

EARLY MODERN WORKSHOP: Jewish History Resources

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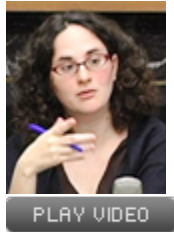
Jewish Women and Economic Encounters with Christians

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ABSTRACT: R. Yair Hayyim ben Moses Samson Bacharach (1638-1702) is well-known for his knowledge of halakha and Kabbalah. Over the course of his lifetime, he served as the rabbi in several locations in the Holy Roman Empire. In these two responsa, Bacharach deals with one of the halakhic problems surrounding women's trade with non-Jews. Such trade inevitably caused women to enter into seclusion (yihud) with non-Jews, especially since according to Jewish law, the presence of the non-Jew's wife did not alleviate the prohibition of seclusion with a non-Jew.

This presentation is for the following text(s):

- Havvot Yair, Responsum 66
- Havvot Yair, Responsum 73



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Introduction to R. Yair Hayyim Bacharach, *Havot Yair*, Responsum 66

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R. Yair Hayyim ben Moses Samson Bacharach (1638-1702,) is well-known for his knowledge of *halakha* and *Kabbalah*. Over the course of his lifetime, he served as the rabbi in several locations in the Holy Roman Empire. In 1666, he was appointed as rabbi and head of the rabbinical court in Koblenz; in 1670, he temporarily served as the rabbi of Worms, after the death of his father. Bacharach returned to his position as rabbi of Worms in 1699. In that same year, he published his book of responsa, *Havot Yair*, in Frankfurt.

In these two responsa, Bacharach deals with one of the *halakhic* problems surrounding women's trade with non-Jews. Such trade inevitably caused women to enter into seclusion (*yihud*) with non-Jews, especially since according to Jewish law, the presence of the non-Jew's wife did not alleviate the prohibition of seclusion with a non-Jew.

The first responsum (no. 66) is R. Meir Stern's (d. 1679) response to Bacharach. (Stern had been the rabbi of Fulda; later he served as the rabbi of the German Jews in Amsterdam, and is also known as one of Christian Knorr von Rosenroth's teachers.) Though Bacharach's initial query is no longer extant, one can reconstruct his proposal for explaining the contemporary practice of women going to non-Jews' homes to trade. Stern disagrees with Bacharach's rationale, and offers his own justification for this behavior. In responsum 73, Bacharach responds to Stern, disputing Stern's idea, and reiterating some of his own reasoning. While neither rabbi views these interactions as permissible, each tries to offer his own *halakhic* rationale to explain how these women were not truly or intentionally violating this *halakha*. As such, we can see how rabbis sought to address contemporary economic realities through the *halakhic* system.

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Havvot Yair, Responsum 66 Yair Hayyim Bacharach, 1699

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A responsum from the eminent and distinguished, famous rabbi, R. Meir Stern, may his candle shine, concerning a question that I asked him. And it [the question] can be gleaned from the answer. Actually, the body of the question was in a previous edition, and I wrote to the rabbi, may his candle shine, [asking] that he return it to me, and he did not do so; this is what is left, and that is all:

...And here, now I will come to what my master asked, concerning women who go to the houses of non-Jews to do business, and who enter into seclusion with them. And here there is an additional prohibition beyond that of seclusion with a Jew, as is learned in the chapter *Ain Ma'amidin*^[1] [where it says] “And she should not enter into seclusion with them [non-Jews],” and it is said in the Talmud that it is not necessary [to single out the prohibition of seclusion with a non-Jew, except to include the provision that seclusion is prohibited] even when his [the non-Jew’s] wife is with him.^[2] For in the case of a Jew, it is certain that his wife will watch over him, but in the case of a non-Jew, it [such seclusion] is prohibited.

And we attribute goodness to the man of esteem and honor, [Bacharach] for he took it upon himself to look after the decrees concerning the daughters of Israel, and to look at the essence of the issue, in order to find them the roots of permissibility, for heaven forbid that the women of Israel are behaving in an unfit manner. Shall our sister be made into a harlot?^[3] And this is what our forefathers and earlier sages did; for they, of blessed memory, said they would obligate themselves to avoid [transgressing] prohibition etc., as is evident from [the adage:] “To be deliberate is worth four hundred *zuzim*, etc.^[4] This is not the case in our generation: [People] say to the wicked, you are righteous. “And from the day that the fist of flattery prevailed,”^[5] no one establishes boundaries, and no one is guarding the breaches, and if only they would not strengthen the hands of those performing transgressions!

And now, we come to trade and do business with them for those same reasons that the man of esteem and honor noted. Now, if we permit this [trade] because of [the fear of] animosity, then [by extension] we would [come to] drink with them, we would drink from their cups and eat from their bread. And what will transpire is that all of the safeguards that were implemented by the sages of blessed memory will be discarded. They had decreed decrees upon decrees, and made safeguards upon safeguards, lest we intermingle with non-Jews, and [thereby] learn from their actions -- and they forbade their bread because of their oil, and their oil because of their wine, and their wine because of their daughters.

And it is certain, as clear as the sun, that nothing is permitted due to [fear of] animosity except for [something which has] a mere chance [of happening and] which is tied to a permissible professional activity, such as receiving a gift from a non-Jew whom one knows on the day of his festival. For throughout the year, one is permitted to trade and to do business with him, and to receive a gift from him. And if it were not permissible to receive a gift from him on the day of his festival -- which would be a mere chance [a random act] tied to a permissible professional contact -- there would be animosity. It is also the case with a Jewish midwife who is known for her skill -- she is not able to refrain from administering to a non-Jew, [and] it is permissible, for it is only a chance emerging from her permissible skill. And it is the same in a case of a Jewish doctor; the animosity stems from a permissible skill of his. This is not applicable to these women in our case -- if they did not go to the houses of the uncircumcised, there is no animosity here. And how could one even think to say that it is permissible to go to their houses without a guardian? Therefore, regarding what was said -- that if they were to bring a guardian with them, it would cause animosity -- if this is so, they should not go to the houses of the uncircumcised at all, and there will be no animosity, and this is certain.

