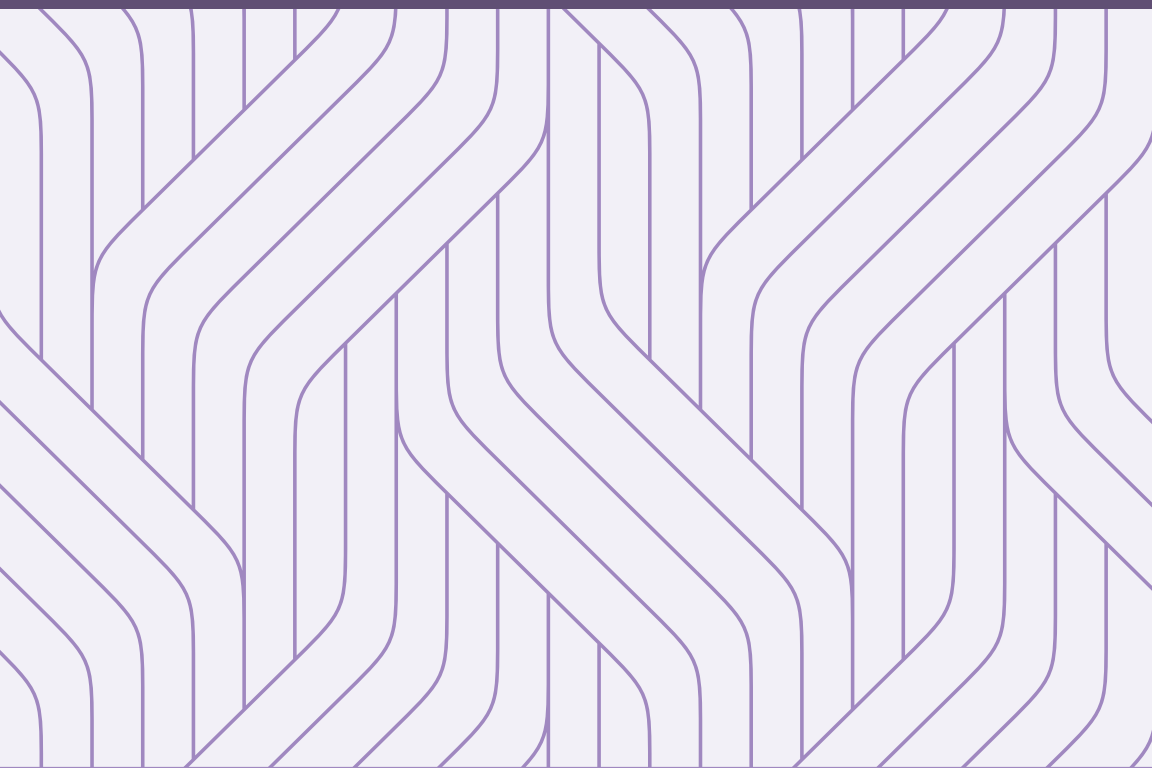


The 44th Siyum Harembam

רמב"ם לעיון

RAMBAM IN DEPTH

— TESHURA —



AN IN DEPTH ANALYSIS OF A HALACHA

חיינו

CHAYENU

רמב"ם לעיון

RAMBAM IN DEPTH

— *An in depth analysis of a Halacha* —

חיינו
CHAYENU

COMPILED AND EDITED BY CHAYENU



DAILY TORAH STUDY. DELIVERED.

CHAYENU

RAMBAM IN DEPTH

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CHAYENU

1526 Union Street, Brooklyn, NY 11213

info@chayenu.org | www.chayenu.org

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FOREWORD

DAILY RAMBAM

In his introduction to Mishneh Torah, Rambam outlines his intentions for writing this book, which has become known as the *Yad Hachazakah*, or *Sefer haYad*.

I set out to compose a work that will incorporate all the conclusions from all these books [=Babylonian and Jerusalem Talmuds, Sifra, Sifrei, Tosefta, and the Halachik compositions of the Geonim] regarding the forbidden and the permitted, the impure and the pure, together with the remainder of the Torah's laws, all in clear and concise language, so that the entire Oral Law could be organized in each person's mouth without questions or objections... clear and correct statements based on the rulings that result from all these texts and commentaries, from the days of Rabbenu Hakadosh until the present. [Such a composition will allow] for all the laws to be readily understood for a youngster or someone great in stature: the laws regarding every single commandment and all the enactments of the Sages and Prophets.

To summarize: [The purpose of this composition is] that a person will not need any other text regarding any Jewish law. Instead, this text will be a compilation of the entire Oral Law,

including Rabbinic enactments, customs, and decrees adopted from the time of Moshe, our teacher, until the completion of the Talmud.

In other words, Mishneh Torah—Rambam’s exhaustive compendium of all of the Torah’s laws, laid out in clear and concise language and arranged in a logical, methodical, and accessible manner—helps students of all caliber understand the simple laws and rulings of every area of Torah law. There is no longer a Jew who cannot learn the basic laws regarding all Torah topics since everyone is capable of learning and understanding the Mishneh Torah.

Behind this phraseology of “to be readily understood for a youngster or someone great in stature” lies the genius and simplicity of Rambam’s words. Rambam is not only for the scholar, the Rabbi, and the Rosh Yeshiva, for it was written in a way that also the youngster can understand. But it cannot be taken at face value, for behind this work, in the nuances and precision of Rambam’s pen, are gems and novel insights for the great in stature.

Understanding that every Jew can understand Rambam on a basic level and that every law of Rambam has depth to be gleaned helps us understand the Lubavitcher Rebbe’s enactment to learn Rambam daily and the contribution of this booklet you are holding in your hand.

In the year 5744, the spring of 1984, the Lubavitcher Rebbe spoke at his birthday farbrengen about “daily study of Rambam,” that every single person,¹ man, woman, and child should study daily Rambam’s Mishneh Torah or Sefer Hamitzvos. This learning, the Rebbe said, should be on a cycle, so that the learner completes the entire Mishneh Torah or Sefer Hamitzvos each year (or every three years) and then learns it over and over again—this way, learning the laws of the entire Torah.²

The Rebbe was clear that everyone was capable of joining this cycle of learning, regardless of their level of Torah knowledge. Even if a person

1. The Rebbe said that “it is not only for Lubavitchers” (Toras Menachem 5745, vol. 4, p. 2215).

2. The Rebbe was clear that this study was in addition to all other study commitments that a person already has in Talmud (Babylonian and Jerusalem Talmud), practical law, and—each person according to their capacity—in other sections of the Torah.

does not fully grasp the depth of Rambam's teachings, they will surely comprehend the literal meaning of his words.³

The Rebbe explained numerous reasons why he was making this suggestion to learn Rambam daily.⁴

1 – Adding more daily learning to one's schedule is always valuable.

2 – It will bring all Jews—from across the entire spectrum of Judaism—together in the study of Torah, where everyone is studying the same subject.⁵

3 – There is no more appropriate subject to bring Jews together than through the study of Mishneh Torah, the only compilation that encompasses all areas of Torah law, even laws pertaining to the Temple and the arrival of Moshiach.

4 – A person is obligated to study the entire gamut of Torah, and you can accomplish this through learning Rambam's Mishneh Torah.⁶

5 – Learning Jewish law is important, as it teaches the person how they must act.

3. Chayenu note: The Rebbe was speaking of a person who has a basic knowledge of the Hebrew language and the Talmudic words Rambam utilizes. The Rebbe's point was that with these tools one can comprehend the Rambam in a simple manner, even if they don't appreciate the depth hidden beneath the surface. Thus, for many, having an English translation of Rambam is crucial for achieving this basic understanding of Rambam.

The Rebbe once shared another accomplishment when learning Rambam in English: When Rambam is studied in the language of the land, the Torah effectively penetrates the worldly realms in its purest, holiest form. Thus, the wisdom of the Torah is drawn from the loftiest supernal levels and penetrates the world in languages other than the Holy Tongue (Toras Menachem 5745, vol. 2, p. 1357-8.).

4. See Likkutei Sichos vol. 27, p. 231ff. and vol. 32, p. 271ff.

5. Because of this unifying aspect of Rambam, the Rebbe encouraged everyone to bring others to learning the Daily Rambam (Toras Menachem 5744, vol. 3, p. 1961; *ibid.* 5752, vol. 2, p. 107). At another occasion the Rebbe suggested communal learning (Toras Menachem 5749, vol. 2, p. 370).

6. Shulchan Aruch Admor Hazaken, Yoreh Deah, Laws of Talmud Torah 1:4.

CHAYENU-3

The enactment entailed three different tracks:

Track 1 – *Three perakim*: By studying three chapters daily, you will complete the entire Mishneh Torah, including its introduction, list of Commandments, and detailed outline of Mishneh Torah, in just under a year.

Track 2 – *One perek*: You will study everything studied in track 1, but at the slower pace of one chapter a day. In this track, you complete the entire Mishneh Torah in under three years.

