Poaching – Handout

# Concept

עני המהפך בחררה ובא אחר ונטלה

* a poor person turns their cake
* the poor turn in the heat
* the poor of the revolution is in distress

and another comes and takes it [the person who took it is called a wicked person – “rasha”]

# Business

# Kiddushin 59a

Rabbah b. Bar Hana gave money to Rav and instructed him, ‘Buy this land for me,’ but he went and bought it for himself. But did we not learn, what he did is done, yet he has behaved toward him as a cheat? — It was a stretch of land belonging to lawless men; for Rav they showed respect, but would not for Rabbah b. Bar Hana. Then he should have informed him? He feared that in the meantime another person might come and buy it.

R. Giddal was negotiating for a certain field, when R. Abba went and bought it. Thereupon R. Giddal went and complained about him to R. Zera, who went and complained to R. Isaac Nappaha. ‘Wait until he comes up to us for the Festival,’ said he to him. When he came up he met and asked him, ‘If a poor man is examining a cake and another comes and takes it away from him, what then?’ ‘He is called a wicked man,’ was his answer: ‘Then why did you, Sir, act so?’ he questioned him. ‘I did not know that he was negotiating for it,’ he rejoined. ‘Then let him have it now,’ he suggested. ‘I will not sell it to him,’ he returned, ‘because it is the first field which I have ever bought and it is not a good omen; but if he wants it as a gift, let him take it.’ Now, R. Giddal would not take possession, because it is written: “But he that hates gifts shall live” (Proverbs 15:27). Nor would R. Abba, because R. Giddal had negotiated for it; and so neither took possession, and it was called ‘The Rabbis’ field’.

# Mishnah Bava Metzia 1:4

If he saw an object and fell on it, and another came and took possession of it, the one who took possession of it acquired it.

# Tosafot Kiddushin 59a

“If a poor person turns their cake, and another comes and takes it [the person who took it is called a wicked person]” - Rashi explains that this refers to a cake that was ownerless. However, this is problematic because we learn in Bava Metzia 10a that if one found an ownerless object and fell on it or covered the object with their garment, and another person comes and takes it, then it belongs to the one who took it. Similarly it also says there that if a poor person falls upon some gleanings from the corner of a field, or spreads their garment over it, we may remove that poor person from the gleanings. So therefore, why is the case with the poor person turning a cake different??

Rabbenu Tam explains that the prohibition to take the cake from the poor person is only applicable specifically when the poor person desires to profit from the wages, or when he or she desires to purchase one item and another preempts and purchases it, like the case of Rav Gidal. And that is why he is called a rasha, because why should he go for the thing his friend is taking the trouble to obtain?

# Shulchan Aruch, Choshen Mishpat 237:1

Once a buyer and a seller have reached an agreement, another person may not interfere with the deal by offering a competing bid. One who does so is labelled by the Talmud (Kiddushin 59a) as a “Rasha” – a wicked person, and although a Beth Din cannot cancel the purchase if this person succeeds in buying it, the Beth Din is permitted to publicize this person’s actions as being immoral.

# Dating

# Kiddushin 59a

Rabin the pious went to betroth a certain woman for his son, but betrothed her for himself. But was it not taught. What he did is done, but that he has behaved toward him as a cheat? — They would not give her to him. Then he should have informed him! — He feared that in the meantime another man might come and betroth her.

# Aruch HaShulchan, Even Ha-Ezer 35:29

If someone appoints an agent to betroth a woman on his behalf, but he went and betrothed her to himself, she is betrothed to the agent. However, it is forbidden to do so; and whoever acts in this manner with respect to dating or commerce, is considered a rasha.

# Mishneh Torah, Laws of Marriage 9:17

One who sends an agent to betroth to him a woman and he goes and betroths her to himself, she is betrothed to the agent. It is forbidden to do this. And all who does this thing and similarly in matters of business is called a rasha.

# Employment

# Bava Batra 21b

R. Huna said: If a resident of an alley sets up a handmill and another resident of the alley wants to set up one next to him, the first has the right to stop him, because he can say to him, ‘You are interfering with my livelihood.’

May we say that this view is supported by the following: ‘Fishing nets must be kept away from the hiding-place of a fish which has been spotted by another fisherman the full length of the fish's swim.’ And how much is this? Rabbah son of R. Huna says: A parasang?’ — Fishes are different, because they look about for food.

# Tosafot Kiddushin 59a

The question arises however, from the case in Bava Batra 21b, where the Gemara says ‘One must distance oneself from the fish as far as they dart’. It seems that the reason there is because he is encroaching in his friend’s livelihood; like the Gemara says there, “One is permitted to object to someone in the same alley putting up a mill next to his - because he can say to him ‘You are interfering in my livelihood’. Moreover, said Rebbi Meir, Rabeinu Tam’s father, ‘the fish’ mentioned there is a dead one - because it was the way of fishermen to place a dead fish in their nets, to attract all the local fish to their nets. And since Reuven was the first to cast his net, and due to his efforts all the fish were bound to collect around his net, if Shimon were to cast his net, it would be akin to stealing from him, and thus Reuven is entitled to tell him that he must go and fish somewhere else.

From here it seems to Rabbi Yitzchak that it is forbidden that a teacher to hire himself to the owner of the house who has another teacher in his home as long as he teaches in his home. Since he is a day laborer, the teacher can go elsewhere to earn a wage. Unless the employer informs him that he no longer intends to retain the first teacher.

However, in the event that the employer hires a teacher, another employer is permitted to bid for his services; and the first employer cannot demand that the second employer hire a different teacher, because the second employer can say “I only want this teacher, since my child will learn more from him”.

# Shulchan Aruch, Choshen Mishpat 237:2

It is prohibited for a teacher to hire himself to a householder who has another teacher in his house; unless the householder says to him "I don't want to keep my teacher." But if the householder hired a certain teacher, another householder can hire that teacher for himself.

Rabbi Yosef Fleischman

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