

## *Kavod Habriyos*

### **1. Rav's Ruling: Losing One's Shirt in the Marketplace**

The Gemara<sup>1</sup> states: if one finds kilayim [forbidden mixtures of wool and linen]<sup>2</sup> in his garment, he must remove it, even in the marketplace, for "There is no wisdom or understanding or counsel before Hashem."<sup>3</sup>

The Gemara is telling us the consideration of *kavod habriyos* [human dignity] is not sufficient to override a prohibition in Torah law.

- How would you express the lesson which the Gemara derives from the verse?
- Is this ruling one which *should* require a verse? Couldn't one say that it is obvious that one may not violate a Torah prohibition regardless of whether it brings them some measure of embarrassment?

The Gemara will now proceed to challenge the above ruling from a number of sources. Each challenge will serve to further fine tune for us an understanding of the relationship between *kavod habriyos* and general Torah obligations.

Let us begin.

### **2. First challenge: Accompanying the Mourner**

Background: A Kohen is not allowed to come into contact with a dead body, this includes walking through a path which has dead body buried beneath.

Gemara: They raised a challenge on this ruling: If they buried the deceased and were returning, and there were two paths before them, one which is pure and the other impure, if he chose the pure path they accompany him on the pure path, if he chose the impure path they accompany him on the impure path out of respect for him. But why? Let us say 'there is no wisdom or understanding before Hashem!'

- Consider the Gemara's question. Is the element of *kavod habriyos* here exactly the same as that of Rav's case where one finds *shaatnez* in his garment?

The Gemara answers: Rabbi Aba explained that the field in question is one which is considered suspected of being impure by Rabbinic decree.

---

<sup>1</sup> Brachos 19b

<sup>2</sup> The term kilayim refers to forbidden mixtures generally. The specific term used for the mixture of wool and linen threads is *shaatnez*, and this is the term we will be using in our discussion.

<sup>3</sup> Mishlei 21:30

The Gemara is thus conceding that while the idea of *kavod habriyos* may not override a Torah prohibition, it will override a Rabbinic prohibition. This is one of a number of areas whereby Derabanan laws are more lenient than Torah laws. Accordingly, in our opening case, if the *shaatnez* which one found in his garment was forbidden on a derabanan level, he would be allowed to return home before taking the garment off.

### 3. Second challenge: Not Getting one's Hands Dirty

Background: the Torah commands us to return lost property. The verse states<sup>4</sup>: “Do not see your brother's ox or sheep wandering around, and ignore them”. The Talmud proceeds to discuss the word “and ignore them”, which is considered to be redundant. The result is quite striking...

They raised a challenge on this ruling: “And you will ignore them” – this teaches us that there are times when you are *entitled to ignore them*. How so? If he was elderly and it was beneath his dignity to pursue the animal, concerning him the Torah says: “and you will ignore them”!

- How would we formulate the intent of the Gemara's challenge?

It seems that the Torah is taking into account a *kavod habriyos* consideration, i.e. the indignity of the elderly person, and thus allowing him to ignore the lost article, even though for someone else to do so would be a Torah prohibition! This sounds like *kavod habriyos* can override a Torah prohibition.

To this the Gemara answers [rather straightforwardly, it seems]: “There it is different, for the Torah explicitly says “you may ignore it”. I.e., that case is an exception.

Yet the Gemara presses on: Why not derive the general rule from that case? How do we know it is an exception?

The Gemara responds: we do not learn matters of *issur* [general prohibition] from matters of *mamon* [money].

- What is the meaning of this response? Why would we not learn *issur* from money in this regard? Is not money ultimately also a matter of *issur*, namely, the prohibition against harming one's fellow's property? If *kavod habriyos* can override the Torah prohibition of ignoring someone else's lost object, why does it not override any other prohibition?

