

ADVISING OTHERS ABOUT WHERE TO SHOP AND WHAT PROFESSIONALS TO USE

During this time of year that so many new families move into town, many of us recall what it was like when we first made the move to a new, unfamiliar community. Realizing that the adjustment may be awkward or lonely, very often neighbors or fellow *shul* members will come forward and offer all forms of friendly help and advice to make the adjustment easier. Guidance is offered regarding who to ask *halacha shailos* to, where to shop, which professionals or babysitters to use, what Summer camps to send the children to, etc. It would therefore be instructive to review some of the pertinent *halachic* issues that can arise when advising others on issues such as these – especially when it involves where people will end up spending their money.

**The Halachic Background
Issue 1 – Loshon Hara**

Most people are aware of at least the very basics of the prohibition of *Loshon Hara*, slanderous speech. It is well known that *Loshon Hara* is defined as any speech that will cause damage, loss or pain to the one being spoken about.¹ However, most people are also aware that for a “*to’eles*” – a constructive purpose – many times it is permissible to say something that would otherwise be prohibited. Unfortunately, perhaps in part due to the many and detailed *halachos* of this *heter*, this dispensation is often used too permissively and is applied to situations that are not necessarily deemed valid in *halacha*. One must exercise extreme caution when considering saying anything that will make someone else look bad or lose money. If someone inquires about a local *shul*, Rav or *posek*, the person answering the query must be very careful how he answers. *Even if the response is completely truthful and even if nothing “bad” in actuality is said*, if, based on the response, the Rav or the *shul* will lose any standing in the eyes of the one posing the question, a full fledged Torah prohibition of *Loshon*

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Hara may have been perpetrated.² This applies as well to discussing a professional in any field that is being inquired about.³

There *may be* circumstances in which it is permissible to discuss these matters.⁴ Therefore, before dispensing such advice, a careful analysis of the pertinent *halachos* must be made, or the question should be posed to a reliable *posek*.

Issue 2 – G’rama BiNezikin, Indirect Causation of Damages to Another Party

One of the most difficult and complex areas of monetary damages law is the issue of *g’rama* – causing in an indirect fashion the loss of money or property to another person. In *Choshen Mishpat siman 386* the various cases and pertinent *halachos* are discussed. The fundamental question dealt with in virtually every instance revolves around whether a given act constitutes *g’rama* – a causative act that is viewed as “too indirect” to be found liable in *Beis Din* – or *garmi* – a causative act that, even though indirect, can render a person liable to pay damages. Entire *sforim* have been devoted to explaining and understanding this distinction alone. What is clear, however, is that even though a *g’rama*-type of damage is not collectible in a court of law, it is certainly nonetheless prohibited to intentionally do an act that would result in a cause of a loss to another.⁵ In addition, the one who caused damage in this way has an obligation to repay “*BiDinei Shamayim*,” as an obligation “to Heaven.”

Technically, he actually does owe the “victim” of the damages the money he cost him, despite the fact that *Beis Din* does not get involved in collecting it.

The *poskim* quote a *Yerushalmi* that tells us “*Hamivatel kiso shel chaveiro, ein lo alav elah ta’arumos.*” If one withholds the wallet of his friend (thereby withholding from the owner the possibility to invest and profit from the money in the wallet), he (the owner of the wallet) has only complaints – but no collectible monetary claim – against the one who withheld the wallet.⁶ This is accepted as the *halacha*

² *Chofetz Chaim* 5, 4

³ *ibid.*

⁴ See *Chofetz Chaim* 4, 7 and *klal* 10

⁵ *Bava Basra* 22b and *Tur Choshen Mishpat* 378, 4.

⁶ *Talmud Yerushalmi Bava Metzia* 5, 5. *Tosefta Bava Metzia* 4, 11.

¹ *Rambam Hilchos De’os* 7:5

by the *Shulchan Aruch*.⁷ There is a discussion regarding whether or not this type of act constitutes a perpetration of *g'rama*, thereby actually defining it as "damage" that would incur a liability to pay *BiDinei Shamayim*.⁸

There are those *poskim* who maintain that advising someone who was going to buy a product in a certain store not to buy that product there is in fact a form of *g'rama* that is *halachically* prohibited.⁹ One has, in effect, caused a loss of potential profit to the merchant who would have made money from the sale.

Advising Someone Not to Shop at a Certain Store or Use a Certain Professional

If Reuvain tells Shimon that he is definitively planning on buying a given product at a specific store, or that he is planning on using a particular professional for a service, it is not permissible for Shimon to tell Reuvain anything that would now steer him away from buying at that store or using that professional.¹⁰ Even though Shimon has good intentions and is trying to save Reuvain money or hassles by sending him elsewhere, he has no right to do so. He may not cause a "loss" to the storeowner or professional in order to benefit Reuvain. Shimon's *mitzvah* of "*ViAhavta lireacha kamocho*" should and does apply as much to the storeowner as it does to Reuvain.¹¹

There are, however, certain exceptions to this rule.

