

# HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

## 92 - CONTEMPORARY YICHUD ISSUES IN A #metoo WORLD OU ISRAEL CENTER - SUMMER 2018

### A] YICHUD - THE ISSUES

- What is the status of the halacha of Yichud - Deoraita or Derabbanan?
- What kind of situations does it relate to? Professional meetings, social engagements, day, night?
- Which people does it relate to and which combinations of men and women?
- How does it impact - positively and negatively - on the currently climate of interaction between men and women.

### B] MODERN SOCIETAL PERSPECTIVES

1. The Billy Graham rule is a practice among male evangelical Protestant leaders, in which they avoid spending time alone with women to whom they are not married. It is named after Billy Graham, a proponent of the practice, although recently has also been called the Mike Pence rule. It is adopted as a display of integrity, a means of avoiding sexual temptation, and to avoid any appearance of doing something considered morally objectionable, but has been criticized as being sexist.

Wikipedia - Billy Graham rule 1 June 2018

2. **OPINION - MIKE PENCE DOESN'T EAT ALONG WITH WOMEN. THAT SPEAKS VOLUMES.**  
*By JESSICA VALENTI*  
The vice-president's rule is insulting for men and limiting for women. But let's not let Pence's sexism distract us from his whole party's sexist agenda. I have to hand it to conservatives: it's 2017, and somehow they have Americans debating whether it's appropriate to dine alone with a woman. You see, this week a Washington Post article about Karen Pence revealed that the vice-president will not eat a meal with a woman other than his wife. Those on the right are commending Pence's marital devotion and moral fortitude, claiming that such a rule is a smart defense against sexual temptation. ....

The Guardian - 31 March 2017

3. **IT'S NOT JUST MIKE PENCE. AMERICANS ARE WARY OF BEING ALONE WITH THE OPPOSITE SEX**  
By Claire Cain Miller  
  
Men and women still don't seem to have figured out how to work to socialize together. .... Many men and women are wary of a range of one-on-one situations, the poll found. Around a quarter think private work meetings with colleagues of the opposite sex are inappropriate. Nearly two-thirds say people should take extra caution around members of the opposite sex at work. A majority of women, and nearly half of men, say it's unacceptable to have dinner or drinks alone with someone of the opposite sex other than their spouse ....  
  
Attitudes reflect a work world shadowed by sexual harassment. In recent news about Uber and Fox News, women see cautionary tales about being alone with men. ... "When a man and a woman are left alone, outside parties can insinuate about what's really going on," said Christopher Mauldin, a construction worker in Rialto, Calif. "Sometimes false accusations create irreversible damages to reputations."

He said he avoids any solo interactions with women, including dining or driving, as does his girlfriend with other men. When he needs to meet with women at work or his church, he makes sure doors are left open and another person is present. Others described similar tactics, including using conference rooms with glass walls and avoiding alcohol with colleagues. "Temptation is always a factor," said Mr. Mauldin, 29.

Over all, people thought dinner or drinks with a member of the opposite sex other than a spouse was the most inappropriate, with more people disapproving than approving. Lunch and car rides were less objectionable, but more than a third of people said they were inappropriate. Fewer than two-thirds of respondents said a work meeting alone with a member of the opposite sex was appropriate ....

In general, women were slightly more likely to say one-on-one interactions were inappropriate. So were Republicans, people who lived in rural areas, people who lived in the South or Midwest, people with less than a college education and people who were very religious, particularly evangelical Christians. Yet the gender caution reaches across divides – and into many workplaces. Kathleen Raven, a science writer at Yale, considers herself to be progressive in many ways. But she does not have closed-door or out-of-office meetings alone with men, because she was previously sexually harassed. She also tries to avoid being too friendly, to ensure she doesn't give the wrong impression.

"Women are taught to believe that we are equals while we're growing up, and that's not a good message," said Ms. Raven, 34. "We have to make a lot of efforts to protect ourselves." ....

The New York Times - July 1 2017

## C] YICHUD - THE CONCEPT

The halachot of Yichud are built upon 3 foundations:

1. A formal system based on objective parameters which prohibits certain private interactions, irrespective of personal attraction or the likelihood of sexual impropriety.
2. A subjective 'common sense' assessment of when things are likely to cause problems, even if they are not within the 'technical' parameters of yichud - ein apitropus l'arayot
3. A separate concern of 'chashad' - even when there is no concern of impropriety, certain situations leave a person open to accusations.

In all cases, the halacha fascinatingly balances an assessment of the psychological realities, as we will see below.

### C1] SUBJECTIVE CONCERNS - אין אפוטרופוס לעריות

4. אמר רבי זעירא .... אפילו כשירין מזנין - דתני אפילו חסיד שבחסידים אין ממנין אותו אפוטרופוס על עריות:

תלמוד ירושלמי (וילנא) מסכת כתובות פרק א

*The Yerushalmi quotes a saying of Chazal that even the most pious of the pious can stumble over the issue of arayot!*

5. כיון דאיסתתר - אין אפוטרופוס לעריות:

כתובות יג:

*The Bavli stresses that this is particularly true once a couple has entered alone into a private place! Note the psychological significance of the locked door and the effect that this can have on an otherwise platonic relationship. As such, Yichud is not only a halachic issue but also a very useful and valuable social tool to avoid moving beyond a 'point of no return'.*

1. Fascinatingly this statement is brought in the Gemara to justify a ruling that the child of a woman who became pregnant through an unknown illicit relationship is not necessarily of questionable yichus. The father may well be a respected individual!!

