

**YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

TALMUDIC METHODOLOGY

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**SHIUR #03: RABBENU TAM AND THE CASE OF GENTILE
ADULTERY**

Although *pikuach nefesh*, the saving of human life, overrides all *mitzvot* of the Torah, the three cardinal sins of *avoda zara* (idolatry), *shefichut damim* (murder) and *giluy arayot* (immorality) are so severe that they must be avoided even at pain of death – "*yeihareg ve-al ya'avor*." This principle seems to be contested by two *gemarot*, each of which imply that the concept of *yeihareg ve-al ya'avor* does not apply in a situation of *giluy arayot*.

The *gemara* in *Sanhedrin* (74b) questions the appropriateness of Esther's behavior, and particularly her willingness to marry Achashverosh even though she was married to Mordechai (according to *Chazal*). In questioning her behavior, the *gemara* claims that her behavior was unacceptable because the public was aware of her conduct. Even minor *mitzvot* must be kept under pain of death if their commission is public knowledge. Although the *gemara's* question is relevant, Esther's conduct could have been questioned on more basic grounds - she was committing *giluy arayot*!! This conduct must be avoided EVEN IN PRIVATE. Why was the *gemara* only concerned with the public nature of her conduct and not with her decision to violate *giluy arayot*?

A similar question arises from a *gemara* in *Ketuvot* (3b), which describes halakhically designated wedding dates. Although Wednesday is the preferred day for weddings, at certain periods of history they were scheduled for Tuesday. Local tyrants sexually persecuted Jewish women by demanding relations prior to their weddings; by moving the wedding earlier in the week, this predicament could be avoided. The *gemara* - concerned about relinquishing Wednesday as the wedding day - suggests informing women that their acquiescence to the tyrants is acceptable since the act is committed *be-ones* (involuntarily forced).

Properly instructed, they would subject themselves to the treatment without halakhic consequence. This suggestion is surprising because such behavior is considered *giluy arayot* and should be forbidden under all circumstances - including pain of death!!

These two *gemarot* convinced Rabbenu Tam that sexual relationships with gentiles are not considered formal *giluy arayot*. Basing himself upon a *gemara* in *Yevamot* (59b) that dismisses the parental pedigree of gentiles, he claims that their sexual activity is not halakhically recognized. Consequently, relations with a gentile – although forbidden – would not constitute *giluy arayot* and would not demand *yehareg ve-al ya'avor*. Based upon this ruling, he allowed a gentile adulterer and Jewish adulteress to marry after the former converted, despite the fact that an adulterer is generally forbidden to marry the adulteress. Since adultery with a gentile is not considered *giluy arayot*, the prohibition of marriage would not result from their sin. Before conversion, the gentile is forbidden to marry a Jew because of his status, but after his conversion, he may marry the woman he committed adultery with.

The Ri questioned Rabbenu Tam's position based on several *gemarot* (*Ketuvot* 26b and *Megilla* 15a), which imply that a woman who committed adultery with a gentile is forbidden to her husband, the standard *halakha* in cases of adultery. If sexual relations with a gentile are sufficient to render a prohibition to the husband, they should be sufficient to prohibit the gentile adulterer to the adulteress! Evidently, then, relations with a gentile IS considered *giluy arayot*, and the gentile should be forbidden to the adulteress even after he converts.

Some attempted to defend the Rabbenu Tam's position by asserting a Rabbinic prohibition forbidding an adulteress to her husband, even though adultery with a gentile is not considered *halakhic* relations and does not render a prohibition to marry the gentile adulterer. This position was adopted by the *Pnei Yehoshua* in his comments to *Ketuvot* (3b). He does not consider why this Rabbinic decree was not extended to the gentile *bo'al* (adulterer) as well.

A different solution emerges from the comments of the Maharik (responsa 167). Typically, *halakha* recognizes two different forms of *shogeg* or unintentional sin. One form concerns an individual who possesses deficient

information, and the other concerns one with inaccurate halakhic background. Not knowing the details of the act being committed or not knowing that a particular act is forbidden are each equally defined as *shogeg*. The Maharik claims that absence of halakhic knowledge that adultery is forbidden does not constitute *shogeg* for *giluy arayot*. Although the violator may not have been aware that his conduct violated halakhic norms, it certainly betrayed the trust of marriage. Aware that this conduct was morally decrepit and deceitful towards a spouse renders the behavior *meizid* (intentional) and subject to punishment.

