

# CENTER FOR MODERN TORAH LEADERSHIP



## WEEK 4 SBM SUMMARY - PRACTICAL, PSYCHOLOGICAL, AND ETHICAL MOTIVATION FOR RELAXING RABBINIC PROHIBITIONS

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Mishnah Shabbat 153b decrees that if a Jew is carrying their wallet in a public domain late Friday afternoon, and realizes that they won't arrive in a safe place before Shabbat, they must hand their wallet to a non-Jew to carry it for them. The "must" means that this solution takes precedence over carrying the wallet themselves in less-than-four amah increments. Ordinarily, having a non-Jew carry an object for a Jew four amot in a public domain would be a violation of *amirah l'nokhri*, instructing a non-Jew to perform a Shabbat action prohibited to a Jew. Similarly, carrying an object more than four amot via multiple trips of less than four amot would be Rabbinically prohibited. The Rabbis removed the prohibition of *amirah l'nokhri* in this case on the assumption that even Shabbat-observant Jews "can't restrain themselves with regard to their money" and would otherwise carry the wallet themselves. They permitted carrying the wallet in multiple trips of less than four amot only as a last resort.

All the above is Rashi's understanding. Rambam, however, formulates the issue not as "can't restrain themselves" but rather as "can't regulate themselves". He holds that carrying in less-than-four amah increments is ordinarily permitted because Jews can be trusted to carefully observe the limit. However, the prospect of losing one's money will cause people to stretch the boundaries even at the risk of violating a Biblical prohibition. Therefore, the Rabbis permitted handing the wallet to a non-Jew, which is ordinarily forbidden. However, this permission applies only to hard-earned money, to which one has become psychologically attached. Money that one found on the way may be carried in less than four-amah increments and may not be handed to a non-Jew.

We're interested in the principles underlying the permission of handing the wallet to a non-Jew. Both Rashi and Rambam seem to say that we permit the Rabbinic violation of *amirah l'nokhri* when maintaining it would make a Biblical violation likely or at least more likely. Rashi appears to hold that we do this when we recognize that people are psychologically incapable of restraining themselves and will deliberately violate a Biblical law unless given a less-prohibited means to achieve their end; Rambam appears to hold that we do this when we recognize that people will be incapable of regulating themselves as the law necessitates. We don't know whether Rashi and Rambam would accept each other's principles.

We also saw cases where emotional upheaval and consequent possible disregard for law is a reason to be less permissive. For example, Mishnah Shabbat 117b teaches (even according to Rabbi Yose) that one may only save three meals worth of food from a housefire on Shabbat, even when saving the food entails no technical violation of Shabbat. The limit serves as a reminder of Shabbat; the worry is that one might otherwise come to put out the fire in order to save the food.

Talmud Shabbat 142b records a dispute about a wallet forgotten in a public space before Shabbat. Shu"t HoRashba Hameyuchasot l'hoRamban #205 understands the conclusion to be that one may not carry it in three-amah increments or ask a non-Jew to carry it to safety. A possible explanation is that because the owner recognizes their own fault for not making sure the wallet was somewhere safe for shabbat, they will be less inclined to violate a Torah law to save it.

Ran al HaRif Shabbat 66a adds that we need to permit Rabbinic laws only in cases where observing the law would otherwise force a person to actively throw away their money, as we're certain they won't be able to do this. An example is a person carrying a wallet on Friday afternoon who is surprised by the imminence of Shabbat. However, people will be able to accept a passive loss, for example they will be able to restrain themselves from extinguishing a fire even if that will cost them possessions.

Ran contends that three states of mind regarding financial loss must be considered. If one is extremely distressed/discombobulated, we can't make any exceptions for them, as that will lead them to believe that the ends justify all means; in fact, we must be extra-stringent, as in the case of saving food from a fire. If one is not distressed at all, there is no need to make exceptions, as we can expect obedience to the law. The intermediate state is one during which one cannot regulate their actions easily, but if we are lenient with them will be able to work within the new relaxed framework without violating torah law.

Shulchan Arukh Harav explains that a person who thinks they have no permitted way to save their money will violate a Torah law to save it, and therefore we must give leniencies to prevent this. Even so, we must be careful what leniencies we give, as one's emotional state will affect whether they are

capable of staying within the permission given and not violate a Torah law.

