

להתוודע ולהגלות מהמדי התורה בכל דף בשי"ס LEHISVADA



Shabbos Daf Yud Gimmel

Issurei D'rabbanan

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If Issurei D'rabbanan are forbidden Min Hatorah

The source for the chiyuv to listen to the Chachamim / If one who transgresses an issur d'rabbanan gets malkus / A number of leniencies that were created within issurei d'rabbanan

- ספד"מ להרמב"ם, השגות הרמב"ן, מגילת אסתר -

[❧] Our *perek* is based on a number of matters made forbidden by Chazal in an effort to prevent us from coming to transgress *Issurei D'oraisa*. As such, it is worthwhile here to explain the source for the *issur* to transgress the words of the *Rabbanan*. It is also important to understand exactly how *Issurei D'rabbanan* work.

In his *Sefer Hamitzvos*¹, the *Rambam* discusses the *inyan* of *issurei d'rabbanan*. He writes that anything Chazal tell us to do or warn us not to do, all this was already given over to Moshe Rabbeinu on Har Sinai with the purpose of informing us. It is as the *pasuk* states² “*Al pi hatorah asher yorucha v'al hamishpat asher yomru li'cha ta'aseh*”. He then warned us against transgressing any decree or enactment put in place as we see from the *pasuk*³ “*Lo sasur min hadavar asher yagidu li'cha yamin u'smol*”. Now, it is clear from his words that there is a warning in the *Torah* concerning all *issurei d'rabbanan*. We were forewarned regarding anything that Chazal come to *assur* in all generations, and this can be seen from how we are commanded to listen to our *Chachamim* without deviating from their ways.

Additionally, the *Rambam* there⁴ also writes that we are commanded to listen to the *Beis Din Hagadol*, and to act on anything we are instructed to do within the realms of *issur v'heteir*. This applies regardless of whether it is extracted through one of the methods used to expound on the *Torah* or something they determine to be one of the *Torah's* secrets. Moreover, we are bound by any matter they see to be a reasonable procedure as a means of strengthening the *Torah*. We are all obligated to listen, act, and stand through their words without deviation. This was made known to us through the words “*Al pi hatorah asher yorucha*”.

On the other hand, the *Hasagos HaRamban* there disagrees with all this. From the *Rambam* it is clear that *mitzvos asei d'rabbanan*

(including *Mikrah Megillah* and *Neir Chanuka*) or *issurei d'rabbanan* (including eating chicken with milk, secondary *araiyos*, and *shevus* on *Shabbos V'Yom Tov*) are all included in the *lav min hatorah* of “*Lo sasur*”. Regarding this, the *Ramban* begs to differ for a number of reasons.

He first focuses on how it comes out according to the *Rambam* that by all *issurei d'rabbanan* (e.g. Using something attached on *Shabbos*, moving *muktzeh*, or *Amirah l'akum*) one transgresses both an *asei* and *lo sasei min hatorah*. He asserts that if this were to be true, then one should be culpable to receive *malkus* for all of them. Now, it may be true that practically one would never get *malkus* as we are dealing with a *lav* which is given over for a capital punishment. [This is because the *lav* of “*Lo sasur*” includes a wayward sage who is punished by strangulation.] As we know, the *halacha* is that one cannot receive *malkus* for such a *lav*. However, there is an alternative opinion holding that one can receive *malkus* even where the *lav* is given over for capital punishment. According to that opinion it should come out that one receives *malkus* for all *issurei d'rabbanan*, and yet we know such a thing is untrue.

His second issue has to do with the general rule dictating how we should act stringently concerning *safeikos d'oraisa* and leniently by *safeikos d'rabbanan*. Now, according to the *Rambam* anyone who is *oiver* on an *issur d'rabbanan* in turn transgresses an *issur d'oraisa* as well. As such, we should then be stringent in the words of Chazal to the same degree to which we are concerning *divrei Torah*. Every *safek d'rabbanan* is truthfully a *safek d'oraisa* as well, being that one transgresses a *lav min hatorah* in the process.