Exceptions – Cases Where it is Permissible to Guide Someone to a Different Merchant

- **If the storeowner is grossly overcharging for his wares.** If a store charges 16% or more over what the going rate is for a given item, the store owner is in violation of the *halacha* of "*ona'ah*."¹² In such a case, one is permitted to inform a prospective buyer at that store that he can find the item he is looking for at a cheaper price elsewhere. Similarly, if the seller uses false weights or measures, it is permissible to tell someone not to shop there.¹³
- **If the prospective buyer is a relative to the one offering advice.** In such a case, the *poskim* cite the law of "*mi basarcha al tis'aleim*,"¹⁴ one may not "hide" from helping his own flesh and blood. Based on this, the responsibility to help one's relatives overrides the loss caused to the merchant.¹⁵ Some

poskim even include close friends of the one giving the advice in this category as well.¹⁶

- **If the potential buyer asks for advice.** In this case, it is clear from the fact that he is seeking guidance that he has not completely made up his mind to shop in a particular store or use a particular professional. Therefore, when advising him to spend his money elsewhere, one is not causing a loss of profit that was *surely* going to be coming to the storeowner or professional.¹⁷
- In all of these cases, however, the one offering advice must be sure not to say anything negative regarding the store or professional in question – that would still be a violation of *Loshon Hara*.¹⁸ Rather, he should merely advise the buyer that it might be in his best interest to shop elsewhere.**

Extending These Ideas to Other Areas

The *Chazon Ish*, in his work "*Emunah U'Bitachon*," writes that knowledge of *halacha* must be a prerequisite to the learning of *Mussar*.¹⁹ A principal tenet of *mussar* and ethical behavior is to constantly be on the lookout for those who are being hurt or oppressed and to do whatever possible to come to their aid. In most every situation between two people, there is a *rodeif* – the aggressor – and a *nirdaf* – the "victim." Although we must always seek to help the *nirdaf*, we must know the *halachos* that pertain to every situation to be able to properly identify who is, in fact, the *rodeif* and who is the *nirdaf*. As we see from the *halachos* discussed in the Newsletter, mispdirected compassion or assistance can at times actually be a violation of *halacha*.

If one is unsure as to whether or not it is permissible to advise or guide another regarding issues such as those discussed here, a thorough review of the pertinent *halachos* must be made or a *shailoh* asked to a competent Rav or Posek.

To reach Dayan Wolfson regarding this or any *halachic* issue, please call the Kollel *Halacha Shailoh* Hotline at 973-614-0053 between 3:00-6:00 PM Sunday to Thursday. For more information on the kollel, for back issues of the newsletter, or to sponsor a future edition of the Newsletter, please see Rabbi Yerachmiel Landy or call the kollel. The Kollel *davens Mincha* daily (Sunday-Thursday) at 4:15 PM.

⁷ See *Choshen Mishpat* 183, 1 and *Beis Yosef* there. See also the *GR"A* who alludes to this in 292 s.k. 26.

⁸ This discussion can be found in *Pischei Choshen* vol.5, chap. 3, note 71.

⁹ *Teshuvos Mishpatei HaTorah* by Dayan Tzvi Spitz vol. 3, 8 based in part on *Shailos ViTeshuvos Chasam Sofer siman* 79.

¹⁰ Based on *Chofetz Chaim Hilchos Rechilus* 9, 10 in the *hagah*. Also *Mishpatei HaTorah* *ibid*.

¹¹ See *Mishpatei HaTorah* *ibid*. *Chelkas Binyamin* (on *Chafetz Chaim*) *Rechilus* 9, s.k. 19 and *Sefer Zera Chaim* (also on *Chafetz Chaim*) 9, 2.

¹² *Choshen Mishpat* 227, 1-2

¹³ *Mishpatei HaTorah* *ibid*. Also *Chofetz Chaim Hilchos Rechilus*.

¹⁴ *Yeshayah* 58, 7.

¹⁵ See note 11.

¹⁶ *Zera Chaim* *ibid*. Based on *Rashi* in *Yevamos* 63a s.v. *Az Tikra*.

¹⁷ See note 11.

¹⁸ *Chofetz Chaim* 10, 2 and 14. Anytime the desired result (i.e. getting the buyer to shop elsewhere) can be achieved without speaking actual *Loshon Hara*, one must do or say whatever they can to avoid speaking *Loshon Hara*.

¹⁹ Chapter 3, 1. See also *Ohr HaChaim al HaTorah* beginning of *Parashas Bichukosai* (*Vayikra* 26, 3 #6).