Track 3 – *Sefer Hamitzvos*: For those who find one chapter of Mishneh Torah (a book of detailed law) difficult, the Rebbe included a track of Rambam's *Sefer Hamitzvos* (Book of Commandments).

From the onset, it has been evident that the optimal track is to complete the entire Mishneh Torah each year.

My suggestion is... you should learn three chapters a day... For those of you who, for whatever reason, find it hard to learn three chapters a day, you should learn one chapter a day... How can we also include those of you who cannot learn from the *Yad Hachazakah*—young children or people who are “young” in knowledge?... I have a suggestion that will allow everyone to join the study of Rambam: Learn every day from Rambam's *Sefer Hamitzvos* (Likkutei Sichos vol. 27, p. 233-4).

The three-chapter-a-day⁷ track received the most attention from the Rebbe in his talks and naturally gained the most traction among his Chasidim. (Although the Rebbe did mention numerous times that those who can only learn one chapter a day, are not just doing the “second best” option.⁸)

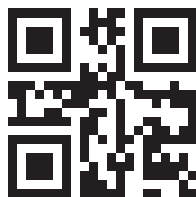
[We at Chayenu recognized that many Rambam learners of the first, optimal track would benefit from having a Chayenu that is portable, has English translation, and is easy to use, and that having Chayenu with three chapters a day would propel those who were unsure if *they can* actually learn three chapters a day. We started publishing a sister publication to

7. In the Rebbe's mind, this daily learning was so important that, like Chitas, the learning of the day was to inspire the entire day. It was part of the dictum, *men darfleben mit der tzeit*—*We have to live with the times* (Toras Menachem 5746, vol. 1, p. 207; *ibid.*), and the learning of each day had a connection to that very day it was learned (*ibid.*, 5745, vol. 1, p. 248).

8. See Toras Menachem 5745, vol. 2, p. 1325-8.

the flagship Chayenu, which only includes one chapter a day and Sefer Hamitzvos, called Chayenu3, which includes the daily three chapters of Rambam.]

To learn more and to order, visit: chayenu.org/3



IN DEPTH LEARNING

The enactment presented two challenges, one technical and a second more substantive “problem.”

The technical problem was that by taking Rambam’s Mishneh Torah out of the hands of the Talmudic scholars and teachers who looked at the structure and wording of Mishneh Torah to gain insight into Rambam’s outlook on a teaching, ruling, or subject of the Talmud, and placing it in the hands of the busy layman and novice scholar, we would only be scratching the surface of Rambam’s intent, leaving behind, and more so, ignoring the depth of Rambam’s words.⁹

The more significant challenge was setting a schedule for the learning, requiring a certain amount of text to be covered daily. Isn’t it better to set aside a specific amount of time to study and learn at the pace the students need to comprehend their studies? Isn’t that better than forcing the students to cover ground and possibly not having the time to understand

9. Another challenge presented when daily learning of Rambam was first enacted was that Rambam didn’t bring the reasoning for his rulings, and the Alter Rebbe rules in his Shulchan Aruch (Yoreh Deah, Talmud Torah, 2:1) that a person must learn Torah law with its reasons! [See also below p. 1, entry for The Book of Knowledge.]

The Rebbe addressed this and explained that although there is undoubtedly a benefit in learning the laws of Torah with their reasoning, even the Alter Rebbe not only agrees, but rules, that there is also an advantage in learning the final laws as recorded by Rambam, since the learner will fulfill the ruling that a person should acquire a knowledge of all 613 commandments (Likkutei Sichos vol. 36, p. 16ff.).

their studies fully?¹⁰

In one of his talks, the Rebbe addressed the reason for this enactment of learning Rambam, which underscores the cruciality of this study, even if it comes at a cost.

Even though schedules learning on a cycle will lead a student to study a topic that he doesn't necessarily have an interest in, contrary to the Talmudic dictum that a person should always study a subject that his heart desires (Avoda Zarah 19a)... Since we are getting closer to the arrival of Moshiach, but he has not yet arrived, we are looking for things that might be the path to his actual arrival. One thing that came to mind that we still need to accomplish is the study of the entire Torah. Therefore, I suggested that all Jewish people, men, women, and children, should learn the whole book of Rambam, the only book that includes all the laws of all the Torah topics.¹¹

This is appropriate for every Jew since everyone admits that the time for Moshiach's coming has arrived, and everyone admits that Rambam includes the laws of all of Torah, and perhaps this is the pathway for Moshiach's arrival (Shabbos Parshas Shelach 5748).

Notwithstanding the necessity and vitality of this learning, the Rebbe addressed the challenges mentioned when introducing his enactment to study Rambam daily.

A person should contemplate when learning [Rambam] they are learning G-d's Torah, and it is not befitting (*past nit*) that they should study in an elementary manner (Likkutei Sichos vol. 27, p. 231).

When learning three chapters a day, it isn't easy to study all the laws in depth and with proper analysis, and the learning

10. The Rebbe found precedent for such a daily cycle in what has become known as Daf Yomi, the daily allocation of Talmud study in both the Babylonian and Jerusalem Talmuds, and the division of Tanya for daily learning by the Previous Lubavitcher Rebbe (see Likkutei Sichos vol. 27, p. 229, 231).

11. At a different occasion, the Rebbe explained that the reason why suddenly there is frenzy (*sheturem*) concerning Rambam study, is because the world was static, almost in a comatose state, it needed something trailblazing and outrageous to wake it out of its stupor (Toras Menachem 5744, vol. 3, p. 1638).

will sometimes be rudimentary. It is, therefore, worthwhile—for those capable of it—to learn (in addition to the three daily chapters themselves) one law or one detail from the daily study with some depth and proper analysis (*ibid.*, p. 233).

Learning a law in depth adds a certain excitement to the learning. And brings life into what can become “routine learning.”

CHAYENU: RAMBAM IN DEPTH

In order to facilitate in-depth learning, Chayenu³ shares a Daily Rambam Insight from the teachings of the Lubavitcher Rebbe, published by **Rabbi Meir Ellituv** in the **Rambam Pardes Hamelech** series.

In the Chayenu flagship publication, we include a weekly essay on a law being studied in that week’s Daily Rambam. Expanding on a ruling of Rambam, we explore the ruling’s source in the Talmud and discuss how Rambam understood the teaching of the Talmud. We also contrast Rambam’s opinion with that of his contemporaries or share various ways to interpret Rambam’s words, etc.

The essays are written in a way that quotes from the traditional commentators on the subject, with an emphasis (on trying) to include the understanding of a Chabad Rebbe on the subject.

The Chabad Rebbes have written extensively on all areas of the Torah, whether it’s the Alter Rebbe in his *Shulchan Aruch*, the Tzemach Tzedek in his responsa, and, of course, the Lubavitcher Rebbe in his talks. Since these teachings are not systematic, as a commentary on Rambam or the Talmud, they can often get lost to the learner. We endeavor to include sources in the footnotes where the idea being explained in the essay is expanded upon or clarified in the teachings of Chabad Rebbes. Or, even better, to build up the essay towards presenting the novel insight (“chidush”) of the Chabad Rebbe.

Note on this booklet: We have selected one essay for each of the 14 books of Rambam’s *Mishneh Torah*.¹²

¹² We find that the Rebbe placed emphasis on each book of the *Mishneh Torah*’s 14 books on its own, in asking that *siyumim* (celebrations of conclusions), should be made on each of these books alone, as it adds in the excitement and encouragement of the Rambam study cycle (*Toras Menachem* 5749, vol. 2, p. 371).

DAILY RAMBAM THROUGHOUT THE GENERATIONS

While the Rebbe's enactment to learn Rambam's Mishneh Torah daily was introduced forty-one years ago—and has become a hallmark of dedication and commitment to the Rebbe's ideals and has also developed into an international cycle of learning the holy Rambam's rulings—this practice traces back a lot longer than that.¹³

16th Century: A letter describing life in Jerusalem in 1521 mentions, “Every evening, we learn one chapter of Rambam” (Mekoros L'Toldos HaChinuch B'Yisrael, vol. 3, p. 10).

17th Century: A letter describing life in Safed in 1603 mentions, “After evening and morning prayer, groups form and study with their teacher... [One] group studies the Rambam in a consistent manner” (Shivchei Ha'Ari, Likkutei Ha'ari 25b).

18th Century: The Maggid of Mezritch writes to the Alter Rebbe, “In the evening, after evening prayers, you should study the holy Rambam” (Maggid Devarav L'Yaakov, addendum, p. 53).

19th Century: Rabbi Chaim Sofer, a student of the Chasam Sofer and a famous Rabbi in his own right, is reported to have gone every weekday from synagogue to the study hall donned in his Tallis and Tefillin to study Rambam's Mishneh Torah in order from beginning to end (Toldos Sofrim 17-18).

Early 20th Century: There is eyewitness testimony that the Rebbe would learn Rambam every evening after Maariv (Yimei Melech, vol. 2, p. 626).

13. As the Rebbe said, he is merely bringing back the glory of studying Rambam to the common practice of yore (*machzir atarah l'yoshnah*), as this was common practice in Sephardic communities (Toras Menachem 5744, vol. 4, p. 2675).