Moreover, he also sees it to be problematic how we find certain leniencies concerning *issurei d'rabbanan* more so than their *d'oraisa* counterparts. One example is what we see from *Pesachim*⁵ concerning how children are believed about matters relating to *issurei d'rabbanan*. Another can be seen in *Kesubos*⁶ where we say that an adult can testify about having seen things in his childhood within the realm of *issurei d'rabbanan*. Additionally, we find in many places

how *issurei d'rabbanan* are pushed off for reasons that aren't sufficient to knock off *d'oraisa's* as well. One such case is how we find⁷ that since the *issur* to remove an object from its place of availability is *m'drabbanan*, as such it is pushed off in the face of *Tzaar Baalei Chaim* which is *d'oraisa*. This is said although the same can't be found by actual *issurei d'oraisa*. Now, if we say one transgresses *m'doraisa* by every *issur d'rabbanan*, we should then ask why the two should be treated any differently when coming up against *Tzaar Baalei Chaim*.

On the other hand, the *Sefer Megillas Esther*⁸ asserts that the proper *pshat* is like the *Rambam* and as such all *issurei d'rabbanan* are also regulated by the *lav* of "*Lo sasur*". This is true concerning both instances where the *Chachamim* explain the *Torah's* intention and even concerning *mitzvos* or *issurim* that they came up with on their own. He then goes on to answer for all of the *Ramban's* questions. His first obstacle is dealing with what he asked that according to the *Rambam* one should get *malkus* for all *issurei d'rabbanan*. Regarding this, he answers in truth this is the reality according to the opinion that one can receive *malkus* for a *lav* given over to capital punishment. To this opinion one would receive *malkus* for all *issurei d'rabbanan*.

He then moves one to answer for the *Ramban's* question concerning how one should be stringent by *issurei d'rabbanan* similar to what we find by *divrei Torah*, and as such all the leniencies should

have no place. For this he writes that it is no question at all. This was the *ikar* decree for one to be lenient when dealing with *Chazal's* words, and it was enacted as an effort to differentiate between them and *divrei Torah*. It can be looked at as a stipulation within the *ikar issur* itself. When making the *issur*, the *Chachamim* also stipulated that one can apply all the leniencies found in the *Gemara*.

This is the whole reason for why we say to be lenient when dealing with *safeikos* in *issurei d'rabbanan*. Although one also transgresses an *issur d'oraisa* in the process, nevertheless this was the initial stipulation of *Chazal* for their enactments to not be *assur* in place of a *safek*. [1]

He then even applies this to explain what we find in *Brachos*⁹ that *issurei d'rabbanan* are pushed off for *kavod habriyos*. We can say that this is because *Chazal* themselves stipulated within their decrees for them to not apply in the face of such things.

However, the *Ramban* there brings this idea up as well. He asserts that one shouldn't twist the matter and say *Chazal* made stipulations concerning how to be lenient with their words. Such a thing makes no sense, and isn't the *ikar*. What comes out is that on the one hand it may be true the *Megillas Esther* answers for the *Rambam* by saying *Chazal* made stipulations in their words. However, the *Ramban* also had this thought, and nevertheless determined that it couldn't be the case.

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Concerning the Chiyuv to listen to the words of the Chachamim

If issurei d'rabbanan aren't included in "Lo sasur", then what is the source for our need to listen to the Chachamim / Understanding a support from a pasuk

- קובץ שיעורים, חידושי הריטב"א -

[2] The *Kovetz Shiurim*¹⁰ comments on the opinion of the *Ramban* who holds that *issurei d'rabbanan* don't also include an *issur d'oraisa*. As we have seen, he proves this from how we find many leniencies within *issurei d'rabbanan*, and asserts that the *pasuk* of "*V'asisa k'chol asher yorucha v'lo sasur*" applies specifically to *dinnei d'oraisa* that are merely explained through the words of the *Chachamim*. Now, with this in mind the *Kovetz Shiurim* raises an

important question. To the *Ramban* we have to determine a source for our obligation to listen to the *Chachamim* and avoid deviating from their words. To him there is no command found in the *Torah* concerning this *chiyuv* neither from a *pasuk*, *halacha*, nor logic. It isn't possible to say this is dictated by logic, because then we would be obligated *min hatorah*. We find many places where the *Gemara* questions the need for a *pasuk* when something is logical, and as such even a *chiyuv* generated by logic is also considered to be *min hatorah*.