6. **טו** אין ממנין אפילו אדם נאמן וכשר להיות שומר חצר שיש שם נשים אף על פי שהוא עומד בחוץ שאין אפטרופוס לעריות ...  
**יט** ואמרו חכמים גזל ועריות נפשו של אדם מתאוה להן ומחמדותן. ואין אתה מוצא קהל בכל זמן וזמן שאין בהן פרוצין בעריות וביאות אסורות. ועוד אמרו חכמים - 'רוב בגזל מיעוט בעריות והכל באבק לשון הרע'.  
**כ** לפיכך ראוי לו לאדם לכופ יצרו בדבר זה ולהרגיל עצמו בקדושה יתירה ובמחשבה טהורה ובדעה נכונה כדי להנצל מהן, ויזהר מן הייחוד שהוא הגורם הגדול ....

רמב"ם איסורי ביאה פרק כב

*The Rambam rules this concept in hilchot Yichud - that a person needs to think beyond the basic, technical and formal requirements of the halacha and be conscious of where real challenges lay!*

Consider the following cases, which are totally permitted according to the formal rules of Yichud, but which are clearly very problematic:-

1. 'Emotional Yichud' - where a counsellor or Rabbi may be involved in long and personal conversations with an individual - even over Skype. The conversations can eventually lead to an emotional bond which can destabilize a marriage.<sup>2</sup>
2. Sports, jogging etc with another individual, even in public areas, which can lead to a deeper personal connection.
3. The teenage sleepover party - eg 10 boys and 10 girls in a sleepover party when the parents are away. Technically not a problem of Yichud but clearly a disaster waiting to happen!!!

## C2] SUBJECTIVE CONCERNS - חשד

7. תנו רבנן: אלמנה - בין שהיא ענייה בין שהיא עשירה אין ממשכנין אותה, דברי רבי יהודה. רבי שמעון אומר: עשירה - ממשכנין אותה, ענייה - אין ממשכנין אותה, שאתה חייב להחזיר לה ואתה משיאה שם רע בשכנותיה

בבא מציעא קטו.

*R' Shimon's opinion is that the Torah prohibits taking collateral specifically from a poor widow. Since the lender will need to return the collateral daily, the neighbors will see his car parked in her drive on a regular basis and cast aspersions!*

8. אמרו אל יתיחד אדם עם כל הנשים בפונדק, אפילו עם אחותו ועם בתו וחמותו, מפני דעת הבריות. .... הרחק מן הכיעור ומן הדומה לכיעור

משכתות קטנות מסכת אבות דרבי נתן נוסחא א פרק ב

*Chazal warn against staying in hotel room with one's sister. One must avoid not only the inappropriate but also that which even LOOKS to be inappropriate.*

9. .... אין התורם נכנס לא בפרגוד חפות ולא במנעל ולא בסנדל ולא בתפילין ולא בקמיע. שמא יעני ויאמרו מעון הלשכה העני או שמא יעשיר ויאמרו מתרומת הלשכה העשיר! לפי שאדם צריך לצאת ידי הבריות כדרך שצריך לצאת ידי המקום. שנאמר (במדבר לב:ב) וְהִיִּיתֶם נְקִיִּים מִה' וּמִיִּשְׂרָאֵל וְאָמַר (משלי ג:ד) וּמִצָּדִיק וְשִׁכְל־טוֹב בְּעֵינֵי אֱלֹהִים וְאָדָם

משנה שקלים פרק ג משנה ב

*The Mishna applies this principle to appropriate behavior when dealing with money in the Mikdash and derives it from Torah and Nach. In certain situations, it is not enough to do the right thing but one must look 'whiter than white'!*

10. **טז** אסור לתלמיד חכם לשכון בחצר שיש בה אלמנה אף על פי שאינו מתייחד עמה מפני החשד ....

רמב"ם איסורי ביאה פרק כב

*The Rambam rules this too. Even if there is NO possibility of a real Yichud situation, there are cases which are inherently open to suspicion and should be avoided.*

Consider the following cases, which are totally permitted according to the formal rules of Yichud, but which are clearly very problematic:-

1. A private meeting in a room with no windows, even if other people could walk in any moment.
2. A ride in an elevator which would not be a problem of Yichud (see below). What if one accuses the other of inappropriate behavior?
3. Giving a ride in the car to a person of the opposite gender. Again, what if one accuses the other?

2. This is especially difficult in student campus situations when a kiruv Rabbi can become emotionally connected with a young female student.

