YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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In loving memory of

Yitzchak ben Chaim Zvi Schwartz z"l, who passed away on 13 Shvat 5771

and Sheva Shayndel bat David Schwartz z"l, who passed away 13 Shvat 5778

Dedicated by Avi and Sarah Schwartz

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**Shiur #15:**

**Confidentiality in the Age of Social Media 3:**

**Public Information — Applications**

**Halakhic models for the potential allowance to share secrets that are already public**

Last week, we discussed the dispensation granted to repeat *lishna bisha* which has been said in front of three people. From this principle, we derived several possible models.

1. Rav Achai understands *lishna bisha* to be the prohibition against breaching confidentiality. He argues that when something is said in front of three people, there is presumed consent by the original speaker that the information be spread.
   1. We understood that according to Rav Achai, in cases where such consent cannot be assumed or is explicitly denied, it would be forbidden to spread the information.
2. The *Chafetz Chayim* proposes that according to the Rashbam, once information is said in front of three people, it is permitted to repeat it, as it is assumed to be public.
   1. Rav Zalman Nechemia Goldberg agrees, though he bases the permission on the assumption that people have given up hope that their information will remain private once it has been said in such a way that anyone who shares the secret would have plausible deniability.
3. Based on the Rambam’s presentation of this dispensation in the context of forbidden gossip, it can be argued that it is only permitted to spread the information if one does not have the intent to spread it further than it has spread.
4. Rav Azriel Ariel and Rav Shlomo Aviner argue that information that is universally known will be permitted to be spread no matter what, without the limitation mentioned by the Rambam.
   1. Rav Avraham Shapira and Rav Dov Lior argue that this is only true while the information is universally known. Once people begin to forget, it becomes prohibited again.
5. Rav Betzalel Stern notes that there can be cases where it is technically permitted to share a secret, but it remains unethical to do so. We wondered whether the same ethical imperative would exist in cases where the information is not just public, but universally known.
6. Information that is shared within a closed group, whether of family, friends, or colleagues, is not assumed to be public just because it has been shared with a large group. Information shared within a closed group is not the same as information shared with a group of outsiders. In such cases, all the people can be expected, legally and realistically, to maintain the secret; thus, sharing it further is forbidden.

This week we will apply these models to information shared on social media. We will also discuss the possible exceptions raised when the content being shared relates to the study of Torah.

**Facebook post**

A publicly sharable Facebook post is obviously permitted. It is already public, and by making it sharable, one is explicitly allowing it to be shared beyond one’s friends. The same is evidently the case for a Twitter post.

What about a post shared only with friends? For Rav Achai, it could be that the fact that one has limited access to the post to friends indicates that despite the inherent publicity of the post, there is no implied permission to share it more widely. However, based on Rav Zalman Nechemia Goldberg’s argument — once something is public, the possibility of every person involved to deny being responsible for spreading it further causes the original speaker to give up on maintaining any semblance of privacy — a Facebook post would surely fall in this category. For the Rambam, who forbids spreading the information further, it might be prohibited. However, based on the point that Rav Ariel develops, this may apply only to things which are not universally known. A Facebook post to thousands of friends may be so public that its further dissemination is no longer meaningful enough to be prohibited. One may wonder, however, based on the position formulated by Rav Stern, whether it would be ethically appropriate not to share such a post further.

As we noted in *shiur* #11, in cases in which there are specific people with whom the poster would not want the post shared, it would be prohibited to do so. For example, sharing pictures of a student with his or her principal or parent would likely be prohibited, even if that student does not mind the picture’s being shared with other peers, even those who are not officially among his or her Facebook friends. We will return to the question of when it would be permitted to share this information for educational purposes or some other pressing need.

**In a closed Facebook group**

What about a post in a private group? According to Rav Achai, it would seem to be prohibited to share this, as there is an indication that the original speaker wants the information to remain private, despite his or her sharing it somewhat widely.

Perhaps one could take this further. Rav Nissim Karelitz stakes out a very strong position on this issue (*Chut Shani, Hilkhot Lashon Ha-ra* 5:1:2). He argues that if one has **committed** to keeping something private and then hears the information from another source (meaning that it is already somewhat public), it is still prohibited to spread it. This position is briefly mentioned by *Semag* (9) and *Hagahot Maimoniyot* (*Hilkhot De’ot* 7:7) It seems that what is relevant is the explicit (or perhaps implicit) commitment one makes by discovering information in a non-public forum. Entering into a closed group may bind one, by virtue of his or her commitment, to try to keep the information as private as possible, even when one knows it is impossible. Rav Stern’s argument, that ethically one should be bound to keep things private even when not legally required, would certainly apply in this kind of case.