The Maharik addressed the categories of *shogeg* and *meizid* and the consequence for punishment, but the same notions may affect the resultant prohibition to the husband of the adulteress. Sexual relations with a gentile may not be considered *halakhic bi'ah*, but DOES indeed constitute a betrayal of marriage, therefore generating a prohibition for an adulteress to rejoin her husband. Regarding the gentile adulterer, no *halakhic bi'ah* has taken place and therefore no residual prohibition to marry the adulteress exists after his conversion. Regarding the husband, however, even though no *bi'ah* was performed, an act of betrayal occurred and that deceit is sufficient to generate a prohibition to the husband.

It appears as if this logic already emerged from a discussion in *Sota* (26b). The procedure for indicting a *sota* woman is a two-staged process. Initially, a husband who has witnessed his wife keeping private company with another man must register his opposition, or "*kinuy*." If she persists and maintains private company with the alleged adulterer, she is subjected to the *sota* ceremony, a ceremony which discloses the alleged adultery. The *gemara* questions the efficacy of the *sota* process to uncover physical contact without sexual intercourse. What would occur if a man registered disapproval and subsequently his wife enjoyed physical contact but not *bi'ah*? Would such a woman be screened by the magical water of the *Mikdash*? After all, her husband was opposed to this form of conduct, and her status as *sota* is a product of the husband's disapproval regarding her sexual betrayal.

Presumably, the *gemara* is considering logic similar to that of the Maharik: independent of the legal nature of *bi'ah*, *sota* status is a product of personal betrayal and can exist even in the absence of classic *bi'ah* activity. It is possible

that Rabbenu Tam adopted this logic to extend a prohibition to the husband of a woman who committed adultery with a gentile even though, from a purely halakhic standpoint, his *bi'ah* is not acknowledged and the gentile does not suffer a residual prohibition typical to adulterers.

To be sure, the *gemara* in *Sota* is describing the formal process of a *sota* woman. Perhaps this situation alone – in which the husband has already registered his anger and the woman has disobeyed his will - applies even in the absence of classic *bi'ah*. It would then be difficult to extend this principle to other cases.

Additionally, the *gemara* actually RETREATS from this position, claiming that only a woman who committed actual sexual adultery would be impacted by the water. It is unclear why the *gemara* rescinded this option. Did the *gemara* counter the Maharik's logic by claiming that only actual *bi'ah* can trigger the *sota* status? If this were true, the *gemara's* conclusion would debunk the Maharik and certainly challenge the aforementioned logic of Rabbenu Tam. Alternatively, the *gemara* may have hesitated to expand the effects of the *sota* waters simply because bodily contact - although forbidden – is not provocative enough to be considered a BETRAYAL. Indeed, the *sota* status can emerge even in the absence of actual *bi'ah* under conditions of betrayal - as the Maharik asserted and the Rabbenu Tam may have adapted - but the type of bodily contact that may have occurred in the *sota* case is not inflammatory enough to create that betrayal. *Bi'ah* with a gentile according to Rabbenu Tam or adultery without knowledge of the biblical prohibition may each be sufficient to trigger various elements of *sota* status.

Many *Rishonim* disagreed with Rabbenu Tam's position, reasoning that a gentile *bi'ah* IS considered halachic *bi'ah*. Despite this, some concurred with Rabbenu Tam's conclusion that upon conversion the gentile is permitted to marry the Jewish adulteress.

The Rosh, in his comments to *Ketuvot* (3b), claims that *giluy arayot* will only impose a prohibition upon the *bo'el* if he were not otherwise forbidden to woman. Prior to his conversion, at the time of *bi'ah*, the gentile was forbidden to marry the Jewish woman; he is therefore immune to the typical prohibition which

affects the *bo'el*. Ultimately, the Rosh concurred with Rabbenu Tam's *pesak* regarding the converted gentile adulterer, even though he disputed his logic regarding a gentile *bi'ah*.

A different strategy is adopted by the Ritva. After his conversion, all the laws and statuses of the gentile are RESET based upon the dictum of "*ger shenitgayer ke-katan she-nolad dami*" (a convert is halachikally deemed as a newborn – without any residual punishments, or familial bonds). Even though he may have been forbidden to marry as a typical adulterer, once he converts his status changes and he can marry the woman in question. This position of the Ritva assumes the application of the "renewal" principle in a very broad manner. It appears that the *gemara* in *Sanhedrin* (71b) believed that the renewal of a convert's status would not affect human administered penalties, even though it would exonerate Divinely supervised ones. This Ritva assumes a comprehensive sweep for the principle. Thus, ultimately, the Ritva also ends up in full agreement with Rabbenu Tam's ruling, despite the fact that he disputes the latter's provocative logic.