**D] THE DEVELOPMENT OF YICHUD - TORAH, TANACH AND CHAZAL**

11. **מתני'.** לא יתייחד אדם עם שתי נשים, אבל אשה אחת מתייחדת עם שני אנשים. רבי שמעון אומר: אף איש אחד מתייחד עם שתי נשים בזמן שאשתו עמו וישן עמהם בפונדקי, מפני שאשתו משמרתו. מתייחד אדם עם אמו ועם בתו ..... **גמ'.** ..... מנא הני מילי? א"ר יוחנן משום ר' ישמעאל: רמו ליחוד מן התורה מנין? שנאמר: (דברים יג:ז) **כִּי יִסְתַּף אָחִיד בֶּן אִמּוֹ.** וכי בן אם מסית, בן אב אינו מסית! אלא לומר לך: בן מתייחד עם אמו, ואסור להתייחד עם כל עריות שבתורה.

קידושין פ:

*The Gemara learns the issur of Yichud from the verse of the 'meisit' - a person who secretly tries to entice another to break the Torah. The Torah unusually uses the expression בן אִמּוֹ to describe such a secret meeting, from which Chazal learn that a son may be locked in a room with his mother, but with not other 'arayot'.*

12. אמר רב יהודה אמר רב: באותה שעה גזרו על הייחוד, ועל הפנויה. - **יחוד? דאורייתא הוא! ...**

סנהדרין כא.

*The Gemara clarifies that the mitzvah of yichud with arayot is Min haTorah. Chazal later extended this to all other men and women.*

13. .... ואיסור ייחוד העריות מפי הקבלה

רמב"ם הלכות איסורי ביאה פרק כב הלכה ב

*This derivation of yichud is not the 'pschat' in the verse of meisit but is rather a 'smach'. The actual halacha is learnt from the Oral tradition<sup>3</sup>.*

14. אסור מן התורה לאיש שיתיחד עם הערוה ....

טור אבן העזר הלכות אישות סימן כב

*The Tur rules that Yichud is in principle min HaTorah and this is the position of most poskim.<sup>4</sup>*

15. **שלא להתעדן באחת מכל העריות** .... ואפילו בלא ביאה כגון חיבוק ונישוק וכל הדומה לאלו הפעולות ....

ועוד אמרו רבותינו זכרונם לברכה במצוה זו שאסור להתייחד עם כל העריות, רצוני לומר עם כל העריות דבר תורה, בין זקנה בין ילדה, שהייחוד לגלות ערוה הוא גורם. חוץ מן האם עם בנה והאב עם בתו והבעל עם אשתו נדה שמותירן .... כשאירע מעשה אמנון ותמר, גזר דוד ובית דינו על ייחוד דפנויה. שמאי והלל גזרו על ייחוד גוים. ....

ספר החינוך מצוה קפח

*The Sefer HaChinuch explains that Yichud is a Torah mitzvah to protect against sexual contact. However, Yichud is not only a biblical 'fence' to sexual relations but also a separate prohibition of 'closeness' in its own right. The Yichud itself is an invitation to intimacy, as we see at a wedding when the chatan and kallah enter a 'cheder yichud'. After the events of Amnon and Tamar it was extended rabbinically to include relationships which are not arayot.*

16. ... ופנויה נידה היא ערוה ככל העריות

ערוך השולחן אבן האזר כב:א

*Nowadays when single women do not go to the mikveh, Yichud between singles will be considered to be between 'arayot' and thus min haTorah, even if there is no sexual contact between them.*

3. The expression מפי הקבלה in the Rambam is subject to debate. Some explain that it means a Rabbinic law. In the case of Yichud most Rishonim understand that the law is min haTorah and the Mishneh LeMelech explains that the Rambam also rules this way. Many Acharonim understand that the issur of one man and one women is min haTorah and the issur of multiple people (where prohibited) is rabbinic. See Binat Adam Klal 126:16

4. See Binat Adam 126:28

## E] THE CORE HALACHOT OF YICHUD

- The core halacha<sup>5</sup> of Yichud presents in two parts: (i) There is a prohibition min haTorah for one man and one woman to be secluded together if they are 'erva' to each other. <sup>6</sup> (ii) There is a rabbinic extension of that prohibition to (a) various combinations of multiple people - men and women together; (b) Yichud with children or an unmarried woman who is not an erava<sup>7</sup>; (c) Yichud with a non-Jew.
- The prohibition of Yichud applies in three scenarios: (i) in the same room; (ii) in the same house/office in different rooms when no one else is in the house/office; (iii) in a remote outside area with no disturbance.

17. אסור להתייחד עם ערוה מהעריות, בין זקנה בין ילדה שדבר זה גורם לגלות ערוה, חוץ מהאם עם בנה והאב עם בתו והבעל עם אשתו נדה. וחתן שפירסה אשתו נדה קודם שיבעול אסור להתייחד עמה, אלא היא ישנה בין הנשים והוא ישן בין האנשים ...

