

Ethical Competition for Clients

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Professionalism topic covered in this presentation

3.1 Marketing legal services in accordance with professional obligations (e.g., advertising nature of practice, advertising fees)

Christie Blatchford, *Defence lawyer causes stir with badly written letter promoting himself to accused killer*, National Post, Jan. 17, 2013

...Mr. Leslie wrote Michael MacGregor, the 19-year-old who along with a 31-year-old woman is charged with first-degree murder in the slaying of Sarnia, Ont., kindergarten teacher Noelle Paquette...

The 27-year-old teacher went missing... Her body was found in a nearby wooded area outside town on Jan. 2. By the very next day, Mr. MacGregor was represented by a London, Ont., lawyer, who was formally put on the record....

On Jan. 7, Mr. Leslie was writing Mr. MacGregor, modestly singing his own praises and offering his assistance. Mr. Leslie said he specialized "in difficult murder trials" and bragged in particular about two unique skills he said he possessed. "One of the Unique challenges in these types of cases is the [question of] how to control the press," he wrote. "I have had several years of experience in dealing with the press. I had made close contacts with many reporters [that] I would endeavor to use to assist you in your case," he told Mr. MacGregor.

Mr. Leslie also bragged about his "tremendous" expertise in obtaining disclosure from recalcitrant Crown attorneys who don't provide it because, Mr. Leslie said, clearly meaning to say relevant, "they feel it is not relevant. I have the resources and know how to obtain all the disclosure relevant to your case and prepare the best possible defence available," he said, adding that "In relation to your charge I have worked on similar cases such as yours I accept legal aid."...

Vignettes

- 1) Linda is pursuing divorce from her husband; she is represented by Sarah, an accomplished family lawyer. At one stage Linda needs to file a motion for a temporary order regarding interim child support, and Sarah is unavailable. Sarah asks her friend, Wilma, to file the motion; Wilma does so, successfully. Linda is impressed by Wilma, and asks Wilma to take over as her legal representative. Is Wilma allowed to do so?
- 2) Linda, now divorced and living in Toronto, is dealing with extensive litigation from her former husband. Linda's cousin Michael is a family law practitioner in Alberta, but he is willing to represent Linda free of charge. Pursuant to By Law 4, Michael may practice in Ontario up to 100 days in a calendar year, but the litigation is dragging on. Michael wishes to challenge the Law Society of Ontario's restrictions against practice by non-members, as infringing on Linda's rights under Canada's Charter by discriminating based on province of residence. Does Michael have a leg to stand on?
- 3) Michael's challenge to the Law Society fails, and Linda finds Ontario representation. One day, Linda mentions her legal troubles to her new neighbour, Susan, who practices family law. Is Susan allowed to promote her own services to Linda?
- 4) James is pursuing divorce from his wife. James has had a preliminary meeting with a lawyer, but has signed no agreements. James mentions his case in conversation with his neighbour, Shira, who practices family law. Is Shira allowed to promote her own services to James?
- 5) Sally comes home from a business trip to find out her husband has pawned her jewelry to cover a gambling debt, which he had run up in trying to pay for his secret drug habit, which he had begun during a year-long affair with Sally's sister. Traumatized, she knocks on her neighbour Shira's door to ask if she could sleep there overnight. Shira practices family law; may she offer Sally her business card?

Choice of Counsel

1. UN Conference on Trade and Development, *Competition and consumer protection*

<https://unctad.org/Topic/Competition-and-Consumer-Protection>

Competition stimulates innovation, productivity and competitiveness, contributing to an effective business environment. This generates economic growth and employment. It creates possibilities for small and medium-sized enterprises, removes barriers that protect entrenched elites and reduces opportunities for corruption.

Competition therefore increases a country's attractiveness as a business location, triggering national and foreign investments. It also delivers benefits for consumers through lower prices, improved services and greater choice. In this sense, competition generates total consumer welfare.