The commentators explain: although a violation of monetary law is a full violation of the Torah's prohibition against stealing, in one respect money is more lenient, namely, the owner of the object can forgo his rights to the object, thus rendering it completely

---

<sup>4</sup> Devarim 22:1

permissible! Obviously, this cannot be done with Torah law generally. Non-kosher food is not kosher and forbidden for consumption, regardless of the owner's feelings about the matter. Thus in the case of lost property, the Torah is essentially demanding that the owner waive his rights to have the object returned to him if it will cause the finder to suffer an indignity. This idea is only applicable with monetary laws, and thus the Gemara says that we do not derive general matters of issur from this case.

Indeed, the commentators further explain that this is what is behind the idea mentioned above in the first challenge, namely, that *kavod habriyos* can override Derabanan law. The basis of this leniency is that when the Rabbis enacted their laws, they waived them in the face of *kavod habriyos*, and in this regard they took their cue from the Torah's demands of the owner of the lost object!<sup>5</sup>

#### 4. Third Challenge: Meis Mitzvah

Background: The Torah states that a Nazir does not become tamei [impure] for any of his close family members. Having stated this generally, the verse proceeds to list all of his close family members by name. The Talmud points out that all of these references are in fact redundant, seeing we have already been told the principle generally. This leads the Gemara to explain that each of these terms refer to a different scenario where we infer that although he may not become tamei for that family member, nonetheless he can – and must – become tamei to take care of a *meis mitzvah*<sup>6</sup>. The case we are about to quote relates to the final family member mentioned regarding the Nazir: his sister.

“And for his sister” what does the verse teach us? If one was on the way to bring the Pesach offering, or to circumcise his son, and heard that his sister passed away, one might think that he should turn back to attend the funeral, thus the Torah states “for his sister”, i.e. he does not go back. One might think that in this situation if one comes upon a *meis mitzvah* he similarly does not involve himself in the burial, but rather proceeds to bring the Pesach offering. To this end the Torah stresses “for his sister”, i.e. he does not become impure for his sister, but he does become impure for a *meis mitzvah*.

- How would we formulate the proof the Gemara is trying to bring?

The issue with *meis mitzvah* is clearly one of *kavod habriyos*, for it is a disgrace for the deceased to lie there unattended. The verse teaches us that one may involve himself with a *meis mitzvah* even though it will be at the expense of bringing the Pesach offering, which is a Torah obligation. This tells us that *kavod habriyos* overrides a Torah obligation! This is the proof of the Gemara

To this the Gemara responds: There it is different for the Torah states “and for his sister”, which specifically teaches us the ruling in this case.

---

<sup>5</sup> Chasam Sofer, quoted in responsa of Ksav Sofer Orach Chaim sec. 37

<sup>6</sup> *Meis mitzvah* refers to the body of a deceased person who has no close family members to take care of his burial needs.

The Gemara asks: Why not learn the general rule from there, i.e. that in all cases of Torah obligations *kavod habriyos* takes precedence?

The Gemara responds: “there he is passive”.

- What is the meaning of this answer?

The Gemara is explaining that in the case of the Pesach offering, taking care of the *meis mitzvah* does not involve him actively violating a Torah prohibition, rather he is merely refraining from fulfilling a Torah commandment. *kavod habriyos* allows one to remain passive in the face of a commandment, but not to actively override a prohibition.

## 5. Interim Summary

Let us review our findings regarding the strength of the consideration of *kavod habriyos* vis a vis other obligations. We have discovered that:

1. *Kavod habriyos* can override a derabanan prohibition
2. *Kavod habriyos* can influence the outcome in a situation involving money
3. *Kavod habriyos* can allow one to remain passive in the face of a Torah obligation.

## 6. Looking Back... / Keeping the Thread

- Think carefully: The Gemara presented three challenges to Rav’s ruling, and gave three responses. Looking back, are all three responses necessary, or could it be that an answer which came out in response to a subsequent challenge would actually be effective in answering an earlier challenge as well, leaving the earlier answer redundant?