And what is more, for those who would say to us that there is animosity if she were to bring a guardian with her -- perhaps there is no animosity, for it is possible to safeguard against [animosity] in several ways. And in the Talmud, it is proven that something is not permitted due to animosity except if it is not possible to prevent animosity in any manner whatsoever. As it says there, R. Joseph thought to say that [helping idolaters or shepherds of small animals up from a pit] would be permissible because of animosity, etc. Abaye said to him, one can respond and say, "I have to run to the boy on the roof." Similarly, more examples are brought there, [see] the Chapter *'Ain Ma'amidin*.^[6]

And it is also not fitting to compare this case to the permissibility of selling large cattle to non-Jews, nor to lending them money with interest, for Tosafot have written that one should make a distinction between different times, and in those cases, there is a reason to make distinctions [between the rabbinic and the contemporary situations and times.] As it is written in the Talmud concerning selling weapons to non-Jews, that today, we

sell to a Persians that protect us.^[7] Therefore, Tosafot wrote permitting the sale of horses to non-Jews in this time, and they added the reason [for their ruling, which is] that we are very few in a given place. And it is similar concerning lending money with interest to non-Jews: There are several reasons that it is established, not just this one, as is learned later that it is not at all prohibited. And what is more, the reason for the prohibition, [namely] lest we learn from his actions, is not applicable these days, since the Jews are a small number dwelling in a given place, and it is necessary to trade and to do business with non-Jews. There is no suspicion that one would learn more from his [a non-Jew's] behavior in terms of interest that in any other type of business or trade, as Tosafot wrote there explicitly.

And even if the entire reason for learning [the permissibility of lending money with interest] was because it was necessary for earning a livelihood, there it is specified – for it is explicitly said in the Talmud that [lending] is permissible when it is necessary for livelihood. This is not applicable to our case, to permit seclusion because of the necessity of earning a livelihood, because it is not found that the sages [explicitly] permitted [seclusion] for the sake of [earning] a livelihood. And I do not know why the eminent man of esteem and honor is opposed to this, for they upheld this [opinion] one hundred to one.^[8]

Also, what the man of esteem and honor mentioned in his text, and this is his language: “That it is fitting to permit seclusion these days, due to the needs of trade and business, for it is established that our wives are called traders and business people in the home, and the Rashba wrote to this effect, etc.” I heard, but do not understand why this is relevant here, for it is established that our wives are called traders, etc., but this is concerning deeds and contracts going out in her name, for it is said that the woman is the trader in the house, etc., and it is established that these women simply trade and do business. But this is not a reason for them to trade and do business [while transgressing] a prohibition. There is also nothing coercing these women to trade and do business that would compel any lenient ruling concerning seclusion. It is just that our women trade and do business, but not, heaven forbid, while transgressing – this is not pardoned for them. And as a support, I can say, based on your own argument, that they trade and do business specifically within the house [and therefore, we cannot use the words of the Rashba to justify their entering into seclusion out of the house.]

And in terms of what he desired to know, is there anything concerning this issue in the responsa of the *Aharonim* [later sages] new ones, or old ones; and if this is clearly prohibited, without any opportunity for leniency, what is the reason that the rabbis were silent [about this topic] for in the case where people behaved in a prohibited manner, who excused this? I will notify the man of belief, that in the responsum of Maharam Padua, chapter 26, he wrote an open rebuke to the residents of Cassel about the fact that their wives were lenient with this. And he dismissed the notion that the fact that their

wives [non-Jewish women] were present would [render this] permissible, for it is not applicable to a non-Jew.^[9] You should look there, and also in the discussion and interpretation of *Even ha-Ezer* chapter 22, where he questions the custom of going along on the convoy of a non-Jew with a guardian who is a minor, and he wanted to stop that practice. And the Bach, in his last commentary, declared that there is no permissibility for such a thing, and that this is a practice which is contrary to the *halakha* and to the law, but that we do not have the power to curtail. And it is same in this world with several biblical prohibitions, regarding which people have practiced leniency, and look there [for details.] And in the responsum of Mahari Mintz^[10], the same is written, that women are similarly lenient in this matter, this is in the 26th or the 27th chapter, at the end of his responsa. I don't have that responsum in my hands at this time to look at it, but you should see if you have that responsum.

Despite all this, I endeavored and found a way to view [these women's behavior] charitably, although there is no permissibility [for what they do], for all Israel is holy, even though they are not prophets. And I found something in the words of the Ran and of the rabbi the *maggid*,^[11] with regards to the permissible ruling for leaving an animal in a non-Jew's inn in our days, because the non-Jews in our times are not suspect of bestiality, but to the contrary, are beaten and punished for this, as is discussed in the Beit Yosef in *Yoreh De'ah* chapter 153.^[12] If that is so, we can justify the law, for it is the same in our case -- for non-Jews in our times are not suspect of harlotry with a Jewess. For even though in their times [Talmudic times], [having sexual contact] with an animal of a Jew was preferable,^[13] in our times, it appears to the Ran and to the rabbi the *maggid* that they are not suspect [of bestiality.] The same is true that they should not be suspect of harlotry with a Jewess, for on the contrary, they are beaten and punished for this. And if the Jewess was married to a Jew, it is evident that they would be beaten and punished for this. But even [in the case] of a single woman, if the non-Jew is married, he is penalized with burning according to their laws, and they judge him as having betrayed his wife and as having committed adultery. I heard this with unequivocal clarity, and it is known to me, without a doubt, that they rule in this way. And see the Beit Moshe on *Even ha'Ezer*, chapter 22, and see the Ritva on *'Avoda Zara*, 26, that in these days, non-Jews are not suspect of murder, for there is the fear of the king [of the law,]^[14] and see the Maharsham, chapter 33.

Furthermore, about three months ago or more, I was at a feast for a *Speinholz*, as is customary to do on the Friday night before a wedding, and there were several learned and important people there, and we had a discussion about this, and I brought this lenient ruling before them. And all of them said that it was just and it appeared very good in their eyes, and they all knew that this is how they rule as well. And in truth, this is a very correct lenient ruling in my eyes, for we can learn from the words of the Ran and of the *Maggid* that they are not called suspects except when we know them to be regularly [engaged] in the [specific] behavior, and when it has happened many times.

And also, [they are suspect] when there is neither any danger nor punishment for the act. But in a case where we have not seen that they regularly behave in this way without shame, and it has not happened frequently in our time, they are not called suspects. And all the more so, when they are beaten and punished for such behavior, they are not suspect. And in truth, our eyes have seen that no such incident occurred during our time, and it is because of this that they [the women] decided to act thus. For if, heaven forbid, there were cases of this occurring, they [the women] would certainly refrain from this [behavior,] or the wise men of the generation would have eliminated this bad practice. Yet, since no such episode is known [to have occurred], they learned from this, and persisted in their practice, and this is the essence of the leniency, since we see that they [non-Jews] are not suspect of harlotry with a Jewess, and it is established.