Rav Gil Student notes that in cases in which one explicitly commits to keeping the secret, it may be that breaking the promise also entails *chillul ha-shem,* desecrating God’s name. Thus, he suggests, that while, as we will see, there are cases of need that permit the breaching of confidentiality, the bar for what counts may be raised in these cases:

If you verbally promise (even without an oath) not to release the recording, then you are further bound to maintain the confidentiality even if there is a public need because of the Chillul Hashem. According to some, you may tell the person in advance, thereby removing the Chillul Hashem, and then release the recording. But if the need becomes great, there may be more room for leniency.[[1]](#footnote-1)

Based on the view of the Rambam, this would clearly be forbidden, as sharing the information beyond the closed group would be spreading it beyond the original public audience. If the information has not yet become universally known, the dispensation developed by Rav Ariel would not apply either.

Arguably, this case would also be subject to the distinction between sharing information **in front of people** and **sharing among them.** In a closed group, this may be similar to sharing among family, friends or colleagues. The *Chafetz Chayim*, who believes that in any case where one can plausibly expect secrecy it becomes obligatory to maintain it, would likely rule that this case fits that paradigm.

**Texts, WhatsApps, emails and listservs**

Showing or forwarding a private text, WhatsApp message or email is clearly prohibited due to these prohibitions, as duly noted by Rav Ariel.[[2]](#footnote-2) If, however, a message has been shared in a WhatsApp **group,** Rav Ariel, based on the position of Rav Achai, argues that it is permitted to share it further. However, if the original writer makes it clear that he or she does not want it to be spread further, then Rav Ariel notes that it would be prohibited. This would be the ruling of the Rambam and the *Chafetz Chayim*, and we have argued that Rav Achai would concur.

As we noted in *shiur* #11, a closed listserv, while aimed at a large group, is presumed to be private. In cases where the rules are explicitly outlined and demand that the emails are to remain private, it would be prohibited to forward them, and the same is true where context indicates that this is the case. While we could make the argument that when one publicizes material on a listserv one waives the prohibition (perhaps based on arguments such as that of Rav Goldberg above), this position does not seem to be compelling. As we have argued regarding the closed Facebook group, a listserv is about sharing information **among** people, rather than **in front of them**, and thus secrecy may be expected and demanded.

**Torah: Is it an Exception?**

One might have thought that if the content under discussion is connected to the study of Torah, these prohibitions would not apply, a position taken by Rav Goren. Rav Gil Student summarizes how this topic comes to be debated as follows:

Teaching and learning Torah are obligations. There is room to say that teaching a unique Torah insight, especially a practical conclusion, constitutes a public need. If so, we may be allowed to record and release a Torah lecture without permission of the speaker.

A related incident occurred 30 years ago. When the Israeli army invaded Lebanon the first time in 1982, with God’s help it proceeded quickly through the country and laid siege on Beirut. Rav Shlomo Goren argued in an article that the Israeli army was halakhically obligated to leave one side of the city open so residents can flee (see *Mishneh Torah*, *Hilkhos Melakhim* 6:7). Rav Shaul Yisraeli sent a private letter disagreeing. He distinguished between a mandatory war (*milkhemes mitzvah*) and an optional war (*milkhemes reshus*). We are only limited to a partial siege in the latter type of war, while the war in Lebanon was of the former type.

To Rav Yisraeli’s surprise, his private letter was soon published in the newspaper. Rav Goren wrote to Rav Yisraeli an apology for the confusion but added that he did not really need permission to publish Rav Yisraeli’s Torah insights (note that Rav Goren published a critique of his views by Rav Yisraeli; this entire letter and Rav Yisraeli’s response are published in *Techumin*, vol. 4). Rav Goren points out that the Tosefta (*Bava Kamma* 7:3) states that someone who overhears (“steals”) another’s Torah insights may repeat them to others (giving proper attribution to the source, of course). Based on this, the *Shakh* (*Choshen Mishpat* 292:35) rules that you may copy a Torah text from someone else’s scroll even if he does not allow it. According to Rav Goren, teaching Torah is sufficient reason to set aside the prohibition against revealing confidential information (i.e. private teachings).

However, this position is not accepted by Rav Shaul Yisraeli, nor by Rav Ariel, his student. Thus, he argues that even if the group under discussion is focused around Torah, a common phenomenon we related to in our *shiurim* on the role of *mara de-atra* in a globalized world (#6 and #7), the same general prohibition about sharing information applies.

Rav Yisraeli (*Chavot Binyamin* 2:75) argues that a Torah scholar may insist that his Torah remain private, especially when damage might be caused by publicizing his position. This is bolstered by the fact that the original obligation to maintain confidentiality is derived from a case in which **God relays laws to Moshe.** It is specifically from this case that the Talmud (*Yoma* 4b) extrapolates that one needs to permission to share something told in private. Thus, a response offered on a *Shut-SMS* or *Shut-WhatsApp* or any other Torah group, whenever it has been made clear that privacy was intended, must remain among the intended audience. Rav Yisraeli argues that the sources marshalled by Rav Goren only apply to Torah taught originally in public, in which case privacy cannot be assumed.