He begins to answer for this by bringing the *Gemara* in *Yevamos*¹¹ where the *b'raisa* teaches how *Moshe Rabbeinu* did 3

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If being lenient in a safek d'rabbanan is a din of doubt or surety / Concerning a sfek safeikah to the stringent side / When someone has a safek whether or not they are obligated in a mitzvah d'rabbanan, if they can be motzi others / If we make a bracha on water we aren't sure is usable for Netilas Yadayim / An additional reason for why we are lenient in safeikos d'rabbanan

- קובץ שיעורים, קריית ספר -

[1] The *Kovetz Shiurim*²⁷ goes further into this idea how we are lenient by *safeikos d'rabbanan* because that was the stipulation made when they were initiated. He writes that as such it isn't that we can rely on the side of *heteir* in the *safek*, rather it is completely *muttar* with certainty. This was the stipulation of *Chazal* to push their words away in place of a *safek*. We find something similar to this from how the *Ran* in *Kiddushin*²⁸ writes that something *safek arlah* in *chutz la'aretz* is *muttar* out of certainty and not just doubt.

With this in mind, he then explains the opinion of the *Rambam*²⁹ who holds to be lenient even in a *safek d'rabbanan* where there is a *sfek safeikah* leaning towards the stringent side. He writes that in truth any *safek d'rabbanan* is *muttar* with certainty. Therefore, the fact that this leans to stringency makes no difference.

He continues that there are many practical differences depending on whether we say to be lenient out of certainty or doubt. One such case would be where one unsure whether or not they are obligated in a *mitzvah d'rabbanan* wants to be *motzi* others. If we say that reason to be lenient is out of certainty, then it comes out he is definitely *pattur*. As such, he wouldn't be able to be *motzi* others in their *chiyuv*.

Another case would be where one wants to make the *birchas al netilas yadayim*, but only has water in doubt whether or not it is usable for this purpose. The *din* there is that it can be used for the washing itself as we are lenient in *safeikos d'rabbanan*. Now, if the whole reason this is said is only by relying on the side of *heteir*, then it is only the *din* out of doubt. As such, no *bracha* would be made. The water could be *pasul*, and we are lenient when making *brachos*. On the other hand, if we say the leniency there is out of certainty, then the water is definitely *kosher* and one would make a *bracha*.

However, in his conclusion he brings the *Mabit*³⁰ who uses a different approach to answer for the *Rambam*. The *Mabit* writes that when the *Rambam* says one also transgresses an *issur d'oraisa* because of "*Lo sasur*", this is specifically where he does so publicly. As such, he points out that according to this there is no room to say the *Rambam* would hold *safeikos d'rabbanan* are treated leniently out of certainty.

things through his own determination, and they all coincided with the desires of *Hakadosh Boruch Hoo*. He separated from his wife, broke the *luchos*, and added one day of preparation for *Kabolas Hatorah*. Now, he asserts that it may be true the *Gemara* shows how he did these things through either expounding on a *pasuk* or making a *kal v'chomer*. However, we still must say they weren't complete revelations, and rather mere supports. This is like we find in many places how something can be *m'drabbanan* with a *pasuk* being used as a support. We must say this here or else it isn't possible to determine that *Moshe* did these things through his own volition. Rather, he was merely supporting his words, and in doing so his actions were even in line with the wants and desires of *Hashem Yisbarach* Himself. He merely wasn't explicitly commanded to do so.