And even so, it must be said that it is still necessary, even with this idea, to halt this practice of entering into seclusion with the uncircumcised at all times and moments. For it is established that it is forbidden to enter into seclusion with a non-Jew, since they are suspect of murder, and this suspicion would be applicable and identical regarding both men and for women. And it is a wonder in my eyes that the exalted man of esteem and honor did not stir to question this practice on the basis of the fact that murder applies to men as it does to women. And in terms of men, no one opens his mouth or utters anything in order to prohibit them from that trade and business which leads to seclusion with the uncircumcised. And according to what I wrote, it is not relevant, since in our times, they are not regularly doing this [murder], but to the contrary, [since] murderers are beaten and are punished with the death penalty, they would not be called suspects for murder. [This is so] notwithstanding that in the year 5418, as the man of esteem and honor knows, an honored man [a Jew] of Trier was killed, may God avenge his blood, here in the house of the uncircumcised [non-Jew]. In any event, that was a chance occurrence, and they [non-Jews] are not regularly acting like this. And this murderer was forced to flee because of this action, and to run for his life. This is what my limited intellect has come up with on this topic, impoverished and meager [though it is.]

And in any event, I saw and heard from my teacher, my rabbi and father-in-law of blessed memory, that he tried to stop them [from entering into seclusion with a non-Jew], and he preached about this publicly, in open rebuke. I, too, in his wake, warned the people of my land, the land of Fulda, about this many times, and I prevented them with rebukes and fines. And I was successful in that they refrained, and no woman went to the house of a gentile without a guardian, as is the law.

And so it is fitting for all who fear God to do, as per their ability. But also, what I have written is to learn something just about how this bad practice spread, and that we should not judge the women as transgressors of the words of Moses and the Jews. And it we still need to examine the other prohibition, which applies to both men and women.

And until then, we need to stop this custom. Therefore [in order to explain the practice,] I have tried to find commonalities among both situations.

And solely concerning the women: In addition, in order to find support [for their behavior, one may rely upon the] words of Tosafot in the Chapter '*Ain Ma'amidin*, citing the Jerusalem Talmud.^[15] Although this is as I wrote, that I put my heart towards [understanding] how this lenient behavior spread through Israel. This could be, heaven forbid, a cause for a rise [in the number] of bastards in Israel, as they think that there is nothing suspect in this behavior. For if they thought otherwise, they would certainly not put themselves every day in a situation of shame and entrapment and [would not] transgress each day on the prohibition of "Do not stray."^[16]

Endnotes

[1]⁶Avodah Zara 22a.

[2]⁷Avodah Zara 25b.

[3] Gen. 34:31.

[4]See Berakhot 20a.

[5]The reference is to Sotah 41b, where the sages praised Agrippa, who was not worthy of such compliments. The Talmud continues: "R. Simon b. Halafta said: From the day the first of flattery prevailed, justice became perverted, behavior was ruined, and no one could say to his neighbor, 'My behavior is better than yours.'"

[6]⁶Avodah Zara 26a. The context is a discussion of the permissibility of a Jewish wetnurse nursing a non-Jewish baby. R. Joseph argues that with payment, it would be permitted, due to animosity; Abaye demonstrates that in each situation, there is a plausible excuse for not performing the action, which would remove the possibility of ill will.

[7]⁷Avodah Zara 16a. This is the Talmud's explanation for why selling weapons to Persians in contemporary times would be permitted, when Jewish law forbids the sale of weapons to idolators.

[8]⁸The phrase stems from B. Bath 85b.

[9]⁹Maharam Padua, Responsum 26. The text reads: "Beloved and friends residing in the city of Cassel...the news that I hear about you is not good, for you observe and remain silent and do not rebuke the daughters of Israel, women who go out, for among you, women go out to the markets and to each and every fair alone, like the merchants of the cities who travel from city to city to get drunk...they go alone and their husbands are not with them, neither are upright men to guard them." Maharam continues, explaining that this transgresses the prohibition of seclusion with non-Jews, citing the Talmud in 'Avodah Zara.

[10]¹⁰The text should read Maharam Mintz.

[11]¹¹ Referring to R. Joseph Karo.

^[12]The Shulhan Arukh reads: “One does not leave an animal in the inn of idolaters, and does not hand over an animal to their shepherds, for they are suspect of bestiality. And in those places where they are not suspect, but on the contrary, are beaten and punished for this, it is permitted.” Shulhan Arukh, Yoreh De’ah, 153.

^[13]See ‘Avodah Zara 22b, where the Talmud explains that bestiality with the animal of a Jew was preferred by non-Jews to intercourse with their wives.

^[14] Here, the Ritva discusses the question of non-Jewish wet nurses. In the Talmud (‘Avodah Zara 26a) non-Jewish wet nurses are forbidden, as they are suspect of murder. The Ritva explains that in contemporary times, the reason why some people permitted non-Jewish wet nurses, since the suspicion that a non-Jewish wet nurse would murder the baby was not applicable, since there were laws governing murder. (Hidushei ha-Ritva, ‘Avoda Zara 26)

^[15]Based upon Bacharach’s response (see responsum 73,) it is possible to reconstruct Bacharach’s original argument. Bacharach cites the Tosafot in ‘Avodah Zara 23a. Tosafot explain that minor infractions of seclusion with a non-Jew do not render a woman sexually forbidden to her husband. According to Tosafot, a woman is only considered to be sexually forbidden to her husband under circumstances in which the woman had been captured by a non-Jew and was subject to him as an animal would be. The logic is that just as he might engage in bestiality, he might engage in sexual relations with the woman, rendering her sexually impermissible to her husband. However, Tosafot explain that: “Where she was not under the hand of an idolater at all, and she was able to cry and there would be someone to save her, the idolater would definitely be fearful, and there is no reason to forbid her [to her husband.]” Tosafot cite the Jerusalem Talmud, where a distinction is drawn between animals and women, for women cry out. Bacharach’s original argument, made clear in responsum 73, was that due to economic necessity, women relied upon this leniency and entered into seclusion with non-Jews. While Stern disagrees with Bacharach, and argues that economic necessity cannot be used as a justification for seclusion, he concedes that this ruling of Tosafot could serve as an explanation of the women’s behavior.

^[16]Deut. 17:11.