BENEFITS OF RAMBAM STUDY

Like learning any subject of Torah, there are many benefits, spiritual and material, that come from studying Rambam, which is part of Torah. Yet, we find some benefits specifically associated with the study of Rambam.¹⁴

Whoever learns Rambam daily with Magid Mishneh's commentary will find wondrous [insight] and answers to their questions in Jewish law (Shaloh vol. 4, Torah Shebaal Peh, p. 21b).

A person must learn about all 613 Commandments. Therefore, they should learn Rambam's Yad Hachazakah, which includes an explanation of all 613 Commandments (Rabbi Meir Papirash, Or Tzadikim, Amud Hatefilah, 22:19).

A person fulfills the Talmudic dictum that, *Whoever learns two Laws every day is guaranteed a portion in the World-to-Come* (Nidda 73a) by studying two laws of Rambam each day (Rabbi Shlomo ben Shimon Duran, Sefer Harashbash, She'elos Uteshuvos, vol. 1, responsa 52).

I learned from my holy teacher [the Ba'al Shem Tov] that the study of Rambam is a segulah (spiritual remedy) for fear of heaven, and to eradicate external negative forces (Rabbi Dovber (Mezritcher Maggid) Magid Devarav L'Yaakov, addendum, p. 105).

The daily study of Rambam among Jews is one of the things that hasten the coming of the final redemption (Toras Menachem, Shabbos Parshas Balak, 5748).

14. At the beginning of the sixth cycle, the Rebbe encouraged everyone to join the learning, and said: *Through an appropriate resolution [to join the Daily Rambam Study], "G-d will help you"—you will have Divine assistance to find success in your learning, including that your learning will be with peace of mind and good health, both materially and spiritually* (Toras Menachem 5759, vol. 2, p. 161).

Rambam has 83 topics of laws. The Talmud teaches that the Hebrew word for disease (*Machala*) has a numerical value of 83 because 83 forms of disease can affect the bile. This alludes to the idea that one can achieve complete health through the study of the 83 halachos of Rambam. This is not to say that studying Rambam only helps those sick; it can prevent sickness in the first place (Hitvaduyos 5746, vol. 2, p. 246).

Rambam organizes all the commandments within Oral Jewish Law clearly and concisely. Thereby, through its study, one fulfills the commandment to study the entire Torah.

Additionally, learning a Torah subject in unison with other Jews brings unity amongst all those engaged in its study. This unity amongst the students and in the study of the halacha itself hastens the arrival of Moshiach (Likkutei Sichos, vol. 32, p. 271ff.).

Recently, there was an additional institution of study—the study of Rambam. Although the person studying Rambam is doing so because it is an enactment of Sages, nevertheless, they are fulfilling a biblical command to study Torah. There is, however, an additional, unique, and precious quality of fulfilling an instruction of their Rebbe (Sefer Hasichos 5749, vol. 2, p. 412).

To a person who was struggling with overwhelming debt, the Rebbe wrote in short but no uncertain terms: *“Have you fulfilled your obligations regarding the study of Rambam”* (Mishneh Torah Hasholeim, Mahaduras Feldi, Chazak Publications, p. 6, fn. 6).

Rabbi Reichik asked the Rebbe for a blessing concerning a medical issue that his fellow was going through. The Rebbe replied: *If he needs a miracle, he should learn Rambam, since RaM-BaM is an acronym for Rabos Mofsai B’eretz Mitzraim (Shemos 11:9)—increase My wonders in the land of Egypt* (Kefar Chabad Magazine, issue 1939, p. 25).

ACKNOWLEDGMENTS

The Daily Study of Rambam was precious and dear to the Rebbe.¹⁵ The Rebbe constantly encouraged its learning, was often observed learning the Daily Rambam, and set aside time at public gatherings to discuss this Daily Study.

We hope this booklet (*teshura* - memento) in celebration of the 44th conclusion of Rambam,¹⁶ and the beginning of the 45th cycle, encourages you to take the next step in your learning of Rambam.¹⁷

The essays were written and reviewed by the **Chayenu Editors**.

We thank **Levi Drimmer** for supporting the Chayenu3 initiative in his father's memory. Chayenu3 has allowed so many more of us not just to read, but learn and understand the three chapters of Rambam. May this be in loving memory and *l'ilui nishmas* Refael Shelomo ben Klonimus Kalman Z"L.

In his love for furthering the fulfillment of the Rebbe's enactment to learn Rambam, he has also taken the expenses of preparing and publishing this booklet.

Thank you to **Rabbi Yossi Simpson**, who dedicates these essays in the weekly Chayenu in loving memory of his father, Aryeh Ze'ev ben Eliyahu A"H, and mother, Chana Basha bas Moshe Uri A"H.

May we merit the times that Rambam speaks about at the conclusion of Mishneh Torah, the time of redemption, when the entire world will be occupied with the learning of Torah.

The Chayenu Team

15. The Rebbe once told Rabbi Avraham Dov Hecht: *ich koch zich doch in Rambam*—I'm absorbed in Rambam [study] (Mishneh Torah Hasholeim, Mahaduras Feldi, Chazak Publications, p. 8, fn. 11).

16. The Rebbe encouraged proper *siyumei harambam*—celebrations for completing the cycle of Rambam (Toras Menachem 5746, vol. 2, p. 495) and that in conjunction with this celebration there should be a printing of novel insights (*chidushim*) of Rambam's teachings (ibid., p. 761).

17. In a handwritten note to Rabbi Adin Even Yisorel (Steinzaltz) the Rebbe wrote: Surely you are making a ruckus (= *mar'ish*) regarding Rambam (the conclusion [of the first cycle, and joining] the second cycle. And as much as you cause a ruckus, and more, there is no concern that maybe this is not according to Rambam's dictum that we must act in an balanced manner (*"biderech ha'emtzais"*), since we have not even reached one third or one quarter [of the noise we need to make].

ספר המדע

THE BOOK OF KNOWLEDGE

RAMBAM: LAWS WITHOUT REASONS



וְחַיֵּב לְשַׁלֵּשׁ אֶת זְמַן לְמִידָתוֹ: שְׁלִישׁ בַּתּוֹרָה שֶׁבִּכְתָּב, וְשְׁלִישׁ
בַּתּוֹרָה שֶׁבְּעַל פֶּה, וְשְׁלִישׁ יָבִין וַיִּשְׁכִּיל אַחֲרִית דָּבָר מֵרֵאשִׁיתוֹ,
וַיּוֹצִיא דָּבָר מִדָּבָר וַיִּדְמֶה דָּבָר לְדָבָר; וַיָּבִין בַּמִּדּוֹת שֶׁהַתּוֹרָה
נִדְרָשֶׁת בָּהֶן עַד שֶׁיֵּדַע הֵיטָף הוּא עֶקֶר הַמִּדּוֹת, וְהֵיטָף יוֹצִיא הָאָסוּר
וְהַמֵּתָר וְכִיּוֹצֵא בָּהֶן מִדְּבָרִים שֶׁלֹּמֶד מִפִּי הַשְּׂמוּעָה - וְעַנְיָן זֶה הוּא
הַנִּקְרָא 'גִּמְרָא'. כִּיצַד? הֲיֵה בֶּעַל אֲמָנוּת וְהֵי עוֹסֵק בְּמַלְאכָתוֹ
שְׁלֹשׁ שָׁעוֹת בַּיּוֹם וּבַתּוֹרָה תִּשַּׁע, אוֹתָן הַתִּשַּׁע קוֹרָא בְּשִׁלְשׁ
מֵהֶן - בַּתּוֹרָה שֶׁבִּכְתָּב, וּבְשִׁלְשׁ - בַּתּוֹרָה שֶׁבְּעַל פֶּה, וּבְשִׁלְשׁ
אַחֲרוֹת - מִתְּבוּנָה בִּדְעָתוֹ לְהַבִּין דָּבָר מִדָּבָר (תַּלְמוּד תּוֹרָה א:יב).

Rambam writes concerning the obligation to study Torah:

A person is obligated to divide his study time in three: one third should be devoted to the Written Law; one third to the Oral Law; and one third to understanding and conceptualizing the ultimate

derivation of a concept from its roots, inferring one concept from another and comparing concepts [Gemara].

How is the above expressed? A person who is a craftsman may spend three hours each day involved in his work, and [devote] nine hours to Torah study: In those nine hours, he should spend three reading the Written Law; three, the Oral Law; and three, meditating with his intellect to derive one concept from another (Talmud Torah 1:11-12).

The source of this teaching is in the Talmud:

A person should always divide his years: One third should be devoted to the Written Law; one third to the Mishnah; and one third to the Talmud (Kiddushin 30a).¹

Rambam clearly explains that the term *Talmud* implies the “understanding and conceptualizing the ultimate derivation of a concept from its roots, inferring one concept from another and comparing concepts, understanding [the Torah] based on the principles of Biblical exegesis.”

Rashi, however, offers another explanation:

Talmud—The rationale of the Mishnah, the reasoning behind the ambiguity of the Mishnah, and resolving the contradictions within the Mishnah.