Using this, he continues that the same is true for all *mitzvos* and *issurei d'rabbanan*. It is considered that *Chazal's* intentions are aligned with that of *Hakadosh Boruch Hoo* Himself. For example we can say that when they *assured* secondary *araiyos* this was the will of *Hashem* as well. He merely didn't explicitly tell us so in the *Torah*. This is why we are obligated in listening to their words. In doing so we inevitably fulfill the desires of *Hashem* as his will is brought about through the words of *Chazal*. Nevertheless, these matters are not brought about through explicit commandments in the *Torah*, and as such aren't treated with the same level of stringency applied to *divrei Torah* themselves.

To drive the point home, he continues that it may be true we don't find even a hint to these *issurim* in the *Torah* itself. Nevertheless, we know through the words of *Chazal* that it is what *Hashem* wants from us, and this in turn creates the obligation to listen. All members of

creation are expected to fulfill the desires of *Hakadosh Boruch Hoo* as this is the purpose of our having been brought to this world.

Now, we can even add to his words. The *Ramban* himself there writes that although the *lav* of "*Lo sasur*" doesn't include *issurei d'rabbanan*, nevertheless the *Chachamim* were still able to use it as a support for their words. What is clear from this is that even he agrees there is at least a support from this *pasuk*. With this in mind, we can now bring in the *Ritvah*¹² who explains this idea of something being *m'drabbanan* with a support from a *pasuk*. He writes that whenever there is a support this means that *Hakadosh Boruch Hoo* Himself wants for such a thing. He merely omitted it as a clear cut obligation, and gave it over to the *Chachamim*. However, He still placed a reference to it in the *Torah* for their use. This is what the *pasuk* means when it states "*V'asisa al pi hadavar asher yagidu li'cha*". Therefore, anytime the *Chachamim* brings a proof, mention, or support from the *Torah*, what this means is that it isn't their own personal *chiddush*. Now, we mentioned even the *Ramban* agrees that "*Lo sasur*" can be used as a support to the words of *Chazal*. As such, we can still see from here how the *Torah* itself is warning us to listen to their words. It merely isn't an explicit command.

[On the other hand, the *Kovetz Shiurim*¹³ does cite the *Grach* as saying even the *Ramban* admits there is an *issur Torah* included in all *issurei d'rabbanan*. It merely isn't part of the matter itself, and is rather a unique *chiyuv* to listen to *Chazal*. (See what is written later on the subject.) However, he personally takes issue with this. He queries¹⁴ that if this is the case our original question should return concerning why so many leniencies are applied by *inyanei d'rabbanan*. On the other hand, in the *Kovetz He'aros*¹⁵ he uses the words of the *Gemara* there to prove the opinion of the *Grach*.]

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If Issurei D'rabbanan impact the Action itself

If one needs forgiveness for accidentally transgressing an issur d'rabbanan / If the whole transgression of issurei d'rabbanan lies within our not listening to Chazal / Safek d'rabbanan / A mitzvah brought about through an aveirah

- נתיבת המשפט, שערי ישר, תורת חסד -

[3] The *Nesivos Hamishpat*¹⁶ asserts that on the one hand it may be true even one who accidentally transgresses a *lav min hatorah* is in need of forgiveness and repentance as protection from punishment. However, concerning one who accidentally transgresses an *issur d'rabbanan* there is no need. It is as if he didn't transgress at all. He goes on to prove this through what we find in *Eiruvim*¹⁷ where the *Gemara* asserts that we don't stop someone accidentally transgressing *issurei d'rabbanan*, and only inform him about the issue later. Now, if one is liable to be punished for such an accidental transgression, then it doesn't make sense that we should just leave him to bear his punishment. Rather, it must be there is no concern when accidentally

transgressing *issurei d'rabbanan*. Therefore, when one accidentally eats something *assur m'drabbanan*, such an act is considered as if he ate *kosher* meat.¹²¹