שולחן ערוך אבן העזר סימן כב:א

*Yichud applies between a man and woman<sup>8</sup> irrespective of age (ie attraction). It does not apply at all between grand/parents and grand/children.<sup>9</sup> It also does not apply between husband and wife, other than in the rare situation of a chupat nidah.*

18. (א) ... ועם אחותו כתירו יחוד ארעי ... ומ"מ המחמיר תצא עליו זרכה וכן פסק בקי"ור פסקי הרא"ש:

חלקת מחוקק סימן כב

*Yichud with a sibling is permitted but permanent residence with a sibling is not.<sup>10</sup>*

### E1] HUSBAND AND WIFE

19. (שיר השירים ז:ג) סוגה בשלשנים - שאפילו כסוגה של שושנים לא יפרצו בהן פרצות. והיינו דאמר ליה ההוא מינא לרב כהנא: אמריתו נדה שרי לייחודי בהדי גברא. אפשר אש בנעורת ואינה מהבהבת! אמר ליה: התורה העידה עלינו סוגה בשושנים - שאפילו כסוגה בשושנים - לא יפרצו בהן פרצות

סנהדרין לו.

*The Gemara records that a heretic accused the laws of Yichud of inconsistency. Since the relationship of husband and a wife who is nidda is karet, how could Yichud be permitted!? The answer is drawn from an allusion in Shir Hashirim to a 'hedge of lilies' - even a 'Chinese wall' can keep husband and wife apart. The Gemara understands this to be a Torah principle!*

20. ומשעת ראייתה עד שתטבול יש לה להתרחק קצת מבעלה בדברים שאפשר כי התורה אסרה ייחוד של כל העריות, וגם נדה היא בכרת כשאר עריות. אלא שהדבר קשה ליהרר מייחוד אשתו נדה ומצאו רמו מן המקרא להתיר ייחוד נדה ודרשו סוגה בשושנים

רא"ש מסכת נדה הלכות נדה בקיצור סימן ב

*The Rosh explains that in order to make marital life possible and enable husband and wife to live together<sup>11</sup>, Chazal found a drasha to permit this.<sup>12</sup>*

5. This sheet is NOT intended as a comprehensive analysis of Hilchot Yichud. For more information see (i) <http://halachipedia.com/index.php?title=Yichud> (ii) [http://www.workplacehalacha.com/wp-content/uploads/2014/12/Chapter-2-Yichud-Jan-20\\_15.pdf](http://www.workplacehalacha.com/wp-content/uploads/2014/12/Chapter-2-Yichud-Jan-20_15.pdf) (iii) <http://www.sichos-in-english.org/books/the-laws-of-yichud/05.htm> (for a Chabad perspective); (iv) <https://torah.org/torah-portion/weekly-halacha-5766-beshalach/> (for an approach by Rav Moshe Feinstein) (v) <http://etzion.org.il/en/download/file/fid/3926>

6. This prohibition will include: (i) aunt - (although some poskim treat this in the same way as siblings - below); (ii) nieces/nephews; (iii) cousins; (iv) in-laws (including mother/father/son/daughter/brother/sister in law); (v) step-relations (but see below).

7. Almost impossible today when single women do not go to mikveh.

8. See below regarding Yichud between the same sex.

9. Since, although they are in an 'erva' relationship, there is no sexual attraction between them. See below as to whether this is due to blood-ties or familiarity and the impact this has on the halacha of adoption.

10. The poskim differ on the relevant length of time. Some rule that less than 30 days is permitted (Shut Imrei Yosher 2:43). Others are machmir after 3 days (Shevet Halevi 5:201-2). Rav Moshe Feinstein rules that it is permitted for the length of time that an equivalent house guest would stay (Igrot Moshe 4:64:3).

11. In contrast to the practice of other cultures which shunned menstruating women. Rambam in Moreh Nevuchim (3:47) sees the halachic structure of nidda as a way to separate husband and wife physically whilst at the same time enabling them to live together socially and psychologically.

12. The implications of this for the development of halacha are fascinating. How could Chazal override a Torah prohibition to make life bearable for husband and wife? Was this built into the Oral Law from the start and the drasha from Shir Hashirim simply gave expression to an existing law? Is this made more possible due to the 'hinted' nature of the Torah prohibition itself? This raises the intriguing question of how much latitude a new Sanhedrin would have today to modify or interpret the halachic system.

21. וי"ל דלא אסרה תורה אלא ... דלא עזידיא דמשתריא אצל נדה סופה ליטבר

תוספות מסכת סנהדרין לו. ד'ה התורה העידה עלינו סוגה בשושנים

*Tosafot give an alternative reason. Yichud is only prohibited with those relationships which will NEVER be permitted. Since the husband and wife will soon be permitted to each other, the issue of Yichud is less problematic.<sup>13</sup>*

## E2] CHILDREN - BIOLOGICAL AND ADOPTED

22. לא תינוקת שהיא פחותה מבת שלשה ותינוק פחות מבן תשע, מותר להתייחד עמהן

שולחן ערוך אבן העזר סימן כביא

*According to the Shulchan Aruch, the halachic concern for yichud begins at the the of 3 for girls and 9 for boys.<sup>14</sup> Rav Moshe Feinstein allowed yichud with a girl up to the age of 7 in extenuating circumstances.<sup>15</sup> Yichud between children is permitted.*

• We have seen that Yichud with one's own children and grandchildren is totally permitted on the basis that, although there is an 'erva' relationship, there is no attraction. Is this based on the blood-tie or on familiarity?

