**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**LIFECYCLES – HILKHOT ISHUT**

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**Shiur #02: *Issur Chibuk Ve-Nishuk* (*Negi’a*)**

[Last week](http://etzion.org.il/en/there-mitzva-be-married), we questioned whether or not marriage is categorized as a *mitzva*. Marriage, followed by bearing and then educating children, is certainly perceived as an ideal from a religious and halakhic perspective. So in what way is marriage a "*mitzva*"?

We noted that while the Rosh (*Ketubot* 1:12) asserts that *kiddushin* is not a *mitzva* and that the *mitzva* of bearing children, *peru u-revu*, can be fulfilled by fathering children with a *pilegesh* (concubine), most *Rishonim* disagree and insist that *kiddushin* is indeed a *mitzva*, although they offer different understandings of this commandment. Some imply that marriage may be an imperative, while others write that it is simply the only halakhically acceptable manner in which one may enter an intimate relationship. Finally, we suggested that the *mitzva* of *kiddushin* may reflect and teach a broader message regarding the Torah's attitude towards sexuality and commitment.

This week, we will begin to examine the issues raised last week, and question whether and why physical contact and sexual relations outside of the context of marriage are forbidden, and whether there is indeed, as the Rosh suggests, an alternative to marriage known as *pilagshut*. This *shiur* will focus on the prohibition of physical contact between men and women who are not related.

**Physical Contact – *Chibuk Ve-Nishuk* (*Negi’a*)**

The Torah states that in addition to close relatives and married women, known as “*arayot*,” one is not permitted to engages in sexual relations with a woman considered to be a “*nidda*,” i.e. who has menstruated and has not yet immersed in the *mikveh* (*Vayikra* 18:19). The Torah uses a unique phrase to describe this prohibition: “Do not approach … to reveal her nakedness.” Although some commentaries (see Ibn Ezra and Chizkuni) understand the phrase, “do not approach,” to refer to sexual relations, the Rabbis taught that this phrase alludes to an additional prohibition of “approaching” a woman in *niddut*, as well as other people with whom sexual relations are prohibited. What is the source, nature, and scope of this prohibition?

The Sifra (*Acharei Mot* 13) relates to this additional phrase and teaches:

"Do not approach a menstruating woman to reveal her nakedness" (*Vayikra* 18:19) – This only tells me not “to reveal.” How do I know not to come close? Therefore we learn, "do not approach." This only tells me for a menstruating woman; how do I know that this prohibition against "uncover" applies to all forbidden women (i.e. *arayot*)? Therefore we learn, "do not come close to uncover.”

According to the Sifra, one is prohibited from “becoming close” to a woman who is a *nidda* or any other prohibited men or women who are categorized as *arayot*.

Another source, Avot De-Rabbi Natan (2:1), also cites this prohibition:

What is the fence that the Torah made about its words? It says, “Also you shall not approach unto a woman . . . as long as she is impure by her uncleanness” (*Vayikra* 18: 9). May her husband perhaps embrace her or kiss her or engage her in idle chatter? The verse says, “You shall not approach.” May she perhaps sleep with him in her clothes on the couch? The verse says, “You shall not approach.”

This source specifically mentions forms of “coming close,” such as embracing, kissing, and engaging in idle chatter.

This source, while similar to the Sifra cited above, implies that this prohibition is a form of “fence.” In other words, physical contact is prohibited as a “fence,” in order to prevent men and women from engaging in forbidden sexual activity. This understanding emerges from another passage (*Shabbat* 13a), which teaches:

Ulla, when he would come from the house of his teacher, would kiss his sisters on their chests. And some say: On their hands… Is this not in contradiction, as Ulla said: Even any intimacy is prohibited [with a woman with whom he is forbidden to engage in sexual relations] due to [the reason formulated as an adage]: Go around, go around, and do not approach the vineyard, they say to the *nazir*.

Just as the *nazir* is meant to take extra precautions so that he does not consume any grape products, a person must refrain from physical contact that may lead to sexual relations.