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ספר שאלות ותשובות חות יאיר סימן סו Havot Yair, Responsum 66 Yair Hayyim Bacharach, 1699

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שו"ת חוות יאיר סימן סו

תשובה מהגאון המופלג הרב המפורסם מוהר"ר מאיר שטערין נר"ו על שאלתי ששאלתי אותו. והוא ניכר מתוך התשובה. אמנם גוף השאלה באשר שהיה מהדורא קמא וכתבתי להרב נר"ו שיחזרנו אלי ולא עשה נשאה מעל וזהו. הלכתא כוותי בכולי תלמוד' וכו'. כל מה דאנא משבח אנא פגים כי לית טימי במרגניתא. ה"ה אהו' הנאמן. צנצנת המן. ויחכם מכל האדם מכלכל דרדע והימן. הרב הגדול. מעוז ומגדול. וכל החושב וסופר מעלתו מבין ידול. נ"י ע"ה פ"ה כבוד מוהר"ר חיים נר"ו יאיר אף יזריח. על אויביו יתגבר יריע אף יצריח. כל צורריו בהם יפיח. ואשוי"ר. אחרי עתירת החיים והשלום על ראשו יחדיו יהיה תמים. עד עמוד כהן לאורים ותומים. באתי להשיב מפני הכבוד באמצע הפרק ובאמצע ברכ' אהבת עולם אהבתיו על כן משכתי בשבט סופר לחוות דעתי הקלושה והנמהרת. על כתב (ע' לעיל תשובה ס' ט"ז) פתוחי חותם קודש בצירוף השאלה מזר ולבונה מקושרת. שקבלתי חוץ לזמנו בסבר פנים יפות מן האלוף ר"מ סופר יצ"ו באונס שכחה הגוברת. ואח"כ על ידי סיבה אחרת. נמשך הזמן ואחר עד עתה. האמנם כי ערוך מאתמול ומשלשום כתבא דנא. כאשר הראיתיו להסופר הר"מ יצ"ו זה ימים רבים. העתק כתב זה. מכאן ואילך כל יומא פרקיה. והנה עתה באתי אשר שאל אדוני בענין הנשים ההולכות לבתי גוים להסתחר ומתייחדים עמהם. והלא יש בהם איסור מוסף על ייחוד שעם איש ישראל כדתנן בפ' אין מעמידין ולא תתיחד עמהם ואמרו בגמ' לא נצרכא דאפי' אשתו עמו. דבישראל קי"ל אשתו משמרתו ובגוי אסור והנה מחזיקינן טיבות' למעכ"ת דרמי אנפשיה לשקוד על תקנות בנות ישראל. ולעמוד על עיקר' דמילתא למצוא להם פתחי היתר כי היכי דלא ליהו ח"ו בנות ישראל נוהגים מנהג הפקר. והכזונה יעשה את אחיותינו. וכה עשו אבותינו ורבותינו הקדמונים. כאז"ל קמאי הוּ מסרי נפשיהו כו' לאפרושי מאסורא. בעובד' דמתון מתון ת' זווי שויא כו' משא"כ בדורותינו אומרים לרשע צדיק אתה. ומיום שגברה אגרופה של חנופה כו' אין גודר גדר ולא עומד בפרץ. והלואי לא יחזיקו ידי עוברי עבירה. והן עתה נבא לישא וליתן באותן הטעמים שהזכיר מעכ"ת דאי משום איבה שרינן כה"ג. א"כ נשתה עמהם מכוסם נשתה ומפתם נאכל. ונמצאו בטלו כל ההרחקו' שעשו חז"ל וגזרו גזירה לגזירה ועשו משמרת למשמרת לבל נתערב בגוים ונלמד ממעשיהם וגזרו על פתן משום שמן ועל שמן משום יינן ועל יינן משום בנותיהם. אלא ודאי ברור כשמש דלא שרי' משום איבה אלא אקראי בעלמא הנמשך מעסק היתר כגון לקבל דורון מגוי מכירו ביום אידו דכל השנה כולה מותר לו לישא וליתן עמו ולקבל דורון ממנו אי לא שרית ליה לקבל דורון ביום אידו דאקראי בעלמא הוא הנמשך מעסקי היתר שלו איכא איבה. וכן מילדת ישראל שידוע לכל אומנתה וא"א לה לאשתמוטי נפשה מלהיות מילדת לגוי שרי' משום איבה דאקראי הוא הנמשך מאומנות היתר שלה. וכן כה"ג גבי רופא ישראל האיבה נמשך מאומנות היתר שלו. משא"כ הני נשי דנ"ד אם לא תלכנה לבתי הערלים