2. Competition Act (R.S.C., 1985, c. C-34)

<https://laws.justice.gc.ca/eng/acts/C-34/page-7.html>

45 (1) Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges

(a) to fix, maintain, increase or control the price for the supply of the product;

(b) to allocate sales, territories, customers or markets for the production or supply of the product; or

(c) to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

90.1 (1) If, on application by the Commissioner, the Tribunal finds that an agreement or arrangement — whether existing or proposed — between persons two or more of whom are competitors prevents or lessens, or is likely to prevent or lessen, competition substantially in a market, the Tribunal may make an order...

3. Chief Justice Nathan Nemetz, Supreme Court of BC (reported at (1985), 64 B.C.L.R. 113 (B.C.C.A.))

We have no doubt that the right to access to the courts is under the rule of law one of the fundamental pillars protecting the rights and freedoms of our citizens.

4. Talmud, Bava Metzia 60a-b

משנה: רבי יהודה אומר לא יחלק החנוני קליות ואגוזין לתינוקות מפני שהוא מרגילן לבא אצלו וחכמים מתירין. ולא יפחות את השער וחכמים אומרים זכור לטוב....

גמרא: ולא יפחות את השער וחכמים אומרים זכור לטוב וכו' מאי טעמא דרבנן? משום דקא מרווח לתרעא.

Mishnah: Rabbi Yehudah said: A store owner may not distribute parched grain and nuts to children, for this would accustom them to come to him. But the Sages permit.

[Rabbi Yehudah said:] And he should not reduce the rate. But the Sages say: He is remembered for the good.

Gemara: What is the logic of the Sages? This will cause the rate to broaden.

5. Rabbi Yosef Karo (16th century Turkey/Israel), Code of Jewish Law, Choshen Mishpat 228:18

וכן יכול למכור בזול יותר מהשער, כדי שיקנו ממנו, ואין בני השוק יכולים לעכב עליו

One may sell for less than the rate, so that people will buy from him; the other merchants cannot prevent this.

6. Rabbi Moshe Isserles (16th century Poland), Code of Jewish Law, Choshen Mishpat 156:7

י"א הא דבני העיר יכולין למחות בבני עיר אחרת, היינו דוקא בדליכא פסידא ללקוחות, שמוכרין כשאר בני העיר וגם סחורתם אינה טובה יותר משל בני העיר, אבל אם נותנין יותר בזול, או שהיא יותר טובה, שאז נהנין הלוקחין מהן, אין מוכרי הסחורות יכולים למחות...

Some say that the ability of local people to protest against people from elsewhere is only where that [protection] would not harm consumers – the outsiders sell as the locals sell, and their merchandise is no better. But where the outsiders charge less, or their merchandise is better, so that consumers benefit, then [local] merchants cannot protest...

7. Leviticus 19:33-34, 24:22

וְכִי־יִגּוֹר אִתְּךָ גֵר בְּאַרְצְךָם לֹא תוֹנוּ אֹתוֹ: כְּאֶזְרָח מִכֶּם יִהְיֶה לָכֶם הַגֵּר הַגֵּר אִתְּכֶם וְאֶהְבֶּתָּ לוֹ כְּמוֹד בְּיִגְרִים הָיִיתֶם בְּאֶרֶץ מִצְרַיִם אֲנִי ד' אֱלֹהֵיכֶם:

מִשְׁפַּט אֶחָד יִהְיֶה לָכֶם כַּגֵּר כְּאֶזְרָח יִהְיֶה כִּי אֲנִי ד' אֱלֹהֵיכֶם:

When a stranger lives among you, in your lands, do not abuse him. He shall be as a citizen of yours, the stranger who lives among you, and you shall love him as yourself, for you were strangers in Egypt. I am Hashem your Gd.

You shall have one justice for yourself, like stranger like citizen, for I am Hashem your Gd.

8. Rabbeinu Asher (13th-14th century Germany/Spain), Rosh to Bava Kama 1:5

וכן מצאתי בשם הגאון ז"ל כתוב דתקנתא דרבנן הוא באיניש דמפסיד נכסיה משום השבת אבידה. ולי נראה דלא צריכנא לתקנתא דרבנן אלא דין גמור הוא שחייב אדם להציל עשוק מיד עושקו בכל טצדקי דמצי למיעבד.

