

HEMDAT YAMIM

PARASHAT KEDOSHIM

28 Nisan 5768

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This edition of Hemdat Yamim is dedicated in loving memory of
R' Meir ben Yechezkel Shraga Brachfeld

o.b.m

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Loving the Right Convert for the Right Reason

Our *parasha* includes one of the mentions of the commandment to be kind to *gerim* (converts). "As a citizen of yours he shall be for you, the convert who lives with you, and you shall love him as yourself for you were strangers in the Land of Egypt" (Vayikra 19:34). Since the convert is a full Jew, why must the Torah tell us separately to love him? *Chazal* understand that there is a need to strengthen this general directive in relation to converts. But why? The Ibn Ezra (ad loc.) says it is because a convert generally has a weaker social status. The Sefer Hachinuch (#431) similarly focuses on the difficulty of leaving his natural surroundings to join a foreign nation. The Rambam (Aseh 207) highlights the extra respect he deserves for going out of his way to accept Hashem's Torah, comparing love of a *ger* to love of Hashem Himself (see also De'ot 6:4).

The differing approaches may depend on how one views the connections between our *pasuk's* parts. After commanding to love the *ger*, the Torah apparently provides a reason: "for you were strangers..." In other words, we should be sensitive to difficult situations similar to the one we experienced. This fits well with the Ibn Ezra and Chinuch.

The Rambam may focus on the earlier part of the *pasuk*. Torat Kohanim (ad loc.) learns from the words, "as a citizen of yours he shall be," not to treat him as other Jews, but as a directive to accept a *ger* only if he accepts all of a Jew's obligations. If the *pasuk* stresses the serious religious commitment required, we understand the connection to the commandment to love him. After all, one who embraces Hashem in a dedicated manner deserves it more than the average Jew, who is simply born into Judaism.

This understanding of the Rambam explains an apparent contradiction. The Rambam (Issurei Bi'ah 13: 15,17) talks about *gerim* who were accepted when it is unclear whether their motivation was noble or self-serving. In one place he says that we wait to see how they turn out before deciding whether to push them away or embrace them. In another place he says that even if their secret is uncovered, we consider them to be valid converts. While some *Acharonim* view the statements as referring to the conversion's status, our mentor, Rav Yisraeli (Chavot Binyamin 67) explains that the conversion even with questionable intentions is valid. The issue is whether we should embrace and love the convert as the Torah usually requires, or whether we should give him a cold shoulder due to his insincere motives. Since the Rambam views the reason to love converts as their willingness to embrace Hashem, not their difficult situation, it makes full sense that when a conversion was self-serving, the *ger* does not deserve our affection.

The existence of converts with questionable motives has caused some to generally look askance on *gerim*. However, we should be careful not to throw out the baby with the bath water.

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Ask the Rabbi

Question: I was on a bus the other day and saw two young men share a *chofshi chodshi* (monthly pass), which Egged clearly forbids. Was I required to say something to the boys? If they would not listen, was I required to tell the driver? Is it a problem of *lashon hara*?

Answer: We will explore three halachic issues, starting with *lashon hara*. If one sees Reuven wronging Shimon monetarily, he may take steps to protect Shimon's rights at the expense of defaming Reuven if seven conditions are met (Chafetz Chayim, Lashon Hara 10). In your case, if you were sure of what you saw, the only questionable condition is the need to rebuke the culprit in a soft manner before causing him embarrassment in order to give him the opportunity to rectify the matter without embarrassment (ibid. based on Rambam, De'ot 6:8). If that had proved ineffective, you would not have had to worry about *lashon hara* when alerting the driver to rectify the situation.