כלל אין כאן איבה ואיך יעלה על הדעת לומר דשרי לילך לבתיהם בלי שומר. לכן מ"ש שאם תקחנה שומר עמה תגרמנה להן איבה. א"כ לא תלכנה לבתי הערלים כלל ולא תהיה להן איבה וק"ל. ותו מאן לימא לן דאיכא איבה בזה שלוקחת שומר עמה דלמא ליכא איבה דמצי לאשתמוטי בכמה גוונים. ובגמ' מוכח דלא שרי' משום איבה אלא באיבה ודאית דליכא לאשתמוטי בשום גוונא כלל. דקאמר התם סבר רב יוסף למימר שרי משום איבה כו' א"ל אביי יכול למימר ברי קאי אאיגר' כו' וכה"ג טובא דאיתא התם פ' אין מעמידין. ולא שייך נמי לדמותו להיתר מכירת בהמה גסה לגוים או להלוותם בריבי' שכתבו התוס' לחלק בין זמן לזמן דהתם אשכחינן בהו טעמא לחלק. כמ"ש התם בגמ' גבי מכירת כלי זיין לגוים והאידינא דמזבנינ' לפרסאי דמגנו עלן. לפיכך כתבו התוס' היתר במכירת סוסים לגוים בזמה"ז וצרפו הטעם שאנו מתי מעט במקום א'. וכן גבי הלוואה בריבית לגוים איכא כמה טעמים בלאו הכי חדא דקי"ל התם כלישנא בתרא דאינו אסור כלל. ותו דלא שייך טעם האיסור משום שמא ילמוד ממעשיו בזמה"ז מאחר דישראל מועטים דרים במקום א' וצריך לישא וליתן עם הגוי. אין חשש' שמא ילמוד ממעשיו בהלוואה בריבית יותר מבשאר משא ומתן. כמ"ש תוס' שם בהדל'. ואפילו טעמא דהכל מקרי כדי חיותינו התם דווקא דאמרנו בגמ' בהדל' דכדי חייו שרי מה שאין שייך בנדון דידן להתיר ייחוד משום כדי חייו דלא אשכחן דשרי חכמים משום כדי חייו. ולא ידעתי למה הוד מעכ"ת עמד מנגד ולא מחו להו אמוחא ק' עוכלא בעוכלי. גם מה שהזכיר מעכ"ת בדבריו וז"ל שיש להתיר יחוד בזמה"ז לצורך משא ומתן באשר קי"ל דסתם נשי דידן מקרי נושאות ונותנות תוך הבית וכמ"ש הרשב"א כו' אני שמעתי ולא אבין מה שייך לכאן דקי"ל סתם נשי דידן מקרי נושאו' כו' דהיינו לענין אונ' ושטרות יוצאו' על שמה דאתמר ביה האשה הנושאת ונותנת תוך הבית כו' וקי"ל דהני נשי דידן סתמא נושאו' ונותנו' נינהו אבל אין זה טעם שתהיינה נושאות ונותנות באיסור גם אין הכרח שתהיינה נושאו' ונותנות לגרום שום היתר ייחוד עי"ז. רק נשי דידן הן נושאות ונותנות אבל לא באיסור ח"ו דלא שבקינן להו. ודרך הלצה אמינא נושאו' ונותנות תוך הבית דייקא אמרו ומטוני' אתינ'. ואשר בקשה נפשו לדעת הנמצא מזה בתשובות האחרונים חדשים גם ישנים. ואם אסורו מוחלט בלי שום פתח היתר מ"ט שתקו ליה רבנן כי נהגו במקום איסורא מי שבקי' להו. הנה אודיע לאיש אמונים כי בתשובת מהר"מ פדוואה סי' כ"ו כתב תוכחת מגולה לבני ק"ק קזאל על שהיו הנשים שם מקילות בזה: ודחה שם היתירא דאשתו עמו דלא שייך בגוי יע"ש גם בדרישה ופרישה א"ע סי' כ"ב תמה על המנהג שנהגו לצאת לדרך עם עגלן גוי בשומר קטן. ורצה לישב המנהג. והב"ח בקונטרס אחרון שלו השיג עליו שאין היתר לדבר ושהוא מנהג נגד ההלכה והדין אלא שאין בידינו למחות וכה"ג בעו"ה כמה איסורי דאורייתא שנהגו להקל בהם יע"ש. וכ"כ בתשובת מהר"ם מיניץ על שמקילות הנשים בענין זה כמדומה שהוא בסי' כ"ו או כ"ז בסוף התשובה ממש. ואין בידי כעת תשובה זו לעיין אחריו. יחפש מר וימצא אם יש לו תשובה זו. ועם כל זה יגעתי ומצאתי ללמד זכות עליהן מאין יצא ההיתר הזה כי ישראל קדושים הם ואע"פ שאינם נביאים ומצאתי און לי ממ"ש הר"ן וה' המגיד בהיתר העמדות בהמות בפונדקאות של גוים בזמן הזה. משום דגוים בזמנינו לא חשידי על הרביעה אדרבה מכין ועונשים עליו הובאו בית יוסף בי"ד סי' קנ"ג. א"כ זכינו לדין דה"ה בנ"ד דגוים בזמנינו לא חשידי אזנות ישראלית דהא אע"ג דבימיהם היה חביב עליהן בהמתן של ישראל ובזמנינו ס"ל להר"ן והרב המגיד דלא חשידי ה"ה דלא חשידי אישראלית ואדרבא מכין ועונשין עליו ואם הישראלית אשת איש ישראל פשיטא דמכין ועונשין עליו אלא אפילו בפנויה ישראלית אם הגוי בעל אשה הוא חייב שריפה בדיניהם ודנין אותו כבוגד באשתו ודין אשת איש כן שמעתי בבירור גמור וידוע לי שכן דנין בלי ספק + עיין בית משה על אה"ע סימן כ"ב, ועיין ריטב"א ע"ז כ"ו דבזה"ז אין לחוש לש"ד כיון דאיכא אימת מלכות, וע' מהרש"ם ח"ד סימן ל"ג. + ואף גם זה כמשלש חדשים ויותר הייתי על סעודות שפי"ן הול"ץ / שפי"ן הול"ץ / כמו שרגילים לעשות בליל שבת שלפני החתונה והיו שמה כמה לומדים וחשובים והיה לנו פתחון פה בזה והרצייתי לפנייהם היתר זה וכולם אמרו יישר והוטב מאד בעיניהם וכולם ידעו שכן דנין בדיניהם ובאמת זה בעיני היתר נכון מאד דמצינו למידין מדברי הר"ן והמגיד דלא מקרי חשידי אלא כשראינו אותם שרגילים בכך ואירע כן הרבה פעמים. וגם שלא יהיה שום סכנה ועונש כלל בדבר אבל בדבר שלא ראינו שרגילים לעשות כך בלי בושא בדבר ולא אירע כן בזמנינו הרבה פעמים לא מקרי חשידי. וכ"ש כשמכין ועונשין עליו דלא חשידי ובאמת עינינו הרואות שלא אירע מכשול בזמנינו ועי"כ מלאו לבם לעשות כן. שאלו ח"ו היו מכשולות מצוים בודאי היו נמנעות מאליהן או חכמי הדור היו מונעים המנהג הרע הזה. אמנם מאחר שלא נודע שום תקלה דנפקא מזה החזיקו במנהגם וזה עצם ההיתר הזה דבהא חזינן דלא חשידי אישראלית וק"ל. ובלאו הכי צ"ל

