon his income would hold true even if a given rabbi happened to be living in the neighborhood in which his shul is located, even before having been hired for the position. Rav Feinstein (Igros Moshe, Choshen Mishpat, 2, 39, 40) discusses other scenarios involving parties trying to create competition with the local rabbinate. He writes very strongly against the practice, both from a spiritual concern⁴ and the personal finances of the individuals impacted.

The Chasam Sofer (Choshen Mishpat, 79) poses an interesting question. When the gemora in Baba Basra explains the leniency to allow competition in the teaching of Torah, why is the rationale a quote specifically associated with the study of Torah (*kinas sofrim tarbeh chochmoh*)? Wouldn't the allowance apply to any mitzvah context? He entertains two possibilities. It is possible that the entire allowance in the gemora is solely rooted in the value of creating competition in the teaching of Torah, so as to bring out the greatest capabilities of both parties. Another possibility⁵ is that the gemora is saying that for a mitzvah item we allow competition. At this point, the gemora expresses concern that competition will discourage a person from pursuing the mitzvah enterprise in the first place. In response to this concern, the gemora cites the concept of *kinas sofrim*, to say that even though a rebbe might be discouraged from pursuing his craft in the face of competition, the Rabbis saw competition as being uniquely beneficial in the realm of the study and teaching of Torah. This benefit outweighs the concern of competition. According to the second approach, the gemora is explaining that, in general, competition would be prohibited by mitzvah matters if there is a concern that it would discourage individuals from pursuing the field. The one exception involves the teaching of Torah. The Chasam Sofer goes on to discuss the issue of rights regarding the printing of Jewish books. At a time when printing was far less common and far more costly, a printer would need to be confident of his ability to earn sufficient income from the enterprise. If he had to be concerned about competition, he might decline to pursue the matter altogether. The concern of the gemora would be in play, and the resolution of *kinas sofrim* would not be. Therefore, in such a circumstance, though it involves a mitzvah, competition would be prohibited.

In conclusion, there seems to be a good deal of leeway in halacha for one religious school to compete with another. It would be permissible even if the competition might lead to the closing of the first institution. According to the Chasam Sofer, this allowance would not extend to one rabbi attempting to usurp another's role within a community. That would be akin to one teacher directly confronting a school to request another's position. Though the general practice of "opening up shop" regardless of concerns of the impact it might make on others would seem permissible for mitzvah items, the Chasam Sofer limits this allowance in circumstances that, if competition were to be allowed, people would be dissuaded from investing time and energy in the first place.

services it seems much more akin to paying for mitzvos, as opposed to the community compensating an employee.

4 It is a mitzvah that the local rabbis have had the merit of performing, and should not be taken away from them. Additionally, it is essential for the sake of the community that there be a uniform communal standard.

5 This is based on an alternate text in the gemora. See Chasam Sofer for more detail.