

# TALMUD TORAH 2:7

*by Rabbi Yitzchak Etshalom*

(intro to next Halakha: \*Mavui\* and \*Hatzer\*. In the times of the Gemara, residences usually opened up into common courtyards - a courtyard is a Hatzer. Several Hatzerot opened up into one Mavui - sort of an alleyway. There are legal relationships, liabilities and obligations between the residents of one Hatzer towards each other, as there are between the many residents of one Mavui)

**7.** If a resident of the \*mavui\* wanted to teach - even a resident of the \*hatzer\* - his neighbors cannot prevent him. Similarly, if someone opens up a school next door to a teacher, in order to attract other students or [even] to attract the first teacher's students, [the first teacher] cannot prevent him, as it says: \*Hashem hafetz lma'an tzidqo, yagdil Torah v'ya'dir\* - "God desires His righteousness, to magnify Torah and glorify it" (Yeshayahu [Isaiah] 42:21).

**Q1:** What claims might the residents of the \*mavui\* or \*hatzer\* have?

**YE:** There are, essentially, two separate but connected issues here: \*m'cha'at b'nei mavui\* - "zoning"; and \*yored l'umnato shel havoro\* - business encroachment.

The first is clearly laid out in the Mishna in Bava Bathra (20b) - basically, residents of a \*mavui\* have the right to prevent one of their neighbors from opening up the type of business which will bring a lot of people into the mavui - or which will create an abundance of noise. (see MT, Hilkhos Shekhenim 6:8) If a given profession which includes noisy work was already there, they have foregone their right of protest regarding that profession. On the other hand, they can, at any time, complain because of the noise of customers entering the mavui. This protest, which is also codified in Hilkhos Shekhenim 6:11-12, does not apply to Torah teachers (i.e. the residents have no right of protest that the sound of the children studying bothers them and that they cannot sleep on its account). See answer to Q2 below for the rationale.

See response to Q3 for discussion of the second issue, \*yored l'umnato shel havoro\* (business encroachment).

**Q2:** If these claims are normally valid claims (such as their ability to prevent him from opening a certain kind of shop etc.), why do they fail here? If they are not normally valid, what is R teaching us here?

**YE:** As indicated, they are normally valid claims. The simplest explanation for the exception of Torah studies is that since the Rabbis (R. Yehoshua b. Gamla) mandated the establishment of schools in

every city, no one can protest its proximity. This may add to our understanding of the legislative reach of this ordinance - it doesn't just affect parents, children and public funds, it also affects "zoning" issues. In Hilkhos Shekhenim 6:12, R seems to compare the "right" of anyone to set up school in the mavui to the "right" of an artisan to stay put, even if the neighbors complain about the noise of his hammering, since he had been there for a while and they didn't protest. That comparison is odd, unless we explain as follows: Just as you lose your right to protest when the artisan has been working there for a significant time, similarly you never had a right of protest against the Torah-teaching, since that was mandated.

**Q3:** Why is the second teacher allowed to "set up shop" next to the first teacher? Isn't this a violation of \*hassagat g'vul\* (encroachment on another's business zone)?

**JF:** \*Kol hamarbeh harai zeh mshubach\* - "The more you learn the better". This quote, originally from the Passover Hagadah may be the answer to why a teacher can "open up shop" so to speak, right next to another teacher.

**YE:** The actual Halakhic problem was misrepresented in the question - the term used by the Rishonim is \*yored l'umnato shel haver\* - encroaching on your fellow's business.

What is a bit strange about R's formulation is his source-text. The Gemara (Bava Bathra 21b-22a) makes the following statement: "R. Huna said: a resident of a mavui who sets up a mill (Rashi: to mill and sell), and his neighbor comes and sets up a mill next to his, by rights he can protest and prevent him from setting up, saying 'you are hurting my livelihood'...R. Yosef said: R. Huna agrees that in the case of a Torah teacher, he [the first teacher] has no right of prevention, as was taught: \*Kin'at soferim tarbeh hokhmah\* - (jealousy among teachers increases wisdom)."

R, instead of using this "competition is healthy" argument, quotes the verse from Yeshaya 42. Perhaps his reasoning is as follows:

If the only reason for permitting the new teacher to set up shop were "healthy competition", that argument could be advanced for any profession or business. Why do we only utilize it here? Because, against the negative of business encroachment, there is a Divine interest, if you will, in the teacher excelling. No such interest exists (or at least, with such intensity) in any other business. Therefore, we put aside the concern about encroachment - which will, as in any other field, lead to competition - because God Himself is, as it were, interested that the practitioners of this field excel as much as possible. Therefore, R quotes the verse which indicates God's interest in the growth and glory of Torah. (There may even be a hint at the beginning of the verse \*l'maan tzidqo\* - on behalf of His righteousness - as if the normal terms of righteousness are somewhat suspended or redefined here.)

Rambam, Copyright (c) 1999 Project Genesis, Inc.