While Rashi stresses the need for understanding and reasoning for every law, Rambam just demands understanding one case law from another case law, or knowing the original sources of the law.

The Alter Rebbe, Rabbi Shneur Zalman of Liadi explains that Rambam’s explanation of what the Talmud means when it obligates a third of one’s learning to the learning of Talmud is consistent with his methodology in Rabbinics and authorship:

1. Rabbi Zev Dov Slonim (original editor of the *Sefer Chitas*) suggests that when studying Chitas one fulfills his daily obligation of each of these studies.

When learning Chumash, one is studying the *Written Law*.

When learning Rashi one is studying *Mishnah*. This is based on the Alter Rebbe’s application of *Mishnah* to include the Talmudic explanation of the written Torah, and Rashi’s explanation is based on the teachings of the Talmudic sages.

When learning Tanya, one is studying *Talmud*. Rambam writes (1:12): The matters referred to as *Pardes* are considered part of the *Gemara* (Likut Al Dvar Chitas VeChashivusom, found in Chitas).

Rambam's explanation is aligned with his methodology. He authored his Mishneh Torah without offering any reasoning for his Halachic decisions. He composed his Mishneh Torah for one to instruct on Jewish law from it alone [without any in-depth knowledge of Talmud and Jewish law], as he wrote in his introduction (to the Mishneh Torah): "A person needs no other composition out there... Just read the written law and this book [of Mishneh Torah, to know Jewish law]" (Shulchan Aruch Admor haZaken, Yoreh Deah, Talmud Torah 2:1, Kuntres Acharon 1).

The problem is not only that a person may not fully understand the source of Rambam's opinion, but also that he may not understand Rambam's words themselves.

Rabeinu Asher, known by his acronym Rosh, writes in his responsa:

Whoever instructs Jewish law from the words of Rambam [alone] is mistaking. He thinks he understands but does not understand it fully (Responsa 31:9, as cited in Shulchan Aruch ibid.).

The Alter Rebbe concludes:

For this reason, it is prohibited to instruct Jewish law [from Mishneh Torah], even regarding a case that the person is confident that he fully understood the words of Rambam in his composition, for maybe he is in fact mistaking (Shulchan Aruch ibid.).

While one cannot necessarily rule on Jewish law from studying the Rambam, one nevertheless is definitely studying Jewish law and becoming familiar with the Jewish law of all 613 Commandments of the Torah.²

2. Cf. Likkutei Sichos vol. 36, p. 16ff.

ספר אהבה

THE BOOK OF LOVE

SAFEK BRACHOS



וְכֵן אֲנִידְרוֹגִינוֹס אֵין מְבָרְכִין עַל מִלְתּוֹ, מִפְּנֵי
שֶׁהוּא אֵינוֹ זָכָר וְדָאִי (מִלָּה ג:ו).

There is a general principle that says *Safek Brachos Lehakel*, if a person is unsure if he is obligated or has already said a specific blessing, he doesn't have to recite the blessing.¹

This principle is reflected in Rambam's ruling concerning a doubtful circumcision:

A blessing is not recited over the circumcision of an androgynous, because he is not definitely categorized as a male (Laws of Milah 3:6).

Raavad argues that this principle is limited to doubts concerning non-Biblical commandments; however, biblical commandments always demand a blessing, even when there is doubt.

1. See also Rambam, Laws of Blessings 11:16. The reason for this is that a person should not mention G-d's name in vain, which can be considered a transgression of the prohibition of mentioning G-d's name in vain. For a discussion if not saying a blessing in the case of doubt is a Biblical consideration or just a rabbinic one, see Tzemach Tzedek, Orach Chaim, responsa 3.

If an androgynous is a doubtful situation, a blessing would nevertheless be said. Since we are speaking here of a doubt concerning a biblical commandment, in which case a blessing is said (Gloss to Rambam ibid.).²

Rambam's view needs further clarification since he seems to imply elsewhere that we don't follow this principle in all cases.

One who is unsure whether or not he recited the Shema should recite it with the blessings before and after it (Laws of Krias Shema 2:13).

This law begs for clarity, as Rashba asks:

Rambam maintains that if a person is unsure if he made a blessing, even concerning a commandment that is biblical, or even if a person is unsure if he is obligated in the commandment that requires a blessing, in all cases he does not recite the blessing. Why then here does he need to recite the blessings before and after? (He should just be obligated to say the Shema prayer) (Responsa 320, quoted in Kesef Mishnah ibid.).

Rashba suggests the following:

Perhaps Rambam maintains that the Rabbis originally instituted the blessings of Krias Shema in such a manner that whenever the Shema is said to fulfill the commandment (even if this is because he is unsure if he already fulfilled his obligation), he is to say these blessings (ibid.).³

Another answer was suggested by the Derisha:

These are not comparable cases. In one place (namely, the case of circumcision), there is a doubt whether the person is even obligated by the commandment; in such a case, the person should not make a blessing. Here, by Krias Shema, there is no question on the person's obligation for the commandment; there is only a question on his fulfillment, in which case, since he is not clearly sure that

2. This argument is articulated in other places in Rambam, e.g., Laws of Tzitzis 3:9, Laws of Sukkah 6:13.

3. This reason is cited by Magen Avraham, Orach Chaim, ch. 67, and the Alter Rebbe in Orach Chaim, ibid. Cf. Tzemach Tzedek, ibid.

he has fulfilled this obligation he must now recite the Krias Shema (again) with its blessings (Gloss on Tur, Orach Chaim, ch. 67⁴).

Based on the above, one can explain the argument between Rambam and Raavad in two ways.⁵

According to Rashba that Krias Shema is an outlier, Rambam maintains that in general, a blessing is independent from the commandment upon which it is being made, and has its own set of laws that demand that it not be recited in the case of doubt. Raavad, however, is of the opinion that a blessing is a subcategory of the commandment it is being made on, and if that is a biblical commandment, then the blessings take on the same rules, in which case one has to be stringent and make a blessing again.

According to the Derisha, we come to the same conclusion but slightly differently; if the person is undoubtedly included in a commandment and only the fulfillment is in doubt, then his blessing is a subcategory of the commandment and must be recited when the commandment is being fulfilled, even in the case of doubt. If, however, the very obligation is in doubt, then the commandment cannot “draw” with it the obligation for a blessing.

4. See also Kneses Hagedolah cited by the Pri Chadash and Pri Megadim to Orach Chaim, *ibid.*; Tzemach Tzedek, *ibid.*

5. See Imrei Tzvi (Gruzman), ch. 2.

ספר זמנים

THE BOOK OF SEASONS

SUKKAH IN THE RAIN



אֲכִילָה בְּלֵילֵי יוֹם טוֹב הָרָאוּשׁוֹן בַּסֻּכָּה, חוֹבָה. אֶפְלוּ אָכַל כֶּזַיִת
פֶּת, יֵצֵא יְדֵי חוֹבָתוֹ. מִכָּאן וְאִילָּה, רִשּׁוֹת: רָצָה לֶאֱכֹל סְעוּדָה,
סוּעֵד בַּסֻּכָּה; רָצָה, אֵינּוּ אוֹכֵל כָּל שְׂבֻעָה אֶלָּא פְּרוֹת אוֹ קִלְיוֹת
חוּץ לַסֻּכָּה - אוֹכֵל, כְּדִין אֲכִילַת מִצָּה בַּפֶּסַח (שׁוֹפָר סוּכָה וְלוּלָב ז:ו).

Eating in a sukkah on the first night of Sukkos is an obligation that is unmatched on the other nights. As Rambam writes:

Eating in the sukkah on the first night of the festival is an obligation. If a person eats merely a k'zayit [=the size of an olive] of bread, he fulfills his obligation. Afterwards, the matter is left to one's volition. If one desires to eat a meal, one must eat it in the sukkah. If one desires, throughout the seven days of the festival, one may eat only fruit or roasted grain outside of the sukkah (Laws of Shofar, Sukkah and Lulav 6:7).

The Magid Mishnah brings a dispute regarding a rainy first night.

Tosefos writes that since the first night is an obligation, one must eat in the sukkah even if it is raining.¹ Rashba writes that there is no such obligation,² and this is the acceptable view (Commentary on Rambam, ibid.).

The Gera explains Rashba's opinion with the following categorization:

As Rashba writes: When rain is falling the [halachik category, or] name "sukkah," does not apply to it (i.e., on the hut) (Biurei HaGera, Orach Chaim 639:5).³

According to this understanding, there would be no added benefit in eating in a sukkah once the rain becomes uncomfortable, since it is not a sukkah, it is merely a booth or hut.

However, the accepted opinion is, as the Shulchan Aruch and Rama write,

If rain falls, one enters their home.... This is the remaining nights of Sukkos. On the first night, however, a person must eat a k'zayit [=the size of an olive of bread] in the sukkah, even if it is raining (Orach Chaim ibid.).

The Alter Rebbe in his Shulchan Aruch, following the opinion of the Magen Avraham and Taz, goes further, and maintains that one must make the blessing made when eating in the Sukkah.