The *Rishonim* debate whether this prohibition is of rabbinic or biblical origin. The Rambam (*Sefer Ha-Mitzvot*, *Lo Ta’aseh* 353) rules that this prohibition is *mi-de’oraita*:

Not to be intimate with a woman with whom sexual relations are forbidden in matters that might lead to intercourse – e.g., embracing, kissing, winks, or signs – as the verse states [*Vayikra* 18:6]: "No person shall approach a close relative to commit a sexual offense.” Based on the oral tradi­tion, we have learned that this prohibits intimacy that might lead to sexual relations.

The Rambam records this prohibition in the Mishneh Torah (*Hilkhot Issurei Bi’ah* 21:1) as well:

Whoever comes to the nakedness of one of the prohibited women by "way of limbs" or through hugging or kissing in the way of desire and benefits from the closeness of flesh, he is lashed in accordance with Biblical law, for it is written, "Keep my requirements and do not follow any of the detestable customs that were practiced before you came and do not defile yourselves with them" (*Vayikra* 18:30), and it is written, "Do not come close to uncover nakedness" – meaning do not come close to things which will lead one to reveal nakedness.

The Rambam clearly maintains that physical contact between *arayot*, including *nidda*, is Biblically prohibited.

Interestingly, the Rambam cites two verses. One might infer from his words that there are two separate and different prohibitions. While certain behavior may be prohibited lest it lead to sexual relations (based on "do not come close to uncover nakedness" – meaning, do not come close to things which will lead one to reveal nakedness), physical contact may also be prohibited “in accordance with Biblical law, for it is written, ‘Keep my requirements and do not follow any of the detestable customs that were practiced before you came and do not defile yourselves with them’” – in other words, because it is a “detestable custom” (*chukot ha-to’evot*). The Rambam expands upon this idea in his commentary to the Mishna (*Sanhedrin* 7:4):

Whoever comes to the nakedness of one of the prohibited women by “way of limbs” or through kissing one of these prohibited woman or if he hugged or kissed their limbs in order to derive pleasure … and similarly one who is playful with one of the prohibited women, as laughter and winking with one’s eyes with the intent of deriving benefit (*leshem ta’anug*) – all of these actions one who does them receives lashes and they are all included in two explicit Biblical prohibitions (*lavin*), one being "do not come close to uncover nakedness," as if He said “distance yourselves from those things which bring one close and accustom one to prohibited sexual relations (*giluy erva*)” … and the second as He said, “Do not follow any of the detestable customs,” and these [actions which] we mentioned are called “detestable customs.”

Although one might distinguish between actions which lead to prohibited sexual relations and those which are considered to be “detestable customs,” the Rambam clearly prohibits all of these behaviors on a *mi-de’oraita* level. Other *Rishonim* (Chinukh, *mitzva* 188; Semag, *Lo Ta’aseh* 126; Ritva, *Shabbat* 13b; Rivash 425, et. al.) also rules that certain physical contact is Biblically prohibited.

The Ramban, in his comments to the *Sefer Ha-Mitzvot* (*Hasagot* ibid.), disagrees:

Although the Rabbi found an explicit ruling and based his words upon a great tree (i.e. the Sifra), a perusal of the Talmud reveals that this is not the case, [and that] hugging and kissing are not considered to be a Biblical prohibition (i.e. a *lav*). This prohibition is Rabbinic… a mere *asmakhta*, and this is very common in the Sifra and Sifri.

According to the Ramban, this prohibition is Rabbinic, legislated in order to distance one from prohibited sexual relations.

The Shulchan Arukh (*Even Ha-Ezer* 20:1 and 21:1) rules in accordance with the Rambam.

**Prohibited Physical Contact**

What kind of physical contact does this prohibition include? Although some authorities imply that all physical contact may be Biblically prohibited (see Beit Yosef, YD 195, who cites a responsa of the Rashba [*Teshuvot Ha-Meyuchasot Le-Ramban* 127] and suggests that “all contact is Biblically prohibited”) and others suggest that all physical contact may be Rabbinically prohibited (see Beit Shmuel, EH 20:1), most *Acharonim* understand that only affectionate physical contact (*chibat biah*) is prohibited. R. Shabbatai ben Meir Ha-Kohen (Shakh; 1621–1662), for example, in his commentary to the Shulchan Arukh (YD 157:10), explains that the Rambam cited above only referred to a case in which “he hugged and kissed in a sexually affectionate manner (*derekh chibat bi’ah*).”