23. ודר עם אמו או עם בתו - דלא תקיף יאריה עליהו - דאכנו זיה אנשי כנסת הגדולה דלא מגרי בקרובתא .... (סנהדרין סד)

רש"י קידושין פא:

*Rashi<sup>16</sup> understands that the reason for the heter of Yichud with close family is because the Anshei Keneset Hagedolah succeeded in removing the inclination for incest with blood relatives. Hence there WILL be a concern with step and adopted children.*

On that basis, a number of 20C poskim were strict on the question of Yichud with adopted/step- children and of course step-siblings. These included the Chazon Ish and the Lubavitcher Rebbe.

### 24. What to Take Into Account When Considering Adoption

In reply to your letter from Sunday in which you write about the difficulties you are encountering in adopting a child from Eretz Yisrael. You ask me whether to travel there in connection with the above in order to ascertain additional details and to carry on discussions about this, etc. With regard to adoption in general, it is important to first realize the difficulties that are related to it according to our holy Torah, as explained in Shulchan Aruch.

[These difficulties will be better understood] by prefacing that the laws regarding an adopted child are different from those regarding one's natural child, for which reason embracing, kissing and yichud, which are permitted between a [natural] father and daughter and a [natural] mother and son, are prohibited in the case of [an older] adopted child. It is self-understood how difficult it is to maintain this form of behavior when the children are raised in such a way that their adoptive status is withheld from them and they think they are their adoptive parents' natural-born children. You should therefore interest yourself in adopting a child only after you take the above into account and most firmly and steadfastly resolve to conduct yourself with the child in keeping with our sacred Torah, the Torah of Life.

Igros Kodesh, Vol. XXIV, p. 130<sup>17</sup>

13. This is yet another fascinating psychological balance. On the one hand, the couple are familiar with and attracted to each other so intimacy is more likely. On the other hand, the fact that they will be able to be together in due course changes the situation to one of 'pat besalo' - removing the heat from the interaction. (This could mean that Yichud is prohibited where the wife refuses to use the mikveh). Could there also be an element of יגעם - one always desires more that which is unobtainable. On the other hand, the newly-married couple who have not consummated the marriage have yet another conflicting psychological factor - the desire to be together - which overrides that of 'pat besalo'.

14. As we saw in the last source, the halachot of Yichud are not based on subjective sexual attractions but formal objective parameters. However, if one of the parties is a child the issur will be derabbanan.

15. Based on an oral ruling of Rav Moshe quoted in Children in Halacha p.40 see also Hilchos Yichud: Rulings Of Harav Moshe Feinstein, by By Rabbi Doniel Neustadt, available at <https://torah.org/torah-portion/weekly-halacha-5766-beshalach/>

16. See also Meiri - Beit Habechira Kiddushin 81b

17. Taken from [https://www.chabad.org/therebbe/letters/default\\_cdo/aid/2307923/jewish/Part-II-Reprouduction-Chapter-VII-Adoption.htm](https://www.chabad.org/therebbe/letters/default_cdo/aid/2307923/jewish/Part-II-Reprouduction-Chapter-VII-Adoption.htm)

25. Matters of Jewish Law Relating to Adoption

The steadily increasing number of people who seek to adopt children includes couples who are most particular about even the minutest detail of the enactments of our Sages. Yet I have observed that many such couples have not noted that all restrictions – such as embracing and kissing, and likewise yichud – apply in full to adopted children. ...

All these latter questions, however, arise many years after adoption and are only in the category of a possible doubt, and [in part] involve [only] financial matters. The prohibitions mentioned earlier, by contrast, such as yichud, must certainly be confronted.

Moreover, they first present themselves many years before the adopted children attain marriageable age. It is self-evident that this situation is not the same as the widespread Jewish tradition of bringing up an orphaned boy or girl. For nowadays the intention of adoptive parents is to conceal the fact that they are not the child's true parents: they go out of their way not to stir the least suspicion in the child's mind that they relate to him differently from the way his friends' parents relate to them.

Moreover, many adoption societies elicit assurances from the outset that the child will be reared without any complication or disturbance – in other words, that the relationship in every aspect will be the same as with one's own child. In addition, doctors and psychologists lend their weight to this attitude, arguing that it is vital for the child's unhampered development. ...

It is therefore to be hoped that all these facts and warnings about the seriousness of the issues involved that will be printed in the coming volume [of Otzar HaPoskim] will suffice to rectify the above situation which must, at long last, be corrected.

Igros Kodesh, Vol. XXIII, p. 310

*The Rebbe was concerned at the complications of Yichud and Negiah with adoptive relationships and the difficulties they caused for religious couples who wanted to adopt.*

26. ז מטרונה אחת שאלה את רבי יוסי .... למה במטמוניות? ואמר לה בתחלה בראה לו, וראה אותה מלאה רירין ודם הפליגה ממנו - חזר ובראה לו פעם ב'. אמרה לו מוספת אני על דבריך. אמורה הייתי להנשא לאחי אמי ועל ידי שגדלתי עמו בבית התכערתו בעיניו, והלך ונשא לו אשה אחרת ואינה נאה כמוני!