I have found from the Gaon z"l, that there is a rabbinic injunction against [a defendant] who [might] destroy his property, to restore loss. It appears to me that there is no need for a rabbinic enactment; it is straightforward law that one is obligated to save the abused party from one who would abuse him, with any available strategy.

9. Rabbi Moses Maimonides (Rambam, 12th century Egypt), Mishneh Torah, Hilchot Sanhedrin 2:7

ובכלל "אנשי חיל" שיהיה להן לב אמיץ להציל עשוק מיד עושקו, כענין שנאמר "ויקם משה וישיען."

Including in "men of *chayil*" is that they must have a brave heart, to save the abused from one who would abuse him, as it says, "And Moshe arose and saved them."

10. Talmud, Sanhedrin 8a

"קטן כגדל תשמעון" - אמר ריש לקיש שיהא חביב עליך דין של פרוטה כדין של מאה מנה. למאי הלכתא? אילימא לעיוני ביה ומיפסקיה, פשיטא! אלא לאקדומיה.

Deuteronomy 1:17 says, "Hear the small like the great." Reish Lakish said: The law of a *perutah* should be as beloved to you as the law of 100 *maneh*. For what? If to examine and rule properly, that's obvious! Rather, to put it first.

11. Talmud, Yevamot 122b

דבר תורה אחד דיני ממונות ואחד דיני נפשות בדרישה וחקירה שנאמר משפט אחד יהיה לכם

Biblically, both financial and capital matters should require high-level interrogation of witnesses, as Leviticus 24:22 states, "There shall be one law for all of you."

Vignette 1 – Choice of Counsel: At the client's request

12. LSO, Rules of Professional Conduct (2014), Rule 3.7-9

Upon discharge or withdrawal, a lawyer shall...

(f) co-operate with the successor legal practitioner so as to minimize expense and avoid prejudice to the client; ...

Commentary [4] Co-operation with the successor legal practitioner will normally include providing any memoranda of fact and law that have been prepared by the lawyer in connection with the matter...

13. Rabbi Yosef Karo (16th century Turkey/Israel), Code of Jewish Law, Choshen Mishpat 237:2

אסור למלמד להשכיר עצמו לבע"ה שיש לו מלמד אחר בביתו, אם לא שיאמר בעל הבית: אין רצוני לעכב המלמד שלי.

A teacher may not hire himself out to an employer who already hosts another teacher in his home, unless the employer tells him, "I don't wish to continue to retain my current teacher."

14. LSO Rules of Professional Conduct (2014), Commentary to Rule 3.7-10

It is quite proper for the successor licensee to urge the client to settle or take reasonable steps towards settling or securing any outstanding account of the former licensee, especially if the latter withdrew for good cause or was capriciously discharged...

15. Tosafot (11th-13th century Western Europe), Commentary to Kiddushin 59a *Ani*

ועוד אומר רבינו מאיר אביו של ר"ת דמיירי בדג מת שכן דרך הדייגים להשים במצודות דג מת והדגים מתאספים שם סביב אותו הדג וכיון שזה פירש מצודתו תחילה וע"י מעשה שעשה זה מתאספים שם סביב ודאי אם היה חבירו פורש הוה כאילו גוזל לו...

And Rabbeinu Meir, father of Rabbeinu Tam, said the case is regarding a dead fish; those who are fishing place a dead fish in their nets, and the fish gather there around that fish. And since this one spread out his net first, and via his action the fish gather there, it is certain that if his rival spreads one out, it is like stealing from him...

16. Rabbi Yaakov Yeshayah Blau (21st century Israel), Pitchei Choshen IV 7 (46)

ומשמע מדברי שו"ת דברי חיים (ה"ב יו"ד סימן ב וסימן כ) שאם אינו יכול לתבוע מבעה"ב, כבנדון ידידיה שהקהל מינו שו"ב ובא אחר והשיג גבולו ושחט, דלא שייך לחייב הקהל, צריך המשיג גבול לשלם לראשון מה שהפסידו.