The next question is whether it is permitted or required to take such steps. In general, there is a *mitzva* from the Torah to rebuke for a sin (Vayikra 19:17). It makes little difference whether one rebukes in order to encourage possible rectification or to cause remorse and a decision not to repeat the sin (like the steps of *teshuva* we know of from our preparations for Yom Kippur). This *mitzva* is strongly related to the responsibility of *afrushei mei'isura*, to distance our counterpart from sin. In your case, the youngsters were in the midst of illegally make use of the bus apparently with no intention to pay. Yet, if one thinks about it, we have ample opportunities to rebuke people on the bus, and, for better or for worse, we rarely do so. For example, if we someone eating without a *beracha* or telling *lashon hara*, we have an, at least theoretical, obligation to rebuke him and/or prevent the continuation of the sin. Our general working assumption is that since our generation is not proficient at rebuking and receiving rebuke, respectively, we have more to lose than to gain by doing so. One could argue that a clear man-to-man sin such as sneaking onto a bus is one that everyone would admit is inexcusable and the rebuke would work. However, many, likely including the youngsters you saw, are able to rationalize away such activity or don't care if it is wrong.

The final issue is *hashavat aveida* (returning something lost). Although the most famous discussions of *hashavat aveida* refer to physical objects, the *mitzva* refers to a variety of actions that need to be taken to prevent loss to our friend. For example, if one sees that his friend's property is in danger of being damaged, he must protect it (Bava Metzia 31a). Furthermore, it appears that according to at least most *poskim*, one is required to take steps to enable his friend to receive the money he is owed. One example is that, in addition to the specific *mitzva* to testify on a friend's behalf, several *poskim* say that the general *mitzva* of *hashavat aveida* also mandates testimony (Netivot Hamishpat 28:1; Sha'ar Mishpat 28:2; see Pitchei Choshen, Aveida 1:(63-65)). No matter how we classify the *aveira* of getting on a bus without paying (stealing for using property without permission, withholding fees due, etc.; analysis is beyond our present scope), Egged deserves to be paid and your action could have ostensibly enabled them to receive payment.

However, it is likely that you were still not required to do so. First of all, it is likely that even if the driver would have decided to confront the cheats, they would have gotten off the bus rather than pay, and thus the money would not have been gained. More fundamentally, though, one is not required to put himself in a situation of significant embarrassment in order to do *hashavat aveida* (Berachot 19b). Since asking the offender to pay and/or going to the bus driver to "snitch" would likely have caused a very upsetting experience, you were likely exempt from doing it.

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Ownership on Foods That Are Assur B'hana'ah – part III

(from Sha'arei Shaul, Pesachim 13)

[In analyzing why one cannot create kiddushin with something that is assur b'hana'ah, we saw Tosafot's view that for different reasons it is not considered something of value. We ended off with the Ritva's claim that even when there is indirect hana'ah that comes to the recipient, it is not considered to have been provided by the apparent owner.]

The Ritva points out that the owner of the *issur hana'ah* may not sell it even to one who is permitted to use it. He also discusses the fact that one can get *hana'ah* after the *chametz* is turned into ashes and explains that this is not cause for *kiddushin* because the ashes are ownerless. Tosafot (2nd answer), who says that it is talking about a case where there is not a *shaveh peruta* of *hana'ah* from the ashes assumes that there is ownership over the ashes.

Tosafot and the Ritva are consistent. The Ritva holds that one cannot have *hana'ah* even in an unusual way. The question is only in regard to the ashes and even there he says that there is no ownership. According to Tosafot, it is permitted to benefit in an unusual manner and therefore even when there is not a *peruta* worth of value, ownership is still possible. If by burning there will be a *shaveh peruta*, the remaining ownership will allow for *kiddushin*.

According to Tosafot, the potential *shaveh peruta* is significant regarding *issurei hana'ah* that it is permitted to possess until some future moment when he will destroy them. Regarding *chametz*, though, since he has an obligation to destroy it as soon as possible, the burning is considered in the manner of *hana'ah* and, therefore, the theoretical possibility of *hana'ah* is irrelevant. It was in regard to *orlah* that Tosafot (Kiddushin 56b) needed to raise the possibility of it not being *shaveh peruta* or the element of *mekach ta'ut* to explain why there was no *kiddushin*.

That which the Rosh distinguishes between strong and weak *issurei hana'ah*, which bothered the Beit Shmuel since the important thing is whether practically it is *assur* or not, can be explained as follows. It is possible to get practical benefit if one waits until it is ashes before getting *hana'ah*. However, if the prohibition is a serious one, we cannot consider this because we may not allow selling of the *issur* to be used for its ashes.