The *Acharonim* rule that one need not be concerned with unintentional physical contact. For example, R. Moshe Feinstein, in his Iggerot Moshe (EH 2:14) rules that one should not be concerned if one inadvertently touches a woman while traveling on a bus or the subway, as the Rambam only prohibited touching which was “*derekh ta’ava ve-chiba*” (in an enjoyable and affectionate manner).”

In this context, some *Poskim* discuss whether it is appropriate, or even permitted, for men and women to shake hands. Some point to an interesting passage in the Talmud Yerushalmi (*Sota* 3:1), which describes how the *kohen* would put his hand under the woman’s hand and assist her in the waving of the *minchat sota* during the *sota* ceremony. The Yerushalmi explains that “the evil inclination is not present for such a short period of time (*ein yetzer ha-ara matzuy le-sha’ah*).”

R. Moshe Feinstein (Iggerot Moshe, EH 1:56) acknowledges that there are some people, even those who are “God fearing,” who are lenient and will offer their hand when a women extends her hand, as this is not “an enjoyable and affectionate manner.” Nevertheless, he concludes that it is “difficult to rely upon this.” This is the view of other contemporary authorities as well (Be’er Moshe 4:130; Az Nidberu 2:73; Rivevot Efraim 8:596:8; Avnei Yashfei 2:89:1). Incidentally, the Sefer Chassidim (12th–13th century Germany, ch. 1090) notes that one should not shake a non-Jewish woman’s hands “even if it is covered with a garment, as a fence before promiscuous behavior.”

On the other hand, it was certainly customary in certain communities to shake a woman’s hand. For example, R. Shlomo Carlebach (1845–1919), the Rav of Lübeck, Germany, testified that the custom of the land was to shake hands and it was perceived as an embarrassment to refuse to shake another person’s hand (see *Le-David Tzvi: Sefer Ha-Yovel LeRadatz Hoffman*, p. 218). In Sephardic lands, R. Yosef Chaim of Bagdad (1835–1909), author of the work *Ben Ish Chai*, relates and defends the practice of women kissing the hand of the “*chakham ve-zaken*” (the wise elder), as this is not an expression of affection. Interestingly, he objects to the “practice of the people of Europe” to shake hands, as “shaking is certainly a gesture of affection.”

Beyond the halakhic question, there are a number of other issues that one should take into account, including local custom, context, familiarity, as well as how one’s behavior will be perceived by the other person. While Torah observant Jews should not participate in a culture that encourages physical contact between men and women, especially in the current social and political climate, “the ways of the Torah are pleasant” (*derakheha darkhei no’am*) and there is no need to embarrass or make others feel uncomfortable, nor to endanger one’s livelihood, in order to avoid an unexpected, polite handshake.

**Physical Contact Between Relatives**

The Rambam (*Hilkhot Issurei Bi’ah* 21:10) relates to physical contact between relatives:

When a man embraces or kisses any of the women forbidden to him as *arayot*, despite the fact that his heart does not disturb him concerning the matter, e.g., his adult sister, his mother's sister, or the like, it is very shameful. It is forbidden and it is foolish conduct. [This applies] even if he has no desire or pleasure at all. For one should not show closeness to a woman forbidden as an *erva* at all, whether an adult or a minor, except a woman to her son and a father to his daughter.

In his Commentary to the Mishnah (*Sanhedrin* 7:3), the Rambam adds that one does not receive *malkot* in this case, implying that there is no Biblical prohibition.

The Shulchan Arukh (EH 21:10) rules accordingly:

To hug or kiss one of the *arayot* whom people do not normally lust after, such as his adult sister or his aunt or the like, even though he derives no pleasure at all, is very reprehensible, forbidden, and the act of a fool. This is because there are no relatives for [the purposes of] licentiousness at all, whether adult or minor, except the father to his daughter and the mother to her son. How is this? A father is permitted to hug his daughter, kiss her, and sleep next to her with flesh touching, and so too a mother with her son, as long as they are minors.

The Chelkat Mechokek (21:10; see also Iggerot Moshe, YD 2:137) adds that one may also hug and kiss one’s grandchildren.

Next week, we will discuss the various halakhic sources which prohibit sexual relations outside of marriage.