And it appears from *Divrei Chaim* that if [the former employee] cannot sue the employer, as in our case where the community appointed a *shochet ubodek* and then another came and invaded his territory and performed *shechitah*, for one cannot obligate the community, then the invader is required to pay the first for what he cost him.

Vignette 2 – Choice of Counsel: Requiring membership in the local bar

17. R. v. Willier, 2010 SCC 37 (CanLII), [2010] 2 SCR 429

<https://www.canlii.org/en/ca/scc/doc/2010/2010scc37/2010scc37.html>

[33] Detainees who choose to exercise their s. 10(b) right by contacting a lawyer trigger the implementational duties of the police. These duties require the police to facilitate a reasonable opportunity for the detainee to contact counsel, and to refrain from questioning the detainee until that reasonable opportunity is provided. However, these obligations are contingent upon a detainee's reasonable diligence in attempting to contact counsel...

[34] Such a limit on the rights of a detainee are necessary, as Lamer J., as he then was, noted in *Smith*, "because without it, it would be possible to delay needlessly and with impunity an investigation and even, in certain cases, to allow for an essential piece of evidence to be lost, destroyed or rendered impossible to obtain. The rights set out in the *Charter*, and in particular the right to retain and instruct counsel, are not absolute and unlimited rights. They must be exercised in a way that is reconcilable with the needs of society" (p. 385).

18. R. v. Allen, 1987 CanLII 3349 (AB QB)

<https://www.canlii.org/en/ab/abqb/doc/1987/1987canlii3349/1987canlii3349.html>

[29] Mr. Allen did not refer to specific sections of the Charter in his originating notice. One might assume, therefore, that his argument relating to his constitutional right to the counsel of his choice might also have been made with reference to s. 7 and s. 11(d) of the Charter.

[30] It may well be that those sections incorporate as constitutional rights many of the trial rights which the common law has assured to accused... However, as the decision in *Re R. and Speid* (1983), [1983 CanLII 1704 \(ON CA\)](#), 43 O.R. (2d) 596, 37 C.R. (3d) 220, 8 C.C.C. (3d) 18, 3 D.L.R. (4th) 246, 7 C.R.R. 39 (C.A.), has pointed out, the right to retain and instruct counsel of one's choice is subject to reasonable limits. In my view, the limitation of a choice to those counsel who have been authorized by the law society to practise in Alberta – so long as the substance and the process of authorization are reasonable – constitutes a reasonable limit on a right to counsel of one's choice however that right may be defined. For the reasons I have set out above in connection with Mr. Layne's position, I am of the view that the limits which the Alberta law society has established in this case are reasonable. Mr. Allen's rights to counsel have not been infringed.

19. R. v. Bishop, 2008 NUCJ 10 (CanLII)

<https://www.canlii.org/en/nu/nucj/doc/2008/2008nucj10/2008nucj10.html>

[37] Having regard to the dictionary definitions of "choice," choice involves a selection or a preferential determination from many. It requires a variety or sufficient number from which to choose. The LSB therefore has an obligation to provide Mr. Bishop, or anyone else charged with an offence that falls within s. 40 of the Legal Service Act, a solid list containing alternatives and a reasonable number or variety of lawyers who are qualified and prepared to act as senior counsel on murder cases or other cases of a similarly serious nature. In this instance, the system that was used to provide Mr. Bishop with the information required to make a choice was haphazard and unsatisfactory. Having the Executive Director call around to various lawyers to find out if they might be willing to take the case is an inappropriate way to consider a choice of counsel appointment on any serious criminal charge. Clients who may not be sophisticated in the criminal process must be provided with the information that is needed to make a well-informed decision about their legal representation.