We are left with three major criteria for paskening in cases such as this:

1. Emotional state
2. Possibility that a torah prohibition will be blatantly violated without a leniency
3. Possibility that a leniency will lead to violation of a torah prohibition

These criteria need to then be considered alongside other principles we learned earlier this month, such as **הטא בשביל שיזכה**, allowing one to sin in order that someone will benefit (often from doing a different mitzvah), and the restriction saying this is only in the case of a communal mitzvah, in a case that pertains to many, or in a great/important mitzvah. Taking all of these into account should begin to give us an idea of how we would approach similar cases brought before us.

One more interesting thing we spoke about, in a guest shiur with SBM alum Rabbi Jonathan Ziring, was regarding the possible motives for making a radical psak. We spoke about the changes in the law prohibiting saving a non-Jew's life on Shabbat. The way many of us are used to viewing this, is that the most radical position is the one that claims that ethically there is no difference between Jews and non-Jews, and therefore permits saving them. The less radical position is based on a pragmatic awareness that not saving nonJews will worsen communal relationships and lead the Jews being endangered.

Rabbi Ziring presented a different way of looking at it, from the late Ashkenazic Chief Rabbi Isser Yehudah Unterman. Rabbi Unterman assumed that halakhic ethics always required violating halakhah to save Jews and non-Jews alike. Shabbat is a special case. The default halakhah put Shabbat on par with idolatry, adultery, and bloodshedding as a sin that one must sacrifice one's life rather than commit. However, that default halakhah is overridden by the logical but narrow argument that if we save a Jew by violating shabbat, they will keep many more shabbats, therefore raising the overall keeping of Shabbat. This narrow argument does not apply to nonJews. Abbayay on Talmud Avodah Zarah 26a suggests that this logic could be explained to nonJews without triggering anti-Semitic violence.

Nonetheless, Rabbi Unterman certainly agrees that violating Shabbat to save nonJews is obligatory today. Two things have shifted. Rabbi Klapper argues that it is simply empirically false that nonJews would accept the argument. Rabbi Ziring focused on changes in reality. Shifts in communal relationships and living conditions means that Jews were in a greater position to save non-Jews, and especially – instantaneous

worldwide communications meant that every action or inaction of every Jew would immediately become known to every nonJew, and surely some of them would respond with intensified antisemitism. It therefore became obvious that for Jews to save nonJews on Shabbat is a communal act of pikuach nefesh/self-preservation and permitted. Some students put this in a broader context; Jewish lives in many contexts depend on systems which integrate Jews and non-Jews. The example of organ-donation, and the challenges to Israel's participation in the European system because not enough Jews were donating post-mortem organs, teaches us that Jewish lives are lost when we are excluded from these systems.

(Rabbi Klapper noted that Rav Aharon Lichtenstein made an argument very similar to Rav Unterman's. Rabbi Klapper's presentation of Rav Unterman and Rav Lichtenstein's positions can be found in his [published dvar torah for Parshat Shelach earlier this year](#).)

We therefore need to keep in mind not only the halachic principles and criteria that we learned in the primary sources, but also to try and understand how the situation we're facing came to be. A radical change in reality may mean that a certain halakhic requirement or restriction is no longer relevant, (for example, Rav Moshe thought that all milk in the US was chalav Yisrael because of the high standards of regulation, therefore making the distinction between our milk and their milk no longer necessary), or impossible. It is vital for us to be careful to understand this new reality correctly in order to make proper decisions.

If we think there has been an ethical change that needs to be addressed, that there are things that we understand now that they didn't then, we also need to be very careful, perhaps more so. We need to remember that our ethical intuition is useful and important, but it may not always be right, and more so when it contradicts what seem to be the ethics of Torah.

Halakhic tradition records more room for flexibility than we might have thought, even with regard to permitting the previously or ordinarily prohibited. That increases rather than decreases the responsibility of the posek or poseket. As we continue our learning of texts, we must also deepen our understanding of reality and of ethics, and of their interaction, in the hope of gaining the sensitivities necessary to properly pasken such delicate cases, or at least to recognize when they have and when they haven't been properly paskened.

*Shabbat shalom!*

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