To explain this, the *Shaarei Yashar*¹⁸ writes that there is a big difference between *issurei d'oraisa* and *issurei d'rabbanan*. When the *Torah* tells us not to eat a *neveilah*, the *issur* becomes part and parcel within the meat itself. Therefore, even one who eats it accidentally is still in need of atonement. The actual consumption of the meat is an issue, and for this the fact that it was done accidentally doesn't help. On the other hand, by *issurei d'rabbanan* this isn't the case. We can take *yayin nesech d'rabbanan* as an example. There the core *issur* has to do with the fact that we are commanded to listen to the *Chachamim*. No *issur* can actually be seen in the wine itself, nor can one be found in the act of drinking it. It all lies in our obligation to follow the words of *Chazal*. As such, one only transgresses by blatantly and brazenly acting against them. Therefore, there is no *issur*

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If one sold treif meat to his friend and he ate it, by something assur m'doraisa he must return the money, but for d'rabbanan's there is no need

- שו"ע, נתיבת חסד -

[2] The *Nesivos*³¹ then uses this to explain something else. The *Shulchan Aruch*³² discusses a case where someone sold meat to his friend and it was later found to be from

a *treifah*. The *din* is that the seller must return the money even corresponding to what the buyer already consumed. However, he clarifies that is specifically where the meat was *assur min hatorah*. On the other hand, if it was only *assur m'drabbanan*, then he doesn't have to return money corresponding to what the buyer already ate. Now, the *Nesivos* explains that the differentiation here has to do with the fact that by *issurei d'rabbanan* there is no *issur* in accidental consumption. As such, the buyer is responsible

when drinking the wine accidentally. [The *Kovetz He'aros*¹⁹ writes like this as well, and he even uses it to explain *Tosafos* in *Yevamos*²⁰.]

The *Shaarei Yashar* then uses this to answer for the *Ramban's* question on the opinion of the *Rambam*. As we know, he had asked that if all *issurei d'rabbanan* are also *assur min hatorah*, then it is difficult to understand why we act leniently by *safeikos* concerning *d'rabbanan's*. In doing so one also transgresses an *issur d'oraisa*. To answer, he writes we can simply say that by *safeikos* one isn't considered to be brazenly transgressing their words. In such a situation, *Chazal* never said yes or no. Therefore, since the whole *issur* lies in our blatantly going against their words, as such there is no issue with acting leniently by a *safek*.

The *Toras Chessed*²¹ explains the *Nesivos's* words quite similarly. He also writes that the reason one doesn't need atonement for accidentally transgressing *issurei d'rabbanan* is because the whole requirement there is for us to listen to *Chazal*. It is not like *issurei d'oraisa* where the problem lies in the object itself. Therefore, an accidental act is not considered to be a transgression.

He then applies this to the *pesul* of a *mitzvah* accomplished through the means of an *aveirah*. Using the aforementioned concept, he asserts that this *pesul* shouldn't apply to *issurei d'rabbanan*. This is because the *Yerushalmi* in *Shabbos*²² shows clearly that the *pesul* of a *mitzvah* accomplished through the means of an *aveirah* is applicable only to *aveiros* inherently found in the object itself. It is the issue within the object that invalidates it for use in performing a *mitzvah*. On the other hand, when the problem is with the person and not the object, in such a situation this doesn't apply. Such an example would be concerning *chillul Shabbos* where it is the person who fails to keep the holy day. In such cases there is no *pesul* of a *mitzvah* accomplished through the means of an *aveirah*, and one can still use the object to fulfill his *chiyuv*.

Now, we have mentioned that *issurei d'rabbanan* aren't an issue within the action or object involved. The whole *chiyuv* there is merely for us to listen to the words of *Chazal*. Therefore, there would be no *pesul* of a *mitzvah* accomplished through the means of an *aveirah* relevant there. The whole *issur* isn't within the object itself.