20. Talmud, Bava Batra 21b

אמר רב הונא האי בר מבואה דאוקי ריחיא ואתא בר מבואה חבריה וקמוקי גביה דינא הוא דמעכב עילויה דא"ל קא פסקת ליה לחיות.
לימא מסייע ליה "מרחיקים מצודת הדג מן הדג כמלא ריצת הדג. וכמה? אמר רבה בר רב הונא עד פרסה?" שאני דגים דיהבי סייארא.
Rav Huna said: If a resident of a street establishes a mill, and another resident of that street establishes one beside the first, the former is legally able to prevent this, saying, "You are interrupting my livelihood."
May we bring support from the following ruling? "One must distance a fishing net from fish [which are already pursued by someone else], the distance of a fish's travel. How much is that? Rabbah bar Rav Huna said: Up to a *parsah*." No; fish are different, because *yahavi sayara*.

21. Rabbi Yosef Karo (16th century Turkey/Israel), Code of Jewish Law, Choshen Mishpat 156:5

כופין בני מבוי זה את זה שלא להושיב ביניהם לא חייט ולא בורסי ולא אחד מבועלי אומניות.

Residents of a street may force each other not to establish among them a tailor, tanner, or one of the crafts.

22. Rabbi Meir Eisenstadt (17th century Poland/Austria), Panim Meiros 1:78

נשאלתי ממחזיקי ארנדרש שהחזיקו שני כפרים בתוך תחום אחד כל אחד משר אחד ורוצ' אחד למכור משקה י"ש ושכר בזול יותר ממה שנקבע השער במדינה והשני מוחה בידו באמרו כי הוא גורם לו היזק שע"י זה מרגיל לבוא אצלו אנשי הכפר שלו לשתות שם וע"י זה בא לו הפסד. תשובה... יכולי שאר מוכרי שכר וי"ש לעכב על זה.

I was asked by the holders of licenses, who established licenses in two villages within one region, each from a different noble. One of them wishes to sell whiskey and beer at a lower rate than the national rate, and the second one protests, saying that the first is causing him harm, by accustoming the people of the second village to come to him and drink there, causing the second merchant a loss.

Response:... The merchants of whiskey and beer can prevent each other from engaging in this conduct.

23. Why does protecting locals justify reducing competition?

- Social contract (Mishnat Rabbi Aharon, Shecheinim, Bava Batra 17b 1:5)
- Rabbinic decree (Beit Yosef Choshen Mishpat 156)
- "Judge righteousness between one and his brother and his stranger" (Chatam Sofer Choshen Mishpat 79)

The Good of the Profession

24. LSO Rules of Professional Conduct (2014), Rule 4.1-2(e)

In offering legal services, a lawyer shall not use means...

(e) that otherwise bring the profession or the administration of justice into disrepute.

25. Grace, Re, 1991 CanLII 572 (ON LST), <<http://canlii.ca/t/1gp2d>>, retrieved on 2016-03-17

16. In November of 1988, the Law Society retained the services of Peter Campbell, investigator, to observe Mr. Grace's activities at the Court House over a number of days. Mr. Campbell submitted a report dated December 5th, 1988 in which he reports that, on November 8th, 1988, he attended at the Court House and observed an accused by the name of Mr. Jean Francois Zuger advise the Court that he was unhappy with his solicitor and would be seeking a new solicitor. This took place in courtroom number 5 (remand court). When Mr. Zuger left the courtroom, he was followed closely by Mr. Grace. Mr. Campbell observed Mr. Grace strike up a conversation with Mr. Zuger in the hallway and further observed the two or [sic] them then go to the cafeteria for coffee. Mr. Grace and Mr. Zuger sat together until approximately 12:00 noon. The Court information indicates that on November 9th, 1988, i.e., the following day, Mr. Grace appeared, as counsel, for Mr. Zuger with respect to the charge.

26. Talmud, Shabbat 114a

אמר רבי חייא בר אבא אמר רבי יוחנן: גנאי הוא לתלמיד חכם שיצא במנעלים המטולאים לשוק. והא רבי אחא בר חנינא נפיק! אמר רבי אחא בריה דרב נחמן: בטלאי על גב טלאי. ואמר רבי חייא בר אבא אמר רבי יוחנן: כל תלמיד חכם שנמצא רבב על בגדו חייב מיתה, שנאמר (משלי ח:לו) "כל משנאי אהבו מות" - אל תקרי "משנאי" אלא "משנאי".