בראשית רבה (וילנא) פרשת בראשית פרשה יז

*The Midrash asks why Chava was created from Adam while he slept and answers that when she was created in front of him first time around, this put him off! She was then 'created again' in private. The Medrash adds to this by telling of a case where a couple were due to marry but familiarity lead to them no longer being attracted to each other!*

27. (ב) אבל לאחר העיון נלפענ"ד להציע כמה צדדי היתר שלא להצריכם לפרוש זמ"ז היכא שלקחו אותם מתחילה לאימוץ בהיתר כשהיו עוד למטה מגיל שהיחוד אסור עמהם.

בראשונה נתעוררתי על צידוד היתר בזה בראותי בדברי הלבוש באה"ע סי' כ"ב סעי' א' שבכח תורתו כי רב מסביר טעם מדידה על היתר היחוד של בן עם אמו וה"ה האב עם בתו והוא מפני שאין דרכה לבא עמו לידי הרגל עבירה וה"ה האב עם בתו, ונראה לכאורה ברור כוונת הסברו בזה, דבהיות שמגדלת אותו ביחסי אם ובן וה"ה האב את בתו. א"כ זהו גופא החיץ והמחיצה המבדלת ביניהם, וזהו המשריש בלבותם ההרחקה שלא יבואו לידי הרגל עבירה, והאין דרכה לבא עמו לידי הרגל עבירה נובע מכח זה שיחסי הטיפוח הוגדרו ביחסים של אם ובן וה"ה אותו הדבר באב עם בתו.

וא"כ לפי"ז י"ל אותו הדבר ואותו הטעם גם בבן ובת מאומצים. דמכיון שהושרש בלבותם מאז קטנותם שהיא לו כאם והוא לה כבן וכן באיש הוא לה לאב והיא לו כבת, וביחסי טיפוח כאלה גדלו אצלם אזי מכח הרגשה זאת תו אין דרכה של האשה לבא עמו לידי הרגל עבירה. וכן אותו הדבר גבי איש דתו אין דרכו לבא עמה לידי הרגל עבירה. וממילא יש מקום להיתר לפי"ז גם החיבוק והנישוק הבא ונובע מיחס וחיבה אבהותי ואמהותי. דלאו קירבה כזאת הוא דקאסרה תורה. ....

(ח) כתבתי בצידוד צדדי היתר הנ"ל הגם שנדמה שנכנסים לכאורה בפירצות דחוקות בכדי ללמד זכות על ישראל, ובראותינו שגם גדולים וטובים לא נזהרים בזה. ובכדי לא לסגור הדרך לפני ילדים אומללים שלא יהא להם דורש ומבקש מבתים שיחנכו אותם שם על ברכי התורה והמסורה. וזאת מיהת לדעת שזה אסור בודאי לקחת לכתחילה לאמץ ילדים שהם כבר בגיל של איסור יחוד - דהיינו בת מגיל ג' שנים ויום אחד ובן מגיל תשע שנים ויום אחד, אם יודעים מראש שלא יוכלו להיזהר מלהתייחד עמם.

שו"ת ציץ אליעזר חלק ו סימן מ - קוני איסורי יחוד פרק כא

*The Tzitz Eliezer permits<sup>18</sup> Yichud (and Negiah) within adoption relationships provided that the children were adopted at an early age, before the prohibitions of Yichud applied.*

18. This is also the position of Rav Moshe Feinstein provided that both adoptive parents are alive and still married to each other - see Igrot Moshe EH 4:64:2.

E3] SAME GENDER

28. **ב** לא נחשדו ישראל על משכב זכור.... לפיכך אין אסור להתייחד עמהן. ואם נתרחק אפילו מייחוד זכור... הרי זה משובח ...

רמב"ם איסורי ביאה פרק כב

*There is no assumed problem of Yichud between two men. Nevertheless, the Rambam rules that even this should be approached with a sensitivity to potential problems.<sup>19</sup>*

E4] MULTIPLE MEN AND WOMEN

29. ... נשים הרבה עם אנשים הרבה אין חוששין לייחוד....

רמב"ם איסורי ביאה פרק כב הלכה ח'

*The Rambam's position is that Yichud is only permitted if there are multiple men with multiple women.<sup>20</sup>*

30. לא תתייחד אשה אחת אפילו עם אנשים הרבה .... וכן לא יתייחד איש אחד, אפילו עם נשים הרבה. כגון: וי"א דאשה אחת מתייחדת עם שני אנשים כשרים אם הוא צעיר (טור בשם הרא"ש). וסתם אנשים כשרים הם חזל אם הם פרוגים אפילו עם י"א אסור. וכל זה צעיר, חזל בשדה או בלילה אפילו צעיר צעיר שלשה. (ב"י בשם הרא"ש) אפילו בכשרים .... ויש מתירין איש אחד עם נשים הרבה אם אין עסקו עם הנשים (טור בשם רש"י).