ג"כ סברא זו לישב המנהג שנוהגים לייחד עם הערלים בכל עת ורגע והא קי"ל דאסור להתייחד עם הגוי דחשידי אשפיכות דמים וחששא זו שייך ושוה באנשים כנשים. ופלא בעיני שלא התעורר רום מעכ"ת לתמוה על המנהג מטעם זה דש"ד הנוגע לאנשים כנשים ובאנשים אין פוצה פה ומצפצף כלל לאסור להם המשא ומתן המביא לידי ייחוד עם הערלים ולפמ"ש א"ש כיון דבזמנינו אין רגילין בכך ואדרבא מכין ועונשין חיוב מיתה על הרוצח לא מקרי חשידי אש"ד בזמן הזה. עם היות שבשנת תי"ח נהרג כהר"מ טריר הי"ד פה בבית הערל כידוע למכ"ת מ"מ אקראי בעלמא הוא ואין רגילים בכך גם הרוצח ההוא הוצרך לברוח מחמת זאת ולהמלט על נפשו זהו אשר העלת' מצודת שכלי הקצצר בזה. דל ורזה. ומ"מ ראיתי ושמעתי ממו"ח הגאון ז"ל שהיה מוחה בידיהם ודרש על כן ברבים בתוכחת מגולה גם אנכי אחריו הזהרתי בני מדינת בולדא ע"ז הרבה ומנעתי אותם ע"י חרפות וקנסות ועלתה בידי שהיו נמנעים מלילך שום אשה לבית ערל בלי שומר כדינו. וכן ראוי לכל ירא אלהים לעשות עד מקום שידו מגעת. אך אמנם מ"ש הוא ללמד זכות האיך נתפשט המנהג הרע הזה ושאיין לדון את הנשים בזה כעוברי ע"ד משה ויהודי' ועדיין צ"ע על האיסור האחר הנוהג באנשים כנשים. וע"כ צריך לישב אותו המנהג ע"כ יגעתי ומצאתי מילתא דשויא לתרוייהו. והנה ע"ד הנשים בלבד עוד לאלוה מלין למצוא שריותא ע"פ דברי תוס' שהזכיר מר בפ' אין מעמידין ע"פ הירושלמי שהביאו שם אמנם הוא כמ"ש שנתתי לבי לדעת האיך נתפשט קולא זו בישראל שהיא סיבה ח"ו להרבות ממזרות בישראל אם לא בסוברם שאין חשש כלל בדבר שאל"כ ודאי לא היו מכניסות עצמן בכל יום לספק תקלה וקלון. ולעבור בכל יום על לאו דלא תסור:

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Havvot Yair, Responsum 73 The Tent-Villages of Yair Havot Yair Yair Bacharach, 1699

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And lo, I went back and responded to the eminent rabbi concerning his words (see above, responsum 66, page 38a, because what he wrote there in the name of the Ran and the rabbi the *maggid* did not escape my eyes, for the Beit Yosef rules concludes according to their words in the *Shulhan Arukh* at the beginning of Chapter 153, [when he says] “And in places where they are not suspect, etc.”^[1]

It is just that what is mentioned above is not a parallel [situation.] For there, the reason for forbidding [leaving an animal in a non-Jew’s inn] is not only because of [the prohibition of not putting an obstacle] before a blind man. And [furthermore,] because in an inn, the abhorrent act is not a secret one since many people are present, specifically in a horses’ stall, there is reason to make a distinction and to say that [this ruling was applicable] specifically in their days [Talmudic times], when they [non-Jews] were not punished [for bestiality] and it was as if it were permissible, as is proven by the words of the Talmud, ‘*Avodah Zara*, the end of page 22.^[2] (And it seems fit to explicate that because of the extent of their regularity in this [bestiality] the rabbis of blessed memory forbade [leaving an animal with a non-Jew] under all circumstances, even though there was room to permit [leaving the animal] in the case where the non-Jew also possessed an animal. And I know that there is room to say that even when a non-Jew possesses an animal, he might desire [the Jew’s] animal, for the animals of Jews are preferable to them,^[3] but if it were so, then in the case of sacrificing [an animal] for idolatry, there is reason to suspect that he will sacrifice them both, or it is better for him to sacrifice the Jews’ animal, and this is definitely not the case, as is demonstrated previously in ‘*Avodah Zara* 6a.)^[4]

What he wrote regarding seclusion, [namely] that its essence stems from the fact that through seclusion without any observers, desire will overcome him, and no one will

know about it: Know that even the seclusion of a woman with one Jew, or even two, or with those who are licentious is forbidden, even though it is certain that they will be punished. However, because it is a private act, therefore two who are licentious will not report it, and both will sin, and likewise, with a non-Jew, even if his wife were with him, she would not report [it] – and the punishment does not instill fear. Therefore, we cannot make a distinction [and argue that since now there is a punishment in place, the activity might be considered permissible.] And this is even more difficult: For concerning the decrees of the sages of blessed memory, they are established, [and] even when the reason [for the decree] is no longer extant, the decree stands. (And this is also difficult in terms of understanding the disputes between the great *Rishonim* [earlier sages] of previous generations and some from these generations regarding certain issues.)

And therefore, heaven forbid that we should be lenient based upon the prohibition of drinking non-Jewish wine, for that decree was only [enacted] because of their daughters, while seclusion with another man's wife is [an] even more grave [offense], for it is [a] biblical [prohibition] even [when committed] with a Jew. (However, as it was said above, according to the Bible, only true seclusion was prohibited. It was only the rabbis of blessed memory that said that his [a non-Jew's] wife is not considered a guardian for him, and even when there are several other non-Jews with him. But this issue requires further inquiry, since in the Talmud *'Avodah Zara* 36, this language is used to justify the reason that the students of Hillel and Shamai decreed [that seclusion is prohibited] even when two non-Jews and [one of their] wives is present.^[5] And one can say that this rebuts [the notion] that this was decreed regarding their daughters. But in any event, the truth is that the words of the Torah specifically concern absolute seclusion, a man and a woman alone, and it is learned from a [biblical] verse concerning an instigator, who also plots in secret, as it says in the verse.^[6] It was just the rabbis of blessed memory that also prohibited seclusion with two upright men, with three licentious ones, and with a non-Jew [even] when his wife is with him.)

And it is the same concerning the bread of a non-Jew, for the Rashba wrote that even the bread of priests, to which the threat of intermarriage [with priests' daughters] is not applicable, is prohibited, as is written in the comments [the *Mappah* of R. Moses Isserles] on the *Shulhan Arukh* at the beginning of Chapter 112.^[7] And according to what the rabbi wrote, it is extraneous these days, for intermarriage is not applicable under any circumstance or with any non-Jew.