Rabbi Chiya bar Abba cited Rabbi Yochanan: It is disgraceful for a Torah scholar to go to the market with patched shoes. But Rabbi Acha bar Chanina went! Rabbi Acha son of Rav Nachman explained: The problem is with patches upon patches. And Rabbi Chiya bar Abba cited Rabbi Yochanan: A Torah scholar who has grease on his clothing is liable for death, as it says, "Those who hate Me, love death." Read it not as "hate Me" but "cause hate for Me".

Vignette 3 – Scooping: Pursuing someone else's client

27. LSO Rules of Professional Conduct (2014), Rule 4.1-2(d)

In offering legal services, a lawyer shall not use means...

(d) that are intended to influence a person who has retained another lawyer for a particular matter to change their lawyer for that matter, unless the change is initiated by the person or the other lawyer;

28. Grace, Re, 1991 CanLII 572 (ON LST), <<http://canlii.ca/t/1gp2d>>, retrieved on 2016-03-17

5. On April 25, 1988, Sharon Rosenberg made a written complaint to Mr. Michael Neville, President of the Defence Lawyers' Association, with regard to an incident that occurred while she was duty counsel in number 6 court (guilty plea court), on April 20th, 1988. Ms. Rosenberg states that she was present in number 5 court (remand court) when

an unrepresented accused by the name of James Bond advised the court he wished to plead guilty. He was subsequently transferred to the guilty plea court where Ms. Rosenberg was duty counsel that morning. Subsequent to receiving disclosure, Ms. Rosenberg met Mr. Bond in the cell block at approximately 9:45 a.m. at which time he confirmed that he wished to be represented by her as duty counsel.

6. Shortly thereafter, Ms. Rosenberg was advised by the Assistant Crown, Mr. B. Dandyk, that Mr. Grace had approached him with respect to Mr. Bond.

7. Ms. Rosenberg advised Mr. Grace that she was acting as duty counsel and inquired as to when Mr. Grace had spoken with Mr. Bond. Mr. Grace responded that he was a friend of the family, through his sister, and that he was acting for free.

8. When Mr. Bond was subsequently brought into the courtroom for plea, Ms. Rosenberg discussed the matter with him. Mr. Bond advised her that he did not request to see Mr. Grace, that his family did not know Mr. Grace, and that he still wished to be represented by Ms. Rosenberg as duty counsel.

29. LSO, *Ethical issues and practice management*

Whose "client" is it - the contracting firm/lawyer/paralegal's client or the Contract Lawyer or Paralegal's client? When the individual seeking legal services first retained the contracting firm/lawyer/paralegal, the individual became the contracting firm/lawyer/paralegal's client. However, during the time that the Contract Lawyer or Paralegal provides legal services to the same individual, that individual is now the Contract Lawyer or Paralegal's client also.

30. Rashi (11th century France), Commentary to Bava Batra 21b

נותנין עין בהבטם להיות נוהגים לרוץ למקום שראו שם מזונות, הילכך כיון שהכיר זה חורו ונתן מזונות בתוך מלא ריצתו **בטוח הוא שילכדנו, דה"ל כמאן דמטא לידיה ונמצא חבירו מזיקו**. אבל הכא מי שבא אצלי יבא ומי שבא אצלך יבא.

[The fish] look around, usually racing to the place where they see food. Therefore, since this person identified the fish's hole and put food within its travel radius, he is certain that he will catch it, as though it has arrived in his hand, so that the rival is harming him. But [in the mill case], one who comes to me can come, one who comes to you can come.

31. Rabbi Moshe Sofer (18th-19th century Hungary), Chatam Sofer Choshen Mishpat 79

כוונתו מבואר דלא מיירי שפירש זה מצודה לצוד [סתם] דגים, אלא **דג ידוע גדול** שיתן זה עיניו בו ללכודו ע"י שנתן מזונו לתוך החור שרגיל הדגים לבוא שם... **וה"ה אם כבר היו הקונים בחנותו וגמר הפסוק ולא חסר כלום באופן שהי' בטוח שיקחו ממנו**, ובא זה ומוליכם לחוץ, ה"ל גזל...