In response to the challenge from ignoring a lost article [challenge 2], the Gemara responded that this dispensation is learned from a verse [“and you will ignore it”]. In response to the next challenge regarding refraining from bringing the Peach offering [challenge 3], the Gemara learned from the word “and for his sister” that *kavod habriyos* allows one to remain passive in the face of a Torah obligation. That being the case, we may ask, why do we need a special verse to teach us that one may ignore the obligation to return a lost object? Refraining from returning the object is passive in nature, and we already know that one may remain passive for the sake of *kavod habriyos*. I.e., lesson number two seems redundant!...

## 7. Defining Actions

Having summarized the significance of *kavod habriyos*, we find ourselves facing an important question in the sugya:

- Have a look at the above three qualifications. Do any of them raise a question regarding Rav’s initial ruling of someone who finds *shaatnez* in his garment?

The third challenge of the Gemara resulted in our concluding that *kavod habriyos* may allow one to remain passive even in the face of a Torah matter. The one who discovers *shaatnez* in his garment wants to know whether he needs to remove it, or may continue to wear it until he arrives home. Here, *kavod habriyos* is asking only that he remain with it on while in the marketplace, that is a passive state, and as we have seen from the *meis mitzvah* case – should be allowed!

- Why is keeping his *shaatnez* garment on considered active?

The Shaagas Aryeh explains that this matter is based on a principle found in a number of places throughout the Gemara. Namely, when a person enters a state through an action, then as long as he remains in that state, it is considered as if he is still doing that action. This is a kind of halacha ‘sustain effect’. Here, too, it was an act of putting on the garment which brought him to be wearing it. Thus, as long as he remains wearing it, he is considered to be perpetuating the act of putting it on, and hence has the status of one who is actively wearing *shaatnez*, and an action is not overridden by the concern of *kavod habriyos*.<sup>7</sup>

---

<sup>7</sup> There is a very interesting and rather subtle question to be asked regarding the above distinction, i.e. that *kavod habriyos* can allow one to remain passive in the face of Torah concerns, but not to actively override them. How might we understand the nature of this distinction? Let us consider two possibilities:

- a. It is a *positive evaluation*. Actively violating a prohibition is more severe than doing so passively; and the weight of the concern of *kavod habriyos* is rated as being in between those two. In other words, in the hierarchy of concerns, the concern of protecting *kavod habriyos* is rated as being more important than being passive on the face of a Torah obligation, but less important than that of actively violating a prohibition.
- b. It is a *practical outcome*. It could be that all of the above concerns are rated as being of equal weight. i.e. *kavod habriyos*, passively refraining from a Torah obligation and actively transgressing a Torah prohibition are all considered equally important. It is for this very reason that *kavod habriyos* allows one to be passive, but not active. For whenever there is a conflict between these equivalent values, their equal weight vis a vis each other leads us to stalemate, for one could not actively choose one over the other. What this means practically is what the Gemara expresses when it says that *kavod habriyos* can ‘override’ a Torah obligation in a passive way, but not in an active way.

It is possible to determine the correct understanding of this matter based on two of the questions we have dealt with.

In the case of the pesach offering vs. *meis mitzvah*, we saw that the concern of *kavod habriyos* allows one to abandon the trip to bring the Pesach, and become actively involved in taking care of the *meis mitzvah*. In this case, the concern of *kavod habriyos* causes him to cease being involved in the Pesach, and to become actively involved in the *meis mitzvah*. If the concept of *kavod habriyos* allowing one to be passive meant that in the clash of equivalent values one cannot take action but must remain passive, then what gives him the license to actively shift his agenda and move his activity over to the *meis mitzvah*? Rather, it must be that the distinction between active and passive is a positive evaluation of the strength of each concern. *kavod habriyos* entitles him to be involved in the *meis mitzvah* in the face of refraining from bringing the Pesach offering. (R’ Elchanan Wasserman, Kuntres Divrei Sofrim 3:27-31)

Secondly, we noted above that keeping the *shaatnez* garment on is considered ‘active’ [which is why Rav says he has to take it off], since it initially began with an action.