And I can see that he is vacillating between two positions and reasons, for he feels that neither one on its own is substantive, the [first] one because it is not regularly practiced, the other because there is a punishment [involved.] And it is not that both [reasons] have life force [behind them]; as for the reason that they are punished [and that such punishment would serve as a deterrent,] even in their days [Talmudic times] they

undoubtedly punished for murder, and because of this, [murder] was also not commonplace.^[8]

Moreover, it seems to me that the Ran and the rabbi the *maggid* were only lenient with regard to the suspicion of bestiality, which is in itself abhorrent and filthy in their eyes, and they are not suspect in it. And this is the essence of the reason [for allowing a Jew to leave an animal in a non-Jew's inn] – and therefore, the rabbi the *maggid* did not mention the reason of punishment [as a deterrent] in the name of the Rashba – and his intention was to indicate that even without the fear of a punishment [non-Jews were no longer suspect of bestiality.] And therefore, the Beit Yosef in the *Shulhan Arukh* did not mention that one can be lenient with regards to the seclusion of a Jew or a Jewess, even though both issues are discussed together in the same chapter.^[9]

Therefore, I uphold my previous position, that since the majority of our food comes from them, and we are compelled to trade and do business with them, and because our wives also trade and do business with our goods and we are extremely pressed regarding food, since it is difficult to find sustenance, and we must send our wives to them to trade and to do business with them, and the community is not able to observe it [this prohibition.] And it is because [of these factors] that [this behavior] spread. They permitted it, even though in truth, it is not permissible without a rabbinical court that permits it. This is all the more so with regards to seclusion, for it is one of the eighteen things that cannot be overturned [by a rabbinical court,] as Tosafot wrote in their commentary on 'Avodah Zara 36a and 36b.^[10]

Despite this, because of the great need, it spread, and the sages of the generations did not see it fitting to halt this, for they saw that it would be impossible for [the people] to observe their decree, or if they did attempt to stop it, it did not bear results. And it is possible that because of a desire for money and for trade and business, they [the women] would go without their husband's commands, and the Ran has already written that we do not compel them [the people] to stop [a prohibited behavior] with regards to anything that is not explicitly [forbidden] in the Torah, as is recorded in the *Shulhan Arukh*, 248.^[11]

And this is the reason for the infractions of this generation, and it is sufficient for [an explanation of] the seclusion of men with them as well, for they act [in light of] of the lenient ruling [termed] “*vi-tu lo midei*,” “so there is no more [to be said about this.]”^[12] Yair Hayyim Bacharach.

Endnotes

^[1]With regard to bestiality, the text of the Shulhan Arukh states: “And in places where

they are not suspect of this, but on the contrary, are beaten and punished for this, it is permitted [to leave an animal in a non-Jew's inn.]” See Shulhan Arukh, Yoreh De'ah, 153.

[2]Here, the Talmud relates: “R. Judah and Samuel said in the name of R. Hanina: I saw an idolater that took a goose from the market, engaged in sexual contact with a goose, strangled it, roasted it, and ate it. And Rabbi Jeremiah of Difti said: I saw one Arab who took a side of meat, held it in order to engage with it sexually, engaged sexually with it, roasted it, and ate it.” ’Avodah Zara 22b.

[3]See ’Avodah Zara 22b, where the Talmud explains that bestiality with the animal of a Jew was preferred by non-Jews to intercourse with their wives.

[4]Here, the discussion in the Talmud surrounds the question of selling an animal to a non-Jew before, during or after a non-Jewish festival. See ’Avodah Zara, 6a.

[5]The Talmud records that the students of Hillel and Shamai were the ones who decreed that a woman may not enter into seclusion with a non-Jew. The context is a discussion about how it was permissible for one rabbinical court to enact decrees that differed from previous enactments. The Talmud explains that the prohibition of absolute seclusion with a married woman was initially a biblical one, hinted to in a verse (see below, note 5.) The rabbinical court of King David prohibited seclusion with a single woman, while the students of Hillel and Shamai prohibited seclusion with a non-Jew. ’Avodah Zara 36b.

[6]’Avodah Zara 36b. The verse in question, dealing with an instigator, uses the word “in secret” to describe the context in which the instigator attempts to lure others into idolatrous practice. This is one connection between the instigator and seclusion. Furthermore, the Talmud states: “R. Johanan said in the name of R. Simon b. Yehozadak: What is the source for [the prohibition] of seclusion in the Torah? From the verse ‘If your brother, the son of your mother shall lure you.’ [Deut 13: 7] And if the son of a mother is an instigator, is the son of a father not an instigator? Rather, a son can enter into seclusion with his mother, while no one else may enter seclusion with a woman with whom sexual relations are prohibited.”

[7]Shulhan Arukh, Yoreh De'ah, 112. The Shulhan Arukh reads: “The sages prohibited eating from the loaf of the idol-worshipping nations because of intermarriage.” The Rama comments: “And even in places where there is no fear of intermarriage, it is [still] prohibited.” This is based upon one of the responsa of the Rashba. The Rashba explains: “You asked if the loaf of priests, who have neither sons nor daughters is permissible, given that there is no issue of [intermarriage] with their daughters. And you said that you already asked us this at another time, and I forbade it, and said that it is a general prohibition...In conclusion, there is no end to your words [advocating that this be permissible] and there is no number to the circumstances that may permit leniency. And in my place, I continue to prohibit this, and there is no space to doubt [regarding this ruling.]” The Rashba notes that if the bread of priests were to be allowed, needless complications would arise in other circumstances which might lend themselves to

leniency or stricture. For example, the bread of those who did not have children yet would be permissible, while the bread of priests who had had children before entering the priesthood would be forbidden. Furthermore, the Rashba also notes that this would fall under the rubric of the eighteen precepts that could not be altered by a rabbinical court. See below, n. 9. Rashba, Chapter 1, 248.

^[8]The logic here is that even though murder was punished and not widely practiced, non-Jews were still suspect of murder, and so seclusion with them was prohibited. Therefore, Stern's argument that the Christian punishment for harlotry with a Jewess would allow for some justification of women's seclusion with non-Jews does not stand in Bacharach's eyes.

^[9] Shulhan 'Arukh, Yoreh De'ah, 153, 4. The text reads: "And a Jewess shall not enter seclusion with idolaters even if there are many of them and their wives are present." This is the same chapter in which Karo rules that leaving an animal in a non-Jew's inn is permissible in the case that the non-Jews are punished for bestiality. See above, note 1.

^[10]Tosafot is discussing the following Talmudic ruling: "Rabah bar Bar Hana said, R. Johanan said: A rabbinical court may overturn the words of his friend's rabbinical court except for eighteen things regarding which even if Elijah would come [to overturn the ruling] the rabbinical court would not listen to him." Seclusion is enumerated as one of the eighteen. [Avodah Zara 36b] This is the reason for the discussion about the students of Hillel and Shammai discussed above in n. 4.

^[11]Citing the Ran in Betza, the Shulhan Arukh notes that on the eve of Yom Kippur, one should stop eating before the onset of dark. Karo continues, explaining: "Women who eat and drink until dark, and who do not know that it is a precept to add from the profane to the sacred, we do not compel them to do otherwise, lest she comes to continue her actions intentionally." Shulhan 'Arukh, Orah Hayyim, 248.