He means that this is not where someone spread out a net to catch [general] fish. Rather, there is a known, big fish, which he has set his eyes on trapping by placing food in its hole, where the fish normally go... The same would apply if there were shoppers in his store already, and the price was already agreed upon and nothing remained open, so that he was certain they would buy from him, and then someone came in and led them outside. It would be theft...

32. Rabbi Moses Nachmanides (Ramban, 13th century Spain), Commentary to Bava Batra 21b

מפרש בערוך לפי שהם מביטים למרחוק וכשאוכלין כאן הם נותנין עינים לראות אם יש מזונות במקום אחר **ופעמים שנצודו ברשת ומתוך שהם רואין מזונות במקום אחר הם הולכין שם וזה גזל גמור** הואיל וכבר נצודו.

[Rabbi Natan, author of the Aruch,] explained that [the fish] look from afar, and while eating in one place they set their eyes to see if there is food elsewhere, and sometimes they are in the net, but they see food elsewhere and go there. This is full-blown theft, since they have already been caught.

33. Rashi (11th century France), Commentary to Bava Batra 22a

יומא דשוקא הוה, והרבה באין ממקום אחר לקנות מן השוק, לפיכך אין בני העיר מעכבין גם על המוכרים להביא אומנות ולמכור לנקבצים לשוק.

This was Market Day, when many came from elsewhere to buy in the market. Therefore, the townspeople cannot keep the merchants from bringing their wares and selling to those who gather in the market.

34. Rabbi Yaakov Yeshayah Blau (21st century Israel), Pitchei Choshen IV 7 (48)

ומכל מקום נראה שמותר לאדם לפרסם ברבים שהוא עובד בתנאים נוחים, או שנתן שירות טוב יותר... Still, it appears that one may publicize that he works for good terms, or provides better service...

Vignette 4 - Scooping: Pursuing a rival's potential client

35. Talmud, Kiddushin 59a

רב גידל הוה מהפך בההיא ארעא, אזל רבי אבא זבנה, אזל רב גידל קבליה לרבי זירא, אזל רבי זירא וקבליה לרב יצחק נפחא...
אשכחיה, אמר ליה: עני מהפך בחררה ובא אחר ונטלה הימנו, מאי? אמר ליה: נקרא רשע...

Rav Gidel was trying to acquire a certain plot of land, but Rabbi Abba purchased it first. Rav Gidel complained to Rabbi Zeira, who complained to Rav Yitzchak Nafcha... Rav Yitzchak Nafcha asked [Rabbi Abba]: Where a pauper is pursuing a cake, and another takes it from him, what is the law? Rabbi Abba replied: He is called wicked...

36. Rabbi Shlomo Luria (16th century Poland), Responsa of Maharshah 36

ולפי ראות עיני הב"ד יראה להחמיר כאשר פסק הרמב"ם [לפי] שיש כח ביד ב"ד להחמיר לפי הנראה בעיניהם יותר מדין הגמרא.
According to the view of the rabbinical court, they should be strict, as Rambam ruled, for the rabbinical court is empowered to be strict as appears appropriate in their eyes, beyond the rule of the Talmud.

37. Rabbi Moshe Isserles (16th century Poland), Code of Jewish Law, Choshen Mishpat 237:1

וכן אם קונה דבר אחד ובא חבירו ויוכל לקנותו בזול שאינו מוצא לקנותו כך במקום אחר, הוי כמו מציאה...
And so if one is acquiring something, and someone else comes along, and he can buy it for a low price which he will not find elsewhere, it is like finding an item...

38. Mishnah Gittin 5:8 (Talmud, Gittin 59b)

עני המנקף בראש הזית - מה שתחתיו גזל, מפני דרכי שלום. ר' יוסי אומר: גזל גמור.
If a pauper is striking atop an olive tree, [taking] that which is beneath him is theft, due to the ways of peace. Rabbi Yosi said: It is fully theft.