We also understand why Rashi has to use the concept of *hefker beit din* in order to explain why there is no *kiddushin* considering there should not be *kiddushin* simply because it is not worth anything. The answer is that if it is talking about a *trei d'rabbanan* (two reasons why it not *d'orayta*), then there is value because the Rabbis did not forbid benefiting from it in an unusual manner or to use it after it is turned into ashes. This was forbidden only when the *chametz* is prohibited from the Torah. Rashi, though, says that even so the Rabbis made the ownership of the *chametz* lacking. While the bride can acquire the *chametz* from *hefker* and can get benefit from it, she is not considered to have received it from the groom.

Rashi's source that the *chametz* is not owned by its apparent owner is the statement of R. Elazar that *chametz* is one of two things that are not in a person's possession and are only treated as such in regard to obligating him. If he owned the *chametz*, it would not be a *chiddush* that the Torah obligated him. The reason it leaves his possession from the Torah could not be its lack of usefulness because Torah law allows its use in an unusual manner. There must be, therefore, some sort of halachic rule that the prohibition removes the status of ownership. This is different from the Ritva's approach. Although he considers it not owned by its apparent owner, according to the Ritva it is because he is unable to receive benefit from it, not due to a *g'zeirat hakatuv*, as Rashi posits.

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P'ninat Mishpat

Signing of a Ketuba of a Different Edah

(based on Halacha Psuka, vol. 42, condensation of Piskei Din Rabbaniiim IX, pp. 152-168)

Case: A husband wants to divorce his separated wife. She does not want to accept a *get* and claims that he wants to divorce because of his interest in another woman. He admits the other relationship but says his unwillingness to remain married to his wife is unrelated.

Ruling: Regarding the opposite case, where a woman is disgusted by and unwilling to live with her husband, *Rishonim* dispute whether the husband can be forced to give a *get* (Rambam, *Ishut* 14:8) or not (Rabbeinu Tam in *Tosafot*, *Ketubot* 63b). The fear that she may have an interest in another man is a reason not to require the *get*. In this case, the man says he is disgusted by his wife, but there is specific reason to suspect that he is motivated by his interest in another woman. If he is permitted to take a second wife, we would not need to suspect that he wants the *get* only to remarry. We thus must see if *Cherem D'rabbeinu Gershom* (=CDRG- the ban on polygamy) applies to this case (note- the husband is Sephardic, upon whom CDRG is not normally binding).

Rav Yisraeli reasoned that since the husband signed an Ashkenazi *ketuba* at his wedding, he is bound to Ashkenazic marriage-related commitments, including CDRG. Although he might have been unaware of the differences between *ketubot*, his acceptance of the *ketuba* binds him. It is similar to what the Shulchan Aruch (*Choshen Mishpat* 45:3) rules: "If one admitted with his signature and the document was written in the script of non-Jews, it is clear that he did not know how to read it and there are witnesses that he signed without reading it, he is still obligated by everything that is written in it."

The Rashba (*Shut* I, 1156) deals with a *ketuba* with added clauses, based on which a woman should lose a dispute regarding monetary rights. The Rashba says that the *ketuba* does not cause her to lose those rights despite her agreement to accept it, citing two reasons: 1) It is the husband, not the wife, who signed the *ketuba*; 2) All know that the woman does not know what is included in the *ketuba*. The first reason does not apply to our case because the husband signed the *ketuba*. The second reason also does not apply because there the *ketuba* and the loss of money are only indirectly connected; in our case, it is direct. Furthermore, the overwhelming consensus of those who get married in our country [including Sephardim] is to not take a second wife. Therefore, we assume that he committed not to take a second wife and cannot force a *get* on his wife.

Rav Kapach ruled that the *ketuba* does not change the husband's natural *minhag*, as few understand differences between *ketubot*, especially in regard to CDRG, which it does not explicitly address and depends on the different *edot's* customs. Therefore, the husband is treated according to Sephardic custom despite his, apparently inadvertent, signing on an Ashkenazi *ketuba*.

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