When a person eats in the sukkah while it is raining, he must also make Kiddush over wine in the sukkah, for Kiddush may only be recited in the place where one eats his meal. He should recite the blessing leishav basukkah before [the blessing] Shehecheyanu, just as if it was not raining (Orach Chaim, 639:18).

Not only the first night, but also the rest of the nights, many Chasidim have the custom of only eating in the Sukkah, and even if it is raining.

1. See Tosefos s.v. Ee Ba'ee, Berachos 49b. See Rosh there. Cf. Tosefos s.v. Ee Ba'ee, Sukkah 27a.

2. Responsa vol. 4, responsa 78.

3. Rashba writes: "We follow the statement [that a sukkah has to be built in a manner] of 'sitting (in the sukkah) in the same way one lives (in his house)'. Thus, the Torah never obligated a person to eat in a sukkah only in a manner that would be acceptable in a home." The Gera explains this to be Rashba's categorization of a sukkah.

The Munkatcher Rebbe, Rabbi Chaim Elazar Shapiro (1868-1937) cites the following explanation:⁴

I will like to shed light on our practice of eating in the sukkah all seven days of Sukkos, even if it's raining. A practice that goes back generations, to the students of the holy Baal Shem Tov... Because of a person's excitement to fulfill this commandment, he does not even pay attention to the rain, and has discomfort from it. Thus, he is obligated to sit in it. Since even in his house, if he was having such pleasure he would not abandon it for other shelter.⁵

Jews are holy, and they don't look for leniencies, and they do not leave the sukkah [for some rain. And though the law says that one who is exempt from eating in the sukkah, and eats there no less, is considered a simpleton (Orach Chim ibid., par. 7). This does not faze a Jew] for one is fine with being called names, such as simpleton, and nevertheless fulfills a commandment of G-d, which is precious to him (Minchas Elazar 4:31).⁶

4. This is in fact a quote from Atzei Eden (commentary on Mishnayus) end of ch. 2 of Sukkos.

5. This rational is based on the law in Shulchan Aruch that the way to determine if the rain is strong enough to go into the house, is to "calculate if such a rain would fall into their house, would they go and find shelter elsewhere, if yes, then they may leave the sukkah for the house" (Rama, Orach Chaim 639:5).

6. See Michas Elazar for a discussion on the Talmudic statement, to what is [rainfall on Sukkos] comparable? To a servant who comes to pour wine for his master, and he pours a jug [*kiton*] of water in his face. And the discussion if this means that the servant is pouring the water on his master's face or the master is taking the water and pouring it on his servant's face (Sukkah 28b-29a). CF. Karban Nesanel on Rosh to Sukkah ibid.

ספר נשים

THE BOOK OF WOMEN

EVERY CHILD AN ENTIRE WORLD



אֶף עַל פִּי שְׂקִיִּים אָדָם מְצֻת פְּרִיָּה וְרִבְיָה, הֵרִי הוּא מְצֻה מְדַבְּרִי
סוֹפְרִים שְׁלֹא יִבְטֵל מַלְפָּרוֹת וְלִרְבוֹת, כָּל זְמַן שֵׁשׁ בּוֹ כּוֹחַ - שְׁכָל
הַמוֹסִיף נֶפֶשׁ אַחַת מִיִּשְׂרָאֵל, כְּאִלּוּ בָנָה עוֹלָם (אִישׁוֹת טו:טז).

Rambam writes:

Although a man has fulfilled the mitzvah of being fruitful and multiplying, he is bound by a Rabbinic commandment not to refrain from being fruitful and multiplying as long as he is physically potent. For anyone who adds a soul to the Jewish people is considered as if he built an entire world (Laws of Ishus 15:16).

The source of this law is in the Talmud:

It was taught: Rabbi Yehoshua says, if [a man] had children in his youth, he should have [more] children in his advanced age, as it is stated: "In the morning sow your seed, and in the evening do not withhold your hand; for you do not know which shall prosper, whether this or that, or whether they both alike shall be good" (Ecclesiastes 11:6; Yevamos 62b).

This prompted the commentaries to the following question:

Rabbi Moshe Cohen [of Lunil]¹ asked on this reasoning of Rambam: Why did he alter the reasoning cited in the Talmud, where a verse is mentioned, and instead bring a rational reason?

This is a reasonable objection. However, we can argue that Rambam, with his reason, removed ambiguity and doubt that can arise concerning the Talmud's reason. Rambam's reason is very straight forward, each child adds to the population and builds the world. According to the Talmud's reason that we "do not know which shall prosper, whether this or that" a person can become lax on having more children, when he has an ample amount of children, who are healthy and honorable (Ma'aseh Rokeach, on Rambam ibid.).

The Ma'aseh Rokeach explains why Rambam possibly abandoned the reason mentioned in the Talmud for this Rabbinic commandment,² and is not disturbed by the mere fact that Rambam *did* abandon the reasoning by the Talmud.

Another possible answer was offered by the Netziv, Rabbi Naftali Zvi Yehuda Berlin, with the understanding that the verse cited in the Talmud presents two reasons to continue having children. 1 – the first reason offered in the verse “*for you do not know which shall prosper, whether this or that,*” suggests that there is a *safek* (doubt) in the viability of the children, and hence in the fulfillment of the biblical command to have children;³ 2 – the latter reason “*whether they both alike shall be good,*” is a straight forward command that many children are a good thing.⁴

Rambam suggested a straight forward reason for having more children, “for anyone who adds a soul to the Jewish people is considered as if he built an entire world.” He was not concerned with the doubt that perhaps some children would pass away... Thus the main reason for this is the later part of the verse, “whether they both alike shall be good” (Ha’amek She’elah 165:3).

According to this understanding, Rambam does follow the Talmud's reasoning, he is just explaining the later part of the verse cited by the Talmud.⁵

Another answer was offered by the Lubavitcher Rebbe:

There are two ways to understand the Rabbinic commandment to continue having children.

1 – The Sages extended the Biblical Commandment for having children. Although the Biblical Command ceases after two children,⁶ the Sages enacted that the Biblical Command for children should not cease.⁷

1. Rabbi Moshe Cohen of Lunil lived in the same generation as Rambam, and when he saw Rambam's work, he wrote down some of his objections to the newly published Mishneh Torah.

2. See Bach to Yoreh Deah, end of ch. 228, where he mentions that this is a Biblical Commandment.

3. According to this reason, there is obviously some biblical undertones to this commandment to continue having children. See Sidei Chemed, Kelalim, Maareches Vov, Kelal Yud-Daled.

4. See Likkutei Sichos vol. 30, p. 24.

5. See Likkutei Sichos ibid., p. 25, where this reason is challenged.

6. See Rambam, Laws of Ishus 15:4-5.

7. See also Magid Mishnah and Lechem Mihnah to Rambam ibid.:7.

2 – The Rabbinic Commandment is seen as independent from the Biblical Commandment.⁸

This then is the intent of Rambam, to teach us that the initial [Biblical] Commandment of “Building the World,” through having children, continues with the additional children (Likkutei Sichos vol. 30, p. 26-8).

According to this, Rambam is not giving a different reason than the Talmud, but clarifying the objective of the Rabbinic enactment.

8. Shulchan Aruch (Even Ha'ezer 1:8) brings an argument on whether one should sell a Sefer Torah to afford having more children. Likkutei Sichos ibid., p. 27-8) explains that this debate is dependent on these two ways of understanding the Rabbinic enactment.

ספר קדושה

THE BOOK OF HOLINESS

UNCOVERED HAIR



לֹא יִהְיוּ בָנוֹת יִשְׂרָאֵל פְּרוּעֵי רֹאשׁ בַּשּׁוּק, אַחַת
פְּנוּיָה וְאַחַת אִשָּׁת אִישׁ (איסורי ביאה כא:ז).

Rambam writes:

Jewish women should not walk in the marketplace with uncovered hair. [This applies to] both unmarried and married women (Rambam, Issurei Biah 21:17).

This law is echoed by the Tur and Shulchan Aruch (Even Ha'ezer, 21:2). However, a contradiction prompts a discussion about the understanding of this law.

Elsewhere, the Shulchan Aruch states:

The hair of a woman that it is the practice (lit. way) to cover is forbidden to recite [the Recitation of the Sh'ma] in front of it. But unmarried women for whom it is their way to go with an uncovered head, it is permitted (Orach Chaim, 75:2).

The Magen Avraham proposes a more stringent approach.

Uncovered hair (in Hebrew Peruot Rosh) mentioned in Even Ha'ezer means unbraided, flowing hair. Which is prohibited even for unmarried women (ibid.:3).

As the commentaries note,¹ this is not the prevalent practice.² Rather, they explain Rambam and the statement in Even Ha'ezer in a non-literal manner.³

The Mordechai writes: All that I have mentioned regarding indecent exposure of Ervah is specifically speaking about something that is usually covered. But unmarried girls who are accustomed to going out with long hair, there is no concern for improper thoughts (when in their presence). We must therefore interpret the unmarried woman mentioned here, to refer to a woman who has had marital relations. But a girl need not cover her hair (Bach, Even Ha'ezer ibid.).