39. Rabbi Shlomo Luria (16th century Poland), Responsa of Maharshah 36

וצריכים אנו לחלק בין טרחא לטרחא, כי ב' חלוקים בטירחא: יש טרחא שאין מועיל כלל, ויש טרחא שמועיל לעניין איסור גזל מדבריהם... לא נקרא טרחא אלא היכא דטרח בגופו שהוא דבר הניכר כגון עני המנקף בראש הזית שאין טירחא גדולה מזה לענין זתים שנשא נפשו למות...

We must distinguish [in the law] between one strain and another, for there are two types of strain: There is strain that is entirely ineffective, and there is strain that turns this into a rabbinically prohibited form of theft... It is not called "strain" unless one strains physically, in a visible way, like a pauper striking atop an olive tree. There is no greater strain than this, regarding olives, for which he endangers his life...

40. Rabbi Yechiel Michel Epstein (early 20th century Lithuania), Aruch haShulchan Choshen Mishpat 273:20

ואם נטלן אחר אין בהם משום גזל גמור להוציאן בדיינים אלא שעבר עבירה ונענש בדיני שמים.
If another takes them, it is not fully theft, such that they could be removed via judges – but he has sinned, and he is punished by the laws of heaven.

41. Rabbi Moses Maimonides (Rambam) (12th century Egypt), Mishneh Torah, Hilchot Matnot Aniyim 10:7

מעלה גדולה שאין למעלה ממנה... נותן לו מתנה או הלואה או עושה עמו שותפות או ממציא לו מלאכה כדי לחזק את ידו עד שלא יצטרך לבריות לשאול

The highest level of tzedakah, beyond which nothing is higher... to give him a gift or loan or create a partnership with him or provide him with work, to strengthen his hand until he no longer needs to ask from others.

42. Rabbi Moses Maimonides (Rambam) (12th century Egypt), Commentary to Avot 1:5

ויהיו עניים בני ביתך - יאמר, שראוי שיהיו משמשוך הדלים והעניים...
"Paupers should be members of your household" – Your servants should come from the poor and indigent...

Vignette 5: The vulnerable client

43. LSO Rules of Professional Conduct (2014), Rule 4.1-2(c)

In offering legal services, a lawyer shall not use means...

(c) that take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover;

44. LSO Rules of Professional Conduct (2014), Commentary to Rule 4.1-2

A person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover may need the professional assistance of a lawyer, and this rule does not prevent a lawyer from offering their assistance to such a person. A lawyer is permitted to provide assistance to a person if a close relative or personal friend of the person contacts the lawyer for this purpose, and to offer assistance to a person with whom the lawyer has a close family or professional relationship. The rule prohibits the lawyer from using unconscionable or exploitive or other means that bring the profession or the administration of justice into disrepute.

45. Leviticus 19:14

לא תקלל חרש ולפני עור לא תתן מכשל ויראת מאלקיך אני ד'

Do not curse the deaf, and do not put a stumbling block before the blind; you shall revere Gd, I am Gd.

46. Midrash, Sifra, Kedoshim 2

היה נוטל ממך עצה, אל תתן לו עצה שאינה הוגנת לו, אל תאמר לו צא בהשכמה שיקפחוהו ליסטים, צא בצהרים בשביל שישתרב

If someone asks you for advice, do not advise him inappropriately. Do not tell him, "Depart in the early morning," such that thieves will attack him, or "Depart at noon," so that he will be overcome by heat.

47. Rabbi Moses Maimonides (Rambam, 12th century Egypt), Commentary to Mishnah, Sheviit 5:6

אמר ד' ולפני עור לא תתן מכשול, הכוונה בזה, שמי שעוורה אותו התאוה והדעות הרעות, אל תעזרהו על עורונו ותוסיף להתעותו.

Gd instructed, "And do not put a stumbling block before the blind." This refers to someone who has been blinded by desire or bad ideas. Do not aid him toward his blindness, leading him further astray.