שולחן ערוך אבן העזר סימן כב סעיף ה'

*This position of the Rambam is ruled by the Shulchan Aruch. However, the Rema rules two leniencies:*

*(i) The combination of 2 men + 1 women is permitted, as long as the men are 'keshirim' - reputable.<sup>21</sup> This would increase to 3 men + 1 woman in remote or night situations.<sup>22</sup> (ii) The combination of 1 man + 3 women is allowed as long as the parties are not close/familiar.<sup>23</sup> 1 man + 2 women is NOT permitted<sup>24</sup> (unless one of the heterim below can be applied).*

F] HETERIMF1] A SHOMER

31. רבי שמעון אומר אף איש אחד מתייחד עם שתי נשים בזמן שאשתו עמו וישן עמהם בפונדקי מפני שאשתו משמרתו

משנה קידושין פרק ד' משנה יב

*A man's wife acts as a 'shomeret' to allow Yichud.*

32. מותר להתייחד .... עם אשה שיש עמה תינוקת קטנה שידעת טעם ביאה ואינה מוסרת עצמה לביאה - שאינה מזנה לפנייה לפי שהיא מגלה את סודה.

שולחן ערוך אבן העזר סימן כב סעיף י'

*So too a small child can be a shomer as long as they are old enough understand what is going on, but not too old to be sexually aware enough to guard the secret - yet another psychological insight!<sup>25</sup>*

- A mother, daughter and grandmother can also be a shomer according to many poskim.<sup>26</sup>
- Only one of the individuals requires a shomer.
- Young children cannot be shomerim when asleep as they do not wake easily.

19. In a case where two men are attracted to each other it seems that there WOULD be a formal prohibition of Yichud since the potential relationship is one of arayot. In the case of two women, the halacha may be technically different but, again, caution should be taken where problems could arise.

20. The poskim debate whether according to the Rambam this would require 2+2 or a minimum of 3+3.

21. I.e. they observe hilchot tzniut and shemirat negiah. If not, one would need at least 2+2.

22. Even though the Shulchan Aruch does NOT permit this (since he follows the Rambam), the psak of many Sefardi poskim is to rely on this leniency in situations of need.

23. This leniency is NOT relied upon by many poskim, who would require at least 2+2. Even 1 man + 100 women would not be allowed according to this view.

24. Unless the two women are in a relationship which is halachically presumed to be one of dislike - eg mother/daughter-in-law, stepmother/daughter

25. Most poskim assess this to be somewhere from age 5/6 to 11/12, but it depends on the child.

26. Igrot Moshe 4:64

- A shomer is good even if they are walking in and out, if they could return unexpectedly.
- Two sisters cannot be shomrim for each other.
- A Jewish wife is a good shomeret but a Jewish woman cannot be in yichud with a non-Jewish man, even if his wife is there.
- The sister-in-law or mother-in-law of the woman are good shomrim.

## F2] HUSBAND IN TOWN

33. אשה שבעלה בעיר אין חוששין להתייחד עמה מפני שאימת בעלה עליה. ואם היה זה גס בה, כגון שגדלה עמו או שהיא קרובתו ... לא יתייחד עמה אף על פי שבעלה בעיר

שולחן ערוך אבן העזר סימן כב סעיף ח

*Yichud is permitted if the husband is in town, as long as the woman and man are not already emotionally close<sup>27</sup>. Is this due to the psychological impact on the woman of her husband's nearby presence? Or, is it due to the possibility of the husband suddenly returning unannounced?*

- If the husband does not know where she is, some poskim do not allow the heter. Others allow it since it is based on the psychology of the wife.<sup>28</sup>
- This would not apply if the husband cannot come back, or has fixed hours. It may be relevant if he makes his own hours even if he works on the other side of town.
- She should immediately tell the man she is that the husband is in town.
- What is the definition of a town?<sup>29</sup>
- There is no equivalent heter of the wife being 'in town', unless she is very close by and could walk in at any time.<sup>30</sup>

## F3] AN OPEN DOOR

34. בית שפתחו פתוח לרשות הרבים אין חשש להתייחד שם עם ערוה

שולחן ערוך אבן העזר סימן כב סעיף ט

*Where there is a door open to a public area there is no concern of Yichud.*

- The door does not have to be open directly to street, just that there is real possibility of being interrupted. This mere possibility changes the psychological reality of the Yichud.
- This should not be relied upon if there is closeness or familiarity.
- Many poskim rule that this heter also applies if they are clearly visible from outside even if the door is shut/locked - hence the importance of windows in doors. But if the room is dark, this heter would not apply even if a door is open to street.
- Would this heter also apply there is video surveillance of the room?<sup>31</sup>
- A door to stairs in building would be acceptable if they could in fact be interrupted.
- This heter will not apply at night when the couple would not be disturbed.<sup>32</sup>
- A closed door which is unlocked could<sup>33</sup> work if people would walk in or would at least expect to be answered.<sup>34</sup> Many poskim rule that a door should be physically left a little open, unless there is a real need and then only if the issur would otherwise be rabbinic<sup>35</sup>.