This conclusion is echoed by many of the later halachists in their commentary on Even Ha'ezer ibid.⁴

Notable, is the inclusion of Mordechai's reasoning, and the omission of Magen Avraham's explanation in the Alter Rebbe's Shulchan Aruch.

It is permitted to recite the Shema in view of unmarried women who customarily go about with their hair uncovered (Orach Chaim ibid.:4).

This would seemingly lead to the conclusion that the Alter Rebbe concurs with the majority opinion that is lenient with an unmarried woman.⁵

1. See Machtzis Hashekel ibid. Bach cited further on.

2. Although there are communities that do strive for this standard.

3. For which reason, Magen Avraham rejects such an interpretation.

4. Chelkas Mechokek 2; Beis Shemuel 5 (with a noticeable variation, explaining that here we are speaking about a widow or orphan); Dagul M'revavah; Pischei Teshuva 2.

5. See also Igrot Kodesh vol. 20, p. 200. There the Lubavitcher Rebbe elaborates on why the mitzvah for covering hair does not apply to an unmarried woman.

For many sources on the nature of this mitzvah, and chabad's custom regarding the onset of the obligation to cover one's hair (especially as it pertains to the wedding night), see *haorot u'biurim* (Oholei Torah) vol. 822, 826, 827, and 833.

ספר הפלאה

THE BOOK OF UTTERANCES

MUFLAH SAMUCH LA'ISH



קָטַן בֶּן שְׁתַּיִם עֲשָׂרָה שָׁנָה וְיָוִם אֶחָד, וְקִטְנָה בֵּת אַחַת עֲשָׂרָה שָׁנָה וְיָוִם אֶחָד, שֶׁנִּשְׁבָּעוּ אוֹ שֶׁנִּדְּרוּ, בֵּין גְּדֻרֵי אֶסֶר בֵּין גְּדֻרֵי הַקֹּדֶשׁ - בּוֹדְקִין אוֹתָן וְשׂוֹאֲלִין אוֹתָן: אִם יָדְעוּ לְשֵׁם מִי נִדְּרוּ וּלְשֵׁם מִי הִקְדִּישׁוּ וְנִשְׁבָּעוּ - נִדְּרֵיהֶן קִיָּמִין וְהִקְדִּשָּׁן הִקְדִּשׁ; וְאִם לֹא יָדְעוּ, אֵין דְּבָרֵיהֶן כְּלוּם (גְּדֻרִים י"א).

Throughout Jewish law, a male is not responsible for his actions before he turns thirteen and a female before she turns twelve, and they need to show physical signs of adulthood. This is not the case when it comes to an oath, here their words have consequence even before they are considered a complete adult.¹ Such a minor has a halachik status regarding oaths as a *muflah samuch la'ish*, lit., oath (of a minor) who is close to adulthood.

As set forth by Rambam,² there are two sets of unique laws regarding the oath of a minor, one pertaining a minor who reached the age of adulthood, but did not show any physical signs of adulthood,³ and one, which

1. The sages derive this from a biblical verse (Temurah 2b; Niddah 46a).

2. Based on Niddah 45b-46b.

3. Whether such a minors' oaths are of consequence biblically is a debate in the Talmud (ibid.). Rambam maintains that it is biblical (Nedarim 11:4). Cf. Rambam and Raavad, Nezirus 2:13.

we will discuss now, when the minor reaches within the year of the age of adulthood.⁴

A male minor who is twelve years and one day old and a female minor who is eleven years and one day old who took an oath or a vow, whether a vow forbidding something to them or a vow consecrating an article. We investigate them and ask them [questions]. If they know for Whose sake they took the vow or for Whose sake they consecrated [the article] or took the oath, their vows and their consecration are binding. If they do not know, their vows and their statements are of no consequence (Nedarim 11:1).

Rambam continues with another clause.

It is necessary to make an investigation throughout the entire twelfth year of a female minor and the entire thirteenth year of a male minor (ibid.).

This law is based on a teaching of the Talmud. Nevertheless, it prompted a question by the commentaries.

The Talmud explains,

One might think that since the Master said that thirty days of a year are considered as a year, therefore, in a case where we examine her for thirty days [after she turns eleven] and she does not know how to utter a vow [i.e., with proper meaning and intent], she is no longer examined [until she reaches the age of twelve. Therefore,] the [Mishnah] teaches us [that she is examined throughout her twelfth year] (Niddah 45b).

The Kesef Mishnah asks,

I don't know Rambam's source. The Talmud says that if she doesn't know how to utter an oath properly, she can continue to be examined for the year, to see if she learned how to take a proper oath. How does Rambam know that if we ascertain that she knew how to take a proper oath, we need to continue to examine her throughout the year? (commentary to Rambam ibid.: 2)⁵

4. A simple reading of Rambam seems to imply that this set of rules is Rabbinic in nature (Tzafnat Pa'aneach on Rambam Nedarim 11:1). Cf. sources mentioned in Likkutei Sichos vol. 28, p. 196, fn. 31.

5. Kesef Mishnah, Radvaz and others maintain that Rambam had an alternate reading of the Talmud, where it read that “we examine her for thirty days [after she turns eleven] and she knew how

The Meiri explains that the Talmud just chooses one side of the equation, but in truth they are both true; you need to continue examining for the entire year, even if she knew who she was taking an oath to at the beginning of the year. The Meiri continues that Rambam maintains this view as well. But Meiri is perturbed with the obvious question: If she knew who she was taking an oath to, then why question this any further, why think that this changed?⁶ He answers:

It seems to me that the reason is because perhaps when she was first checked, it [didn't reflect her brain capacity, and] was just a coincidence that she knew what she was speaking about (Beis Habechira to Niddah ibid.).⁷

The Lubavitcher Rebbe explains, that this law is based on a Chazakah, a Halachik assumption, one that cannot be asserted here:⁸

The meaning of a Chazakah is that we are convinced that nothing will change from a status quo. When it comes to a minor, he has no steadfast intellectual maturity. Since he lacks true wisdom. As we see that minors continuously change their minds, and do not take on concrete resolutions. Thus, it is obvious that we can't safely assume (chazakah) that a minor's intellectual maturity will continue throughout the year, without a relapse (Likkutei Sichos vol. 28, p. 194).

to utter a vow." This reading is reflected in a second and later version of Rambam's commentary to Mishnah.

In Rambam's first version of his commentary, one can see that he had the same reading as our Talmud, which lead the Meiri and others to conclude that Rambam contradicts himself from his commentary to his Mishneh Torah. For a full discussion on these two reading and this entire topic, see Likkutei Sichos vol. 28, p. 191 ff.

6. See also Bach to Yoreh Deah ch. 233.

7. See also commentaries mention in Likkutei Sichos ibid. fn. 7.

8. Although he doesn't directly use this explanation to clarify the words of Meiri (or commentaries referred to in the previous note) directly.

ספר זרעים

THE BOOK OF AGRICULTURE

REDEEMING A FIRSTBORN FROM A FEMALE PRIEST



וְכֵן פְּדִיּוֹן הַבֶּן לְזִכְרֵי כֹהֲנָה, שֶׁכֵּן נֶאֱמַר בּוֹ "וְנִתְּתָה
הַכֶּסֶף לְאַהֲרֹן וּלְבָנָיו" (ביכורים א:).

There is a Biblical commandment to redeem a firstborn son from a priest.¹ By giving the priest 5 Shekalim, the parents are, so to speak, reclaiming their child. Rambam writes that this “redemption” is from a male priest.

The redemption of firstborn [sons is given] only to males of the priestly family, for concerning it, [Numbers 3:48] states: “And you shall give the money to Aharon and his sons” (Laws of Bikkurim 1:10).

As the Mishnah Lamelech (on Rambam *ibid.*) points out, there is a dissenting view.² To appreciate it, we will begin with an excerpt of the Talmud

1. For a Halachic analysis on whom this commandment applies, see Likkutei Sichos vol. 11, p. 42ff. Chasan Sofer, responsa 25.

2. The numerous views are cited in Pidyon Haben K’hilchasa (Oberlander), p. 92, fn. 25, many sources are cited in Rabbi Akiva Eiger’s gloss to Yoreh Deah 61:8. See also notes to Tosfos Harosh, Kiddushin 8a (Mosad Harav Kuk).

discussing that the daughter of a priest should marry a Torah scholar or a priest, otherwise the marriage may be tumultuous.

Rav Kahana said: Had I not married a daughter of a priest, I would not have been exiled (Pesachim 49a).

Tosfos comments:

From this we can glean that Rav Kahana was not a priest. Concerning that which we learn in Tractate Kiddushin (8a) that Rav Kahana took a cloth [sudara] for the redemption of a firstborn son—he took it on behalf of his wife [who was a priest] (s.v. amar [49b]).