## 8. Shake Up from Shavuos

The Gemara in Shavuos presents a parallel ruling regarding the issue of *kavod habriyos*:

Rabah bar Rav Huna said: If a Torah scholar knows testimony about his fellow, and it is degrading for him to go to a court which is made up of his juniors, he does not need to go. Said Rav Shisha the son of Rav Idi: We have learned similarly [regarding lost property]: if one found a sack or a basket, and it is not his way to handle such things, he does not need to pick it up. These words are said regarding a monetary case. However, if he knows testimony regarding *issur* [something being prohibited] – there is no wisdom, nor understanding, nor counsel before Hashem.

- Does this ruling in the Gemara Shavuos seem to concur in all respects with the conclusion of the Gemara in Brachos?

The Gemara Brachos concluded that if one is passive, we take note of *kavod habriyos* even with regards *issur*. In the case of testimony, the Torah scholar is being passive by not testifying, why then does the Gemara state that if it is a matter of *issur* he is obligated to forgo *kavod habriyos* and testify?

This is the question of Tosafos in Shavuos.<sup>8</sup>

- Before consulting the answer of Tosafos, can we ourselves identify any differences between the *kavod habriyos* concern in the two cases?

## 9. Tosafos: Grading Degradation

Tosafos respond that the level of degradation in the two cases is not equivalent. In the case of *meis mitzvah* [the Gemara in Brachos], the degradation of a body lying there with no one to bury it is a very serious one. In such circumstances we are told that one may even remain passive in the face of a Torah obligation, e.g. bringing the Pesach offering. In the case of the scholar who knows testimony [the Gemara in Shavuos], the degradation of testifying in front of his juniors is much milder. A lower level degradation does not entitle him to remain passive if it will lead to a prohibition in the area of *issur*.

---

Now, while keeping the garment on may have the status of an action, nonetheless the fact remains that from the time he discovered that he is wearing *shaatnez*, he is not doing anything by keeping it on. If the formula of *kavod habriyos* allowing one to be passive is a de facto ruling of passivity when all the equivalent values clash, then he should be able to continue doing nothing. Rather, we see that *kavod habriyos* is rated as being more important than passivity, and less important than activity. Once his state has the status of an active violation, it will override the concern of *kavod habriyos*, and thus he will have to remove the garment.

<sup>8</sup> *S.v. aval*

- Look back at the question raised above in section 6. Will this explanation of Tosafos help explain why we need two separate lessons from the verse regarding *kavod habriyos* – “and you will ignore it” , and “for his sister”?

We now understand why we need both lessons. The two lessons refer to two differing levels of *kavod habriyos* issues. The lesson of “and for his sister” teaches us that when dealing with a high level *kavod habriyos* issue, one may refrain from a Torah obligation. The lesson of “you will ignore it” is also necessary, for it tells us that when dealing with a low level *kavod habriyos* case one may refrain from returning the lost object, being in the category of *mamon* – money.

## 10. From the Tosafos to the Synagogue

It is very interesting to see this distinction played out in practical everyday life. The Rema<sup>9</sup> rules that if the corner of one’s tallis rips in a way which renders it disqualified from the mitzvah of tzitzis, he must take of the tallis straight away. The Magen Avraham raises a question: The problem with wearing a tallis without tzitzis is that one is thereby in neglect of the mitzvah to have tzitzis in his garment. Wearing such a garment is thus passive vis a vis the obligation of tzitzis. Why, then, is he required to take it off immediately? Is it not somewhat embarrassing to be the only one sitting in synagogue without a tallis. The answer, says the Magen Avraham, is that it may indeed be somewhat embarrassing, but the Rema subscribes to Tosafos’ distinction between different levels of *kavod habriyos* issues, and being on a lower level, one is not allowed to remain passive in the face of a Torah obligation, as per the Gemara in Shavuos

## 11. What if you saw *shaatnez* in someone else’s garment?

Thus far we have considered a situation where someone is in a public setting and discovers that they are wearing *shaatnez*. The ruling is that they must remove the garment immediately. The question arises: What if they see *shaatnez* in someone else’s garment? Are they likewise required to remove it? Or at least to alert them they are wearing *shaatnez* which will then require them to remove it themselves?