27. Eg employer/ee, relatives, teacher/student.

28. Some poskim rely on this in situations of need and where the prohibition is rabbinic in nature e.g. 1 man and 2 women, or with a non-Jewish person or a child. If the issue is the psychology of the wife, then this heter would also apply even if the husband does not know where she is!

29. Rav Willig rules that Riverdale & Staten Island are not same town. Rav Rimon rules that Yerushalayim is 'one town'. One municipal area of small villages is 'one town'. Two municipal areas close by is a question.

30. Again, this appears to be based on the different psychological reactions of a man and woman to their spouse being in town.

31. This may depend on (i) whether the footage was really monitored, live feed etc; (ii) whether the couple was already close; (iii) whether this is a one-off or regular occurrence.

32. The Chazon Ish ruled that an open door was a good heter in Bnei Brak until 10pm

33. Rashba rules that a closed but unlocked door does work. (Shut Rashba 1:1251). R. Akiva Eiger (Shu't Mahadura Kama 100) disagrees and rules that the door must actually be open to a public domain.

34. Rav Moshe Feinstein ruled that the heter applies even a locked door if there is reasonable possibility that people will knock and expect to be answered. This heter is not agreed upon by most poskim. This could apply if the door was locked but several family members had keys and could return at any time. For instance, babysitting for a child may be acceptable where the parents could walk in at any moment.

35. e.g. 1 man and 2 women or with a non-Jewish person, or a child.

**G] COMMON CONTEMPORARY APPLICATIONS****G1] MEDICAL TREATMENT**

- Ok if the door could be opened - e.g. by workers, even if familiar with woman. It helps if there are people waiting outside - some women may bring a friend to sit outside.<sup>36</sup>
- For the purposes of halacha a doctor has a 'professional reputation' and we normally say that s/he would not jeopardize this.

**G2] HOTEL ROOMS**

- Separate rooms are ok. Adjoining rooms with a lockable connecting door are technically ok, but may be a bad idea.
- May be a problem if no one else is in the corridor. Clearly a problem if no one is in the building.

**G3] CARS**

- Ok during the day if the windows are clear - some are machmir.
- Ok with non-Jewish driver if there are passers-by. Taxi driver - ok as we assume 'professional' concern.<sup>37</sup>
- Problem at night unless well-lit city streets<sup>38</sup> and there are people around.<sup>39</sup> Solution may be to leave a light on inside the car.
- Husband in town is a weak heter here but can help.
- Late night rides 1 on 1 are very problematic. In situations where one needs to give a ride to someone late at night and it would be dangerous to leave them by the road, at the very least a light should be turned on in the car.

**G4] WORKERS IN THE HOME**

- Ok if (i) husband in town; or (ii) there is a shomer in the house; or (iii) the door left a little open, or at least unlocked if there is a real possibility that someone could walk in.

**G5] ELEVATORS**

- Time in elevator is insufficient for yichud (35 s to 3m).<sup>40</sup>
- Also like door open to public.
- Even if not an issur of yichud, this could may be a concern of 'chashad' - see above.

35. וכ'כ בשו"ת חתם סופר (י"ד מה) דהנסיין מעיד יותר מכל הסברות הבנויות על ראיות... וקבלתי ממורי מהר"ש ענגיל ז"ל שכל שאלה ובעיא צריך מקודם לדונו מצד המציאות והטבע ואח"כ לדונו אם גם הלכה מסכמת לזה

שערים מצויינים בהלכה קנב אות ו)

*The Sha'arim Metzuyanim Behalacha rules that elevators do not present a halachic problem of Yichud and adds that, in any given halachic situation, the matter must also accord to the physical reality.<sup>41</sup>*

**G6] TIYULIM**

- Yichud also applies in isolated open areas.

36. Rav Moshe Feinstein ruled that, outside hours, the husband or a child should be a chaperone.

37. One must of course also consider general safety issues.

38. Some poskim are concerned that, even if there is no current Yichud problem, the car could turn off into a dark or deserted alley - see Igrot Moshe 4:65:2-3.

39. Intercity travel at night could be more of a problem. Where prohibited, 1 man + 2 women will not help unless there is a shomer. 2 men + 1 woman may help. Tzitz Eliezer allowed 2 men + 1 woman on the Yerushalayim to Tel Aviv highway since cars pass every few seconds.

40. If more than 3 minutes or the other occupant is not tzanuah, this could be a potential problem. However, many Rishonim do not mention a specific time requirement for yichud and some poskim are strict not to allow Yichud for any length of time.

41. Consider the famous case of the ski-lift: On August 22, 1963, Ruth Friedman and Jack Katz, two counselors on their day off from camp, went on a hike at the Belleayre Mt. Ski Center in the Catskills. They took the ski lift to the top of the mountain, and hiked there most of the day. On their way back down, the ski lift stopped, leaving Jack and Ruth stranded on the ski lift. Concerned about violating the Jewish law prohibition against the seclusion of men and women (Yichud), Ruth jumped off the ski lift, breaking both her legs. (See Friedman v. State, 282 N.Y.S.2d 858 (N.Y. Ct. Cl. 1967)) - taken from <http://mevakeshlev.blogspot.com/2012/01/yichud-6-ski-lifts.html>