The issur to benefit from the remaining oil by the Ner Chanuka / Tum'ah d'rabbanan

- אתון דאורייתא, בית האוצר -

[7] On the other hand, the *Sefer Atun D'oraisa*²³ initially writes like this as well that concerning *issurei d'rabanen* the *issur* isn't found

within the action itself. Rather, it lies in how we must listen to the *Chachamim*. However, in his later words he does raise that an *issur d'rabbanan* is applicable to an object itself. He proves this with how the *Midrash Tanchuma* states²⁴ "One shouldn't say I will refrain from fulfilling the words of the *Zekeinim* as they aren't *min hatorah*. To such a person *Hashem* responds that to say such a thing is forbidden. Rather, all of their decrees should be fulfilled as the *pasuk* states "V'asisa al pi hatorah asher yorucha". I agree to all their words as it states "Vatigzar omer va'yakam lach". Now, in the beginning this *Midrash* asserts that if oil is left over from a *Ner Chanuka* after the eighth day, it should be used for its own torch. Since it was set aside for a *dvar mitzvah* it then becomes *assur* for use. These words need explanation.

He goes on to write that the intention here is to go against what we might have said. The logic would dictate that *Chazal* only have the power to forbid a person from doing things, and not to actually make an object *assur*. We would think their entire power is in how we must listen to their words, and making object's *assur* is something only *Hakadosh Boruch Hoo* has the ability to do. It is only He who has the power to draw things close or distance them. However, in reality we can't say this. If such a thing were to be true then the concept of something set aside for a *mitzvah* would apply only to *mitzvos d'oraisa* and not the *d'rabbanan's*.

Now, we have mentioned that the reason a *Ner Chanuka* needs to be made into its own torch is because it was something set aside for a *mitzvah*. As such, it is quite clear that indeed the *Chachamim* do have the power to create something within an object itself. This *din* would then apply to *issurei d'rabbanan* as well, and it works because after assuring something *Hakadosh Boruch Hoo* Himself agrees. Therefore, it becomes his will for one to refrain from such an object, and in turn it itself becomes *assur*. One then has to distance himself because it is the desire of *Hashem*.

Additionally, the *Sefer Beis Ha'otzer*²⁵ goes to great lengths concerning this question of whether or not *issurei d'rabbanan* can have an effect on an object itself. In one spot²⁶ he brings an interesting point in an attempt to show that this can be done. He writes that we know there is such a thing as *tum'ah d'rabbanan*, and all the general rules of *tum'ah* are applicable to it. Now, if we say *Chazal* don't have the power to place an *issur* within an object, then there is no room for there to be *tum'ah d'rabbanan*. *Tum'ah* is something that takes place within the object itself. Therefore, there would be reason to learn from this that *Chazal* even have the power to create *issurim* in objects.

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to pay for what he benefitted from. It is just like the *din* where one person benefits and the other loses a little where there is a need to pay corresponding to the benefit. On the other hand, where the food was *assur m'doraisa* this isn't the case. There one is punished

for his accidental consumption and his loss is greater than his benefit. Therefore, it is considered as if he didn't benefit at all, and as such the seller must return even the money corresponding to what he already ate.

מראי מקומות

- (1) (שורש הראשון). (2) (דברים יז). (3) (שם). (4) מ"ע קע"ד. (5) דף ד'. (6) דף כ"ה. (7) (שבת קכ"ה). (8) שם על הרמב"ם. (9) דף י"ט. (10) ח"ב בקונטרס דברי סופרים סי' א' (אות י"ב ואילך). (11) דף ס"ב. (12) ב"ר דף ט"ז. (13) שם (אות ל"ב). (14) שם (אות ל"ג). (15) סי' ט"ז (אות ח'). (16) סי' רל"ד סק"ג. (17) דף ס"ז. (18) שער א' פרק ז'. (19) סי' ח' (אות ט"ו). (20) דף ז': (ד"ה וראה). (21) שו"ת סי' ל"א (אות ה'). (22) בפ"ג. (23) כלל י'. (24) (נשא סי' כ"ט). (25) להגרי"ע כלל קכ"ב. (26) שם כלל קכ"ד. (27) ח"ב בקונטרס דברי סופרים סי' א' (אות מ"ג מ"ד). (28) דף ל"ט. (29) שו"ת. (30) בקרית ספר. (31) שם. (32) שם סעיף ב' ג'.

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