- Should the halacha regarding seeing *shaatnez* in someone else’s clothing be different than in one’s own? If so, why? Is the other person not equally obligated not to wear *shaatnez*?

Let us consider a couple of possibilities.

- a. Perhaps one may say that since the only one who has noticed it is not himself actively violating a prohibition, we may invoke the rule that one may remain passive for the sake of *kavod habriyos*, and thus he does not need to say anything as long as the other person is in a public setting.<sup>10</sup>

---

<sup>9</sup> Orach Chaim 13:4

<sup>10</sup> Shaagas Aryeh sec. 58

- b. Alternatively, even from the point of view of the one who is wearing the *shaatnez*, since he has no idea that this is the case, the level of stringency of his unconscious active violation is actually closer and more analogous to passivity than to activity, and thus *kavod habriyos* wins out, as it always does when faced with a ‘passive violation’.<sup>11</sup>

Indeed, the Rosh rules that if one sees that his fellow has *shaatnez* in his garment, he does not need to alert him and require him to endure the embarrassment of removing it in public.

## 12. Rambam

The Rambam<sup>12</sup> rules regarding this matter as follows:

If one sees kilayim forbidden on a Torah level in his friend’s clothing, even if he was walking in the marketplace, he must approach him and remove it from him immediately, even if it was his rabbi who taught him Torah, for *Kavod habriyos* does not override a negative prohibition which is explicit in the Torah.<sup>13</sup>

Apparently, the Rambam rates this situation as an active violation, for even though the observer is passive, nonetheless, he is observing an active violation, albeit an unwitting one, and needs to react accordingly.<sup>14</sup>

- Think back to the discrepancy pointed out by Tosafos [sec. 8] between the two sugyas regarding allowing passivity in the area of issur. Could the Rambam’s position help reconcile the sugyas?

According to the Rambam the two sugyas are actually talking about two different *kavod habriyos* questions. The first sugya regarding finding *shaatnez* in the marketplace deals with how to relate to *someone else’s kavod habriyos* in the face of a Torah prohibition. Here we say that the other person’s *kavod habriyos* may allow one may be passive in the face of a Torah obligation. Thus, the proofs which are brought deal with the *kavod habriyos* of someone else, e.g. the feelings of the mourner who will be left alone, the degradation of a *meis mitzvah* who lies unburied.

In contrast, the sugya in Shavuos deals with *one’s own kavod habriyos*, e.g. should the senior Torah scholar undergo the embarrassment of testifying before a junior court. There

---

<sup>11</sup> Responsa Pri Yitzchak 1:26

<sup>12</sup> Hilchos Kilayim 10:29

<sup>13</sup> Commentators point out that the Rambam’s reading of the case in the Gemara is not “one who finds *shaatnez* in his garment”, but simply “one who finds *shaatnez*”, i.e. even in someone else’s garment. The ruling of the Rambam also explains why the Gemara, after quoting the verse of “the is no wisdom etc. before Hashem”, concludes by saying “wherever there is a desecration of Hashem’s name one does not accord honor to a rabbi”, for according to the Rambam the Gemara is ruling that one would even have to remove the *shaatnez* garment from his rabbi.

<sup>14</sup> This dispute between Rambam and Rosh regarding seeing *shaatnez* on someone else’s garment subsequently becomes a dispute between the Shulchan Aruch and Rema (Yoreh Deah 303:1).

we say that he may only invoke *kavod habriyos* for himself regarding a monetary case, for there we will tell the plaintiff to waive his monetary rights in order to spare this scholar embarrassment. With regards the area of *issur*, however, on the contrary, we will insist that the scholar forgo his honor for the sake of preventing a violation of a Torah prohibition.<sup>15</sup>

- How will this explanation provide an alternative answer to Tosafos' question as to why we need both the lesson from "you will ignore it" and "for his sister"?