^[12]See 'Avodah Zara 23a, and Tosafot there. Tosafot explain that minor infractions of seclusion with a non-Jew do not render a woman sexually forbidden to her husband. According to Tosafot, a woman is only considered to be sexually forbidden to her husband under circumstances in which the woman had been captured by a non-Jew and was subject to him as an animal would be. The logic is that just as he might engage in bestiality, he might engage in sexual relations with the woman, rendering her sexually impermissible to her husband. However, Tosafot explain that: "Where she was not under the hand of an idolater at all, and she was able to cry and there would be someone to save her, the idolater would definitely be fearful, and there is no reason to forbid her [to her husband.]" Bacharach thus rules that the women in our case were relying upon this ruling, and were entering into seclusion for economic purposes. See n. 14 in the translation of Responsum 66, in which the differences between Stern and Bacharach are delineated.

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ספר שאלות ותשובות חות יאיר סימן עג Havot Yair Yair Bacharach, 1699

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שו"ת חוות יאיר סימן עג

הנה חזרתי והשבתי להרב הגאון על דבריו (ע"ל תשובה ס"ו דף ל"ח ע"א) כי מ"ש בשם הר"ן וה"ה לא נעלם מנגד עיני שהרי הב"י סתם כדבריהם בש"ע ר"ס קנ"ג ובמקומות שאינן חשודים וכו' רק שנ"ל דלא דמי דשם אין הטעם רק לפני עיור ומפני דבפונדקאות אין ענין המעשה הנתעב דבר סתר דשכיחא רבים ובפרט בארוות סוסים לכן יש לחלק ולומר דווקא בימיהם שלא היו עונשין והיה נעשה להם כהיתר כדמוכח מהנהו עובדא דבגמרא /ע"ז/ סוף /דף/ כ"ב (ונ"ל דלגודל הרגלם בכך אסרו רז"ל בכל גוונא אף שהיה מקום לומר דבדאית לגוי ג"כ בהמה שרי וידעתי שיש פתחון פה לומר אפילו אית ליה בהמה יחשוק בזו דחביבין עליהן בהמתן של ישראל רק דא"כ גם גבי הקרבה לע"ז יש חשש שיקריב שניהם או ניחא לי' טפי בבהמות ישראל והא ודאי ליתא כדמוכח בפ"ק דע"ז ו' ע"א) מש"כ ענין היחוד שעקרו מפני שע"י היחוד בלי רואה יתקפהו יצרו ולא ידע מזה איש ותדע שהרי גם יחוד אשה עם ישראל אחד או אפי' עם שנים ופריצי אסור אעפ"י דבדאי מענשין אלא ע"כ משום שהוא דבר שבצנעה ולכך תרי דפריצי לא יפרסמו ויחטאו שניהם וכן בגוי אפילו אשתו עמו לא תפרסם ולא מרתת כלל משום עונש לכן אין לחלק בזה וע"ק הרי גבי גזירות חז"ל קי"ל אפילו בטל הטעם הגזירה קיימת (וזה קשה גם על חילוקי גדולי הראשונים דורות הקדמונים בין דורות אלו בקצת דברים) וא"כ חלילה נקל בסתם יינם שלא היה הגזירה רק משום בנותיהם ויחוד דא"א = דאשת איש = חמור טפי דדאורייתא היא אפילו עם ישראל (אלא דנ"ל דמדאורייתא לא נאסר רק ביחוד גמור רק דחז"ל אמרו דאין אשתו משמרתו ואפילו כמה גוים אצלו רק דצ"ע דה"ל להש"ס ע"ז ל"ו לתרץ כך דשמאי והלל גזרו אף בשני גוים ואשתו עמו. וי"ל דזה דוחק דסתם אמר גזרו על בנותיהן ומ"מ קושט' דמילתא דמדאורייתא דווקא יחוד ממש הוא והיא לבדם ויליף מקרא דמסית דג"כ מסתמא בסתר כבקרא רק רז"ל אסרו גם בתרי כשירי ובג' פריצי ובגוי אפי' אשתו עמו) וכן פת של גוים שכתב הרשב"א דאפילו פת של כומרין דלא שייך חתנות אסור כבהג"ה ש"ע ר"ס קי"ב ולפי מ"ש הרב נתיר בזמן הזה דלא שייך חתנות בשום ענין ובשום גוי. וראיתי שהוא פוסח על שני סעיפים וטעמים באשר הרגיש שאין בשום אחד לבדו ממש הא דלא שכיח' והא דמענשי ולא זה וזה שיש בהם רוח חיים כי טעם דמענשי גם בימיהם היו מענשין בלי ספק על ש"ד. ומפני כך ג"כ לא היה שכיח. ועוד נ"ל דלא הקילו הר"ן וה"ה רק בחשד רביעה שהוא מצד עצמו דבר נתעב ונאלח בעיניהם ואינם חשודי' בה וזהו עיקר הטעם ולכן לא זכר ה"ה בשם הרשב"א טעם דמענשי ור"ל אפילו בלי מורא עונש. ולכן לא זכר הב"י בש"ע להקל גבי יחוד ישראל או ישראל'י אף ששנוים יחד בסי' זה. על כן אני מחזיק בדברי הראשונים שמפני שעיקר מחיותינו מהם ומוכרחים אנו לישא וליתן עמיהם ומפני שנשי דידן ג"כ נושאות ונותנות בשלנו ואנחנו טרודים מאד על המחיה דקשים מזונותינו וצרכים אנו לשלוח נשינו אליהם לישא וליתן עמיהם וה"ל

קרוב שאין הציבור יכולים לעמוד בו ומזה נתפשט התירו אע"פ שבאמת אינו מותר בלי ב"ד שיתירו כ"ש יחוד שהוא מי"ח דבר שאפילו אלי' אינו יכול לבטל כמ"ש התוס' פ"ב דע"ז ל"ו ע"א וע"ב מ"מ ממילא מפני רוב הצורך נתפשט ולא ראו חכמי דורות למחות מפני שראו שא"א לעמוד בגזירתם א"נ מיחו ולא הועיל ואפשר דע"י חימוד ממון משא ומתן ילכו בלי ציווי בעליהן וכבר כתב הר"ן דכל מידי דלא מפורש בתורה לא מחינן בידיהו הובא בש"ע תר"ח. וזה הוא טעם פרצת הדור בזה ויספיק גם ליחוד אנשים עמהם דנוהגין היתר ותו לא מידי: יאיר חיים בכרך

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