Tosfos, here, holds that a woman who is a priest can also redeem a firstborn,³ and Rav Kahana was doing it on his wife's behalf.⁴

The Chasam Sofer offers the following answer to the simple question: Rambam cites a verse that says “to Aharon and his sons,” so how can Tosfos posit that a female priest can also redeem the firstborn?⁵

In Parshas Korach (18:15-16), where the priestly gifts are mentioned, there is no mention that they have to be given to Aharon and his sons; therefore, the commandment that is for generations does not include a specific detail (i.e., the detail that it must be given “to Aharon and his sons”). That [detail] is mentioned earlier on (in 3:48) as a commandment [specifically] regarding the redemption that took place in the desert (Yoreh Deah, Responsa 301).⁶

The Chasam Sofer concludes with his application of the law.

It seems to me that if someone toils to find a male priest and the day of the redemption has arrived, and the person does not want

3. See Tos. Kiddushin 8a, s.v. Rav Kahana, where he cites this answer and an additional answer (that there were two Rav Kahanas), which the Mishnah Lamelech understands to be reflective of these two opinions, whether a female priest can redeem a firstborn or not.

4. For the numerous ways of understanding the precise method utilized here (e.g., is the woman taking it, is the husband taking it on his wife's behalf, or is he allowed to take it on his own behalf, because of his wife who is a priest), see Chasam Sofer, Yoreh Deah, Responsa 301; Shiurei Rabbi Dovid Povarsky, Kiddushin, vol. 1, par. 254.

5. See Rosh, end of Tractate Bechoros; Rashba, Responsa 836.

6. The Chasam Sofer offers another more favorable answer. See also Derech Emunah (R. Kienevsky) on Rambam, Bikkurim 1:10.

to delay the process, because who knows what tomorrow will bring, he should make the redemption process with a female priest without a blessing. He should then stipulate in his mind that this redemption is only in the event that I do not find a male priest; if I do find one [and have the opportunity to make the redemption in a proper manner], then I will do it then with the blessings, and this current redemption will be of no consequence (Ibid.).⁷

7. See Chasan Sofer (mentioned in fn. 1), where he suggests to do redemption with a priest who is married to the daughter of a priest, to maximize the validity of the redemption. (See there where he explains the viability of using a female priest for redemption, based on the foundational principles in understanding the redemption process.) See also Likkutei Sichos vol. 36, p. 63.

ספר עבודה

THE BOOK OF TEMPLE SERVICE

THE PRIESTLY GARMENTS AND SHAATNEZ



בגדי כהנה מתר להנות בהן. לפיכך לובש אותן ביום עבודתו, אִפְּלוּ
שֶׁלֹא בְשַׁעַת עֲבוֹדָה; חוּץ מִן הָאֲבֵט - מִפְּנֵי שֶׁהוּא שֶׁעֲטִינּוּ. אֲסוּר
לְכוּהֵן הַדְּיוּט לְלוּבְשׁוֹ אֶלָּא בְשַׁעַת הָעֲבוֹדָה (כלי המקדש והעבדים בו ח:יא-יב).

Regarding the priestly garments, and the prohibition against wearing Shaatnez, a mixture of wool and linen,¹ Rambam writes:

It is permitted to derive benefit from the priestly garments. Therefore [the priests] wear them on the day of their Temple service even when they are not performing service with the exception of the sash, because it is shaatnez. It is, however, forbidden for an ordinary priest to wear it except during his service (Klei Hamikdash V'ha'ovdim Bo, 8:11-12).

Raavad argues on the extent of this permissibility:

1. See also Likkutei Sichos, vol. 29, p. 122.

From the Talmud it seems that a priest can wear his clothing the entire day, provided he is in the Temple (Gloss to Rambam, ibid.).²

In explanation of Rambam's position, the Shaagas Aryeh writes:

There is a principle that a positive commandment overrides a negative commandment, Aseh Doiche Loh Taaseh (Yevamos 3b), thus, only during the service, which is a positive commandment, can the prohibition be superseded (siman 29).

The Shaagas Aryeh, then, questions the application of this principle.³

How can we permit wearing Shaatnez even during the Temple service, if the Talmud in tractate Beitzah (8b) explains that one can only override a negative commandment, if at that very moment he is fulfilling the positive commandment, e.g., removing a tzaraas leprosy (which is a prohibition), through circumcision, or wearing tzitzis which is shaatnez. If, however, one is not fulfilling the positive commandment at that very moment of transgressing the prohibition, one cannot supersede the prohibition. Thus, a priest dons his clothing before he begins his Temple service, at a time that he is not performing a positive commandment, and if this is permitted, it cannot be because of the principle that a positive commandment overrides a negative commandment. Rather, it is for another reason, which allows for a priest to wear his priestly clothing even when not doing temple work (as the Raavad posits).

The Kuntres Acharon on the Shaagas Aryeh defends Rambam from this question:

I see that in sefer hamitzvos, Rambam numerates a positive commandment (33) that the priest should don his priestly clothing. If so, when he puts on his clothing, he is already fulfilling a positive commandment, the commandment of donning these garments, which causes the priesthood to be "established" on the priest,⁴ as

2. See also Rambam and Raavad, Laws of Kilayim, 10:32.

3. Understanding Rambam with this position has led the Shaagas Aryeh to question Rambam's position from numerous Talmudic passages. For a defense of Rambam from some of Shaagas Aryeh's queries, and a different conceptual idea of Rambam's reasoning, see Tzemach Tzedek, Orach Chaim, responsa 71; Likkutei Sichos, vol. 36, p. 153ff.

4. See Asvon D'oreisa (Engel), principle 19 and Beis Ha'otzer (Engel), maareches beis, principle 10, where he discusses if the priestly cloth provides as a function in the priesthood of a priest, or

we learn in Tractate Sanhedrin (83b), that it is when the priestly clothing is on them that they are considered priests; otherwise, they are like foreigners, who are liable to capital punishment if they perform Temple service⁵ (Kuntresh acharon, 8 (Machon Shaar Hamishpat ed.)).

In understanding Raavad's opinion, Shaagas Aryeh writes:

There is a biblical exemption (learned from tzitzis) that allows for the wearing of priestly clothing in the Temple at all times, even though it is shaatnez... Once the Torah allows during the Temple service, it also allows when there is no Temple service, employing the principle of "migui" (siman (29 and) 30).

There is a principle called "hoi'l," which effectively means that something is permissible to do, because something can come up in which case that thing will be permissible to do (see Pesachim 46b). Here also, wearing clothing is permissible at all times, since the Priest can possibly be called upon to do a temple service at any moment (ibid.).⁶

The Lubavitcher Rebbe offers the following insight into Raavad's position:

The Torah commanded that the priestly garments should be made with wool and linen; thus, it is obvious that no prohibitions (i.e., shaatnez) apply to these garments. This is the description of priestly clothing, concerning which the discussion of a prohibition of shaatnez does not begin (Likkutei Sichos vol. 36, p. 154).

it penetrates deeper, and is a function in his Temple service. Perhaps, one can suggest that this is the discussion on hand, and the varying opinions between the Shaagas Aryeh and the Kuntres Acharon.

5. He cites there to look up Ramban and Megilas Esther to Sefer Hamitzvos, Positive commandment 33.

6. See there that a practical difference between these two explanations will be at a time that the priests are allowed to be in the Temple but cannot possibly perform any Temple services.

ספר הקרבנות

THE BOOK OF SACRIFICES

A PROPERTY'S LIEN ON A SACRIFICE



הָאִשָּׁה שֶׁהֵבִיָּאָה חֲטָאתָהּ וּמָתָה - יָבִיאוּ הַיּוֹרְשִׁים עוֹלָתָהּ.
אֶף עַל פִּי שְׁלֹא הִפְרִישָׁה אוֹתָהּ מֵחַיִּים, כִּבָּר נִשְׁתַּעֲבָדוּ
נִכְסֶיהָ בְּקֶרְבָּן, וְהִשְׁעֵבּוּד דִּין תּוֹרָה הוּא (מְחוֹסְרֵי כִפְרָה אִיג).

A woman who gives birth or has excessive uterine bleeding at an abnormal time (*zavah*) is obligated to bring first a sin-offering and then a burnt-offering in order to complete her purification process. Rambam rules what should be done in a case that the sin-offering was brought and then the woman died.

When a woman brought her sin-offering and then died, her heirs should bring her burnt-offering even if she did not separate it during her lifetime. The rationale is that a lien for the sacrifice was already established on her property and this lien has the power of Scriptural Law (Mechusrei Kaparah 1:13).

The Lechem Mishnah offers some clarity on the dynamics of the above scenario, from Rambam's ruling by a similar situation concerning the offering that is brought when a person comes to the Temple on a festival (*olas re'iyah*).¹

Rambam writes:

When a person sets aside a burnt-offering brought when appearing before God and dies, his heirs are obligated to offer it (Chagigah 1:10).

The Lechem Mishnah comments:

Rambam's rulings are difficult to understand. The Jerusalem Talmud compares these two cases to each-other. And regarding the case of the woman who died the Talmud clearly writes (and Rambam clearly rules this way) that even if the woman did not separate the burnt-offering in her lifetime, the heirs must still bring the sacrifice because of the lien. Why, then, by the burnt-offering for appearing at the Temple [are the heirs] obligated to bring the offering only if it was set aside?

