

May One Use a Client List from an Old Employer

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Case: An employee leaves a business or company for whom he or she was working and is now in possession of some useful information gleaned during their work, such as an address list, a client list, or other details about a product.

Question: What may the employee do with that information according to the halacha in the future? May he or she use it to their own personal benefit or to help a future employer?

Answer: There are a few potential halachic issues relevant to this question, which arises frequently when employees change jobs.

The first is the status of intellectual property, though the halacha about this issue is somewhat of a grey area and difficult to determine. One important factor within this context is *dina d'malchusa*, the rule that the law of the land is considered binding according to the halacha as well. Without entering into details, we can say generally that if secular law defines intellectual property and its legal status (when it may be used by others and when not), that could influence the halacha as well regarding how much of this information is owned by the person.

The second potentially relevant issue is that of *ani mehapech b'charara*, which prohibits one person or business from trying to take an item or a job away from another who is already significantly involved. If the situation involves two businesses (i.e., an old employer and a new employer) rather than individuals, this may involve an even more complicated issue called *ma'arufia*, discussed by the Rema and the Gra (C.M. 156). In such a case, there may be even more restrictions imposed upon what information from the old employer the employee may share. The Rema also cites a major *machlokes* in which cases of *ma'arufia* the *bais din* can enforce the restrictions.

It is also important to note that even one who attempts to encroach upon the clients of another generally (not only when switching jobs) may also violate the halacha of *ani mehapech*.

A third issue is the rule of *ani menakef*, where a poor person is harvesting olives from a tree and creates a pile of them on the floor but has not yet acquired them through a *kinyan*. In such a case, it is problematic for another person to seize all of the olives. Such an action may violate *gezel derabanan* (despite the lack of a *kinyan*), as discussed in the Gemara in *Gittin* (in the fifth *perek*). In our case as well, if the employee tries to solicit a client for himself or a second employer away from the first employer, it may violate the principle of *ani menakef*.

Question: Is there a difference in the halacha whether the information obtained is proprietary, such as knowledge about certain software developed by the company, vs. more generic information, such as client information, contact lists, and the like?

Answer: The intellectual property factor and the grounds for the first employer to prevent the employee from sharing such information due to *ani*

mehapech is stronger in the first scenario where the information is proprietary. In that situation, more of a case can be made that it is *assur* for one to share such information with others.

The bottom line is that if an old client reaches out to a person after they have left the first company and wishes to use him, the best general advice (heard from one of the prominent contemporary *poskim*) is to be honest with them as to the situation. He or she should tell them that their business is welcome, but they should be aware that he or she no longer works for the first company, but rather independently or for a different company. Nevertheless, this issue is very case specific, and it is recommended to ask an individual *shaila* before proceeding.