We will thus understand why both verses of "for his sister" and "you will ignore it" are necessary. The verse of "for his sister", which deals with *meis mitzvah*, teaches us the rule regarding someone else's *kavod habriyos*. i.e. passive in the face of *issur*. The verse of "you will ignore it", which deals with one who sees a lost object which would be degrading for him to return, teaches us the rule regarding one's own *kavod habriyos*, i.e. in monetary cases only.

### 13. Subjective vs. Objective

Let us suggest a third approach to understanding why there are two sources for the idea of *kavod habriyos*. Perhaps it is because there are two different yardsticks by which to measure a *kavod habriyos* concern. The verse of "and you will ignore" relates to someone for whom it would be degrading to pick up this object, given his individual station or status. For another person to pick up this object would not be considered degrading at all. The same is true for the senior scholar testifying before a junior court. All these concerns are subjective, and the verse teaches us that they may hold sway in matters of money, but not *issur*.

By contrast, the verse of "and for his sister" deals with a level of degradation which is universal. It is so fundamental a degradation that it is not dependant on the type of person one is or what they do. Any deceased body lying unattended is a breach of dignity, as is the case for anyone having to leave their clothes in the marketplace. This bedrock level of human dignity can impose itself even in the realm of *issur*, in the form of remaining passive even in the face of a Torah obligation.

### 14. Man vs. Mankind

Indeed, let us say more. Commentators raise a question which cuts to the very heart of the idea of *kavod habriyos*: what is the nature of this concern? Is it the mental anguish of degradation, which would thereby place the concern of *kavod habriyos* alongside other various forms of distress which the halacha needs to take into account, e.g. physical pain and monetary loss?<sup>16</sup> Or perhaps *kavod habriyos* goes beyond the pain of the individual, and is more an expression of the dignity of mankind. A recognition and consciousness of

---

<sup>15</sup> Urim ve'Tumim 28:12

<sup>16</sup> See Responsa Chavos Yair sec. 191

man as created in the Divine image is the foundation of living life on accordance with the Divine will. Looked at this way, the idea of preserving *kavod habriyos* is not a concern which *competes* with Torah laws, but rather a fundamental *contributing factor* to Torah living.

R' Elchanan Wasserman<sup>17</sup> demonstrates the veracity of the second approach by referring us to the *meis mitzvah* case. There, the deceased no longer feels any embarrassment, and it is not for his benefit that his burial takes priority over other concerns. Rather, the obligation to tend to his burial needs is for the benefit of those who are living, that they not see a human body on this state of degradation.

Perhaps we may say that this is what is behind the two separate sources for the idea of *kavod habriyos*, for indeed they relate to two different categories of *kavod habriyos* which are fundamentally distinct in nature, and hence in halachic weight. The cases of finding a lost object which is beneath one's station to return, or of testifying before one's juniors, do not pertain to the global issue of human dignity, rather, the issue is one of personal indignity. The question here is one of embarrassment endured by the person, and the guidelines for this type of concern are derived from the verse "and you will ignore". The second category is represented by the *meis mitzvah*. This is fundamental violation of the dignity of man, and its distinct guidelines are derived from the verse "and for his sister".

Moreover, the litmus test which separates these two types of *kavod habriyos* situations would be to ask the question: In a case where the halacha gives priority to *kavod habriyos*, may a person choose to waive his rights and forego his honor? It would seem that the answer would depend on the nature of the *kavod habriyos* question at hand. If someone sees a lost object which is beneath him to return, and thus is exempt from doing so, should he choose nonetheless to do so he may well be permitted to do so, for such a person has set aside his feelings of embarrassment and chosen to engage in the mitzvah. It may even be considered a praiseworthy act. However, if someone were to leave in their will that even if they were to be found by the roadside, they forego their *meis mitzvah* rights in the event that the finder is on his way to perform a mitzvah, we would presumably ignore them. In this situation, the honor accorded them is not for themselves, but for the Godly image which they carry, and that is not theirs to forego.

---

<sup>17</sup> Kovetz Shiurim Bava Basra sec. 49