It is possible, that by the case of the burnt-offering for appearing at the Temple there was no landed property (karka) as part of the inheritance, and therefore there was no real lien created (and thus the heirs are only obligated when the sacrifice was already set aside). In the case of the woman who died, there was landed property as part of the inheritance, and this landed property causes a proper lien on all the deceased's properties.²

This answer is tenuous, for Rambam should have clarified such. See also Kesef Mishnah for similar remarks. Further clarification is needed (commentary to Chagigah ibid.).

One way to understand this is that—despite the difficulty of reading it into Rambam words—the case of a woman who died after bringing the sin-offering, that her heirs must bring the burnt-offering even if she didn't separate it, is only in a case where landed property was part of the

1. The Mishnah Lamelech to Mechusrei Kaparah 1:13 refers the student to this second ruling and the commentaries there.

2. Kesef Mishnah writes that the Jerusalem Talmud clearly writes that when there is land as part of the inheritance, no separation is needed during the deceased's lifetime.

inheritance, and Rambam relies on his ruling elsewhere in his Mishneh Torah, where he clearly writes that a lien only falls upon and through land.³

However, the simple reading of Rambam lends itself to the interpretation that he is not differentiating between a scenario where landed property was part of the inheritance or not, and that he makes no reference to a ruling elsewhere in his Mikshneh Torah. But, this begs the question: why should there be a lien in our case on the moving property (*mitaltlin*), if Rambam writes that biblically a lien is only on landed property?

Perhaps, only when there is a debtor and creditor do we say that moving property is not under lien, because the creditor does not rely on such moveable, transient property, and is essentially forgiving such a lien.⁴ In a case of hekdeshe, sacred ownership (i.e., sacrifices), one cannot make this argument [that there is forgiveness], therefore even moving property is on lien. Thus, the heirs must bring the burnt-offering, even if no landed property is inherited, only movable property (Tzemach Tzedek, Chidushim Al Hashas 153c).⁵

3. See also Rambam, Malveh Uloveh 11:7. This understanding of Rambam is mentioned by the Maaseh Rokeach to Chagigah 1:10; Mayim Chaim on Rambam *ibid.*; Kedushas Yom Tov (Algazi), ch. 43.

4. The Tzemach Tzedek references to the Tumim (39:2), who makes this argument.

5. See also Pachad Yitzchak (Spector), vol. 2, ch. 107.

ספר טהרה

THE BOOK OF PURITY

THE SAFEKEEPING OF RED HEIFERS



וַיִּשַׁע פְּרוֹת אֲדָמוֹת נִעְשׂוּ מְשֻׁנָּצָטוֹו בְּמִצָּה זוֹ עַד שְׁחָרַב
הַבַּיִת בַּשָּׁנָה - רִאשׁוֹנָה עָשָׂה מֹשֶׁה רַבֵּנוּ, שְׁנִיָּה עָשָׂה עֶזְרָא,
וְשִׁבְעַ מֵעֶזְרָא עַד חֲרָבֵן הַבַּיִת. וְהָעֲשִׁירִית יַעֲשֶׂה הַמֶּלֶךְ
הַמָּשִׁיחַ, מִהֶרָה יִגְלֶה אָמֵן כֵּן יְהִי רָצוֹן (פֶּרֶה אֲדוּמָה ג:ד).

The ashes of the Red Heifer (Parah Aduma) was sprinkled on the ritually impure through a dead corpse as part of their purification process. Rambam finds it important to record the number of Red Heifers that were prepared throughout the generations.⁶

Nine Red Heifers were offered from the time that they were commanded to fulfill this mitzvah until the time when the Temple was destroyed a second time. The first was brought by Moses our teacher. The second was brought by Ezra. Seven others were offered until the destruction of the Second Temple. And the tenth

6. From Mishnah, Parah 3:5.

will be brought by the king Mashiach; may he speedily be revealed. Amen, so may it be G-d's will (Parah Aduma 3:4).

The obvious question is, why is all this important?

Why is it important to know who prepared these [Red Heifers]?⁷ (Mishnah Achrona, Parah 3:5 s.v. mishtayim)

The Mishnah Achrona answers:

I want to suggest that the reason why we are taught who prepared the Red Heifers is to clarify how we can purify with a Red Heifer in any future time, if the rule is that at least one Red Heifer from previous times must be included when purifying with a newly prepared Red Heifer,⁸ when none are available? By telling us that Moshe Rabbeinu prepared the first one, and we know that Moshe's Red Heifer remained forever,⁹ we know that there is surely one Red Heifer to go back and get from¹⁰ (Mishnah Achrona ibid.).

The reason why Rambam records the number of Red Heifers can be gleaned from the Bartenura's commentary on the Mishnah, similar to the previous explanation.

Since ideally one was sprinkled from all the Red Heifers that were there, namely, all seven. Therefore, it mentions here that there were seven (Bartenura, Parah ibid. s.v. lo Matz'u).

According to this, the reason for mentioning the number is to know how many Reb Heifers are ideally needed to cause purification.

The Lubavitcher Rebbe offers a novel insight into Rambam, which sheds light on this question.

According to Rambam, the ash from all the Red Heifers needs to be set aside as a "safekeeping."¹¹ Meaning, it is not set aside so that it's available for use when needed, but for safekeeping. In other words, setting it aside is not a detail in "sprinkling" the ash.

7. This question is especially true about Rambam who self-professes to be a book of Laws (see introduction to Mishneh Torah), not a book of history (which the Mishnah often mentions), so why this long elaboration?

8. Mishnah ibid. with commentaries as a continuation to ibid. 3:1; Rambam, Parah Adumah 2:6.

9. Cf. Tosefos Yom Tov, Parah 3:3 s.v. v'zorko.

10. Cf. also Boaz par. 7, on Parah 3:4.

11. See Laws of Parah Adumah 3:4, citing Bamidbar 19:9.

Rather, it is a separate law, that ash must be set aside for safe-keep (even if there would not be a practical need for actual use for purification).

To reword this approach (with some additional depth): The obligation to set aside ash for “safekeeping” demands that there is constantly ash that is in a state of “available and set aside.” It follows, the command to set aside ash for “safekeeping” is not (just) a requirement to set aside ash from each Red Heifer that is prepared, rather, there is a general and constant commandment: Red Heifer ash has to be constantly set aside for “safekeeping.”¹²

Now we can appreciate why Rambam includes all the Red Heifers that were prepared from the time of Moshe Rabbeinu: After explaining that the Red Heifer has to be “constantly set aside,” Rambam fortifies this assertion by demonstrating that this was the case throughout the generations. By citing the Mishnah that discusses who prepared the Red Heifers we see that the ash was indeed always set aside.¹³ In the words of Rambam: Nine Red Heifers were offered from the time that they were commanded to fulfill this mitzvah until the time when the Temple was destroyed a second time. And with Moshiach’s arrival, the tenth one will be prepared,¹⁴ and this commandment will be fulfilled once again (Likkutei Sichos vol. 28, p. 133ff.).

To conclude with Rambam’s words:

May he [=Moshiach] speedily be revealed. Amen, so may it be G-d’s will.¹⁵

12. See Rambam *ibid.*; Sefer Hamitzvos of Rabbi Saadya Gaon, Parsha 45; The Commentary of Ri Perlo on Saadya Gaon *ibid.* (191a ff.); Likkutei Sichos vol. 28, p. 133-4; vol. 16, p. 418-20.

13. This explains why Rambam brings this “historical” fact as a continuation to the law that the ash of the Red Heifer has to be set aside, unlike the Mishnah that cites it as a continuation to laws of sprinkling and using the ash (Likkutei Sichos vol. 28, *ibid.*).

14. See also Likkutei Sichos vol. 33, p. 128.

15. With these words Rambam teaches us a law regarding the anticipation for Moshiach: It is not enough to believe in Moshiach, rather, one must yearn and anticipate Moshiach’s arrival to such an extent that when Moshiach is mentioned in passing (like in our case, that it is cited as a law regarding the Red Heifer in the messianic era), it calls out a yearning and prayer for his arrival (Likkutei Sichos *ibid.*, p. 135ff.).

ספר נזיקין

THE BOOK OF DAMAGES

STEALING IN JEST



אָסור לָגֵנֵב כָּל שֶׁהוּא דִין תּוֹרָה. וְאָסור לָגֵנֵב דֶּרֶךְ שְׁחוֹק
אוֹ לָגֵנֵב עַל מְנַת לְהַחְזִיר, אוֹ לָגֵנֵב עַל מְנַת לְשָׁלֵם.
הַכֹּל אָסור, שְׁלֵא יִרְגִּיל עֲצָמוֹ בְּכָךְ (גְּנִיבָה א:ב).

Rambam extends the parameters of the prohibition against stealing so that it does not apply only in a case where someone steals something of value with malicious intent.

The Torah prohibits