Rav Yitzchak Zilberstein (*Chashukei Chemed, Bava Metzia* 29b) agrees, noting that the same logic that prohibits disclosing information in general, whether it is based on the obligation of “*Ve’ahavta le-rei’akha kamokha”* or the prohibition of *geneivat daat* (as he proposes), applies equally to *talmud Torah.* However, as in the above cases, if the context indicates that the rabbi in question would not mind being recorded or his positions shared, it would be permitted. In cases where he would mind, it would be prohibited. Thus, he notes that people who secretly record and share recordings of private *shiurim* or discussions with rabbis are violating the *Halakha.*

Rav Moshe Feinstein (*Responsa* *Iggerot Moshe* *OC* 4:40:19) similarly forbids recording *shiurim* without permission, especially when the lecturer explicitly objects. He argues that while it is not theft, it is *geneivat daat,* especially when the lecturer sells recordings of his *shiurim*.

More relevant for our discussion is a second concern he raises; namely, he argues that rabbis may feel uncomfortable being recorded (or, we may add, having their lectures or positions spread), as they may be unsure that what they have said is correct. While one would hope that rabbis would attempt to only issue proper rulings always, especially in public settings, they, like all human beings, can make mistakes. They may want to retract, and they may want their rulings to remain within the group which will see their corrections or retractions. Disseminating their positions beyond the group makes that impossible. Thus, the limitations that apply to general information should apply to Torah material as well. We should note that Rav Moshe disagrees with Rav Yisraeli, who feels that all public lectures may be publicized freely.

Parenthetically, we raised such concerns in our discussion of *mara de-atra,* noting that while the world of social media has expanded the way we understand authority, shifting it from geographical to ideological models, certain benefits of the localized model have been lost. Chief among them is the ability to control information, which increases the possibility of mistakes, making retractions harder; moreover, as Rav Shlomo Brody notes, it becomes harder for Poskim to issue needed leniencies which may cause political trouble for the Posek.

Rav Menashe Klein (*Responsa* *Mishneh Halakhot* 7:273) notes that the same rules apply to Torah material as to general material. Thus, he forbids recording a private conversation with a scholar, and even more so, to disseminate it. In a case in which the dissemination may damage the scholar’s reputation, this is even truer. However, at a public *shiur*, under most circumstance, one may assume that the lecturer does not mind if the content becomes public, and thus it may be recorded and spread.

However, he then raises a concern similar to those expressed by Rav Dov Lior and Rav Avraham Shapira: even if something is public now, it may be forgotten in time. Thus, even if a lecture has been **given** publicly, this does not mean that the lecturer would want the *shiur* to be **recorded** and spread in such a way that it will be preserved for an unknown period of time. Therefore, while there may be reasons to argue that even this would be permitted, he advises refraining from this.

What emerges from the rulings of these Poskim is that the same principles which guide the obligation to maintain confidentiality concerning general material apply to Torah material as well. While there may be some practical differences as to under what circumstances information may be assumed to be public, the rules that govern the sharing of Torah material would be similar to those that govern the sharing of general material.

**Snapchat**

Originally, Snapchat did not allow sending messages to groups of people, presumably as part of its attempt at enabling secrecy. However, in the last several years, it has allowed sending messages to groups.[[3]](#footnote-3) As with a normal Snapchat, the default assumption is that messages will be deleted after a certain amount of time. Concerning this feature, it would seem even more obvious than with regular texts or WhatsApps that confidentiality should be assumed, even if the message is sent to a group of people.

**Spying**

As we have already noted, creating fake IDs or hacking into private Facebook or Instagram accounts is prohibited for a host of reasons. Spreading the information would violate even more prohibitions, nor matter how many followers or friends the person may have on his or her account.

**Time Limit**

There does not seem to be any time limit after which the assumption of secrecy is waived. This point is made in the following Talmudic passage:

The Gemara relates: There was **a certain student, about whom a rumor emerged that he revealed a statement that was stated in the study hall** and should have been kept secret, and the rumor emerged **twenty-two years after** the time the statement was revealed. **Rav Ami removed him from the study hall** as a punishment. Rav Ami **said: This is a revealer of secrets** and he cannot be trusted. (*Sanhedrin* 31a, Koren translation)

***Ve’ahavta le-rei’akha kamokha***

As we cited from Rav Ariel at the beginning, even in cases in which the technical prohibitions may not apply, one must approach these issues with a broad sensitivity as well. As all of our private information is similarly in danger of becoming public, we should strive to respect others as we would want to be respected.

In the next few weeks, we will begin discussing the issues of *lashon ha-ra* in the classic sense, and then return to the possible exception to both prohibitions: *to’elet,* (revealing information for) great need.

1. *Search Engine: Finding Meaning in Jewish Texts, Volume 1: Jewish Life* (Kodesh Press, 2018), pp. 298-299. [↑](#footnote-ref-1)
2. Available at: https://www.yeshiva.org.il/ask/104573. [↑](#footnote-ref-2)
3. See here: https://www.cnet.com/news/snapchat-groups-mass-send-selfies-up-to-16-snaps/ [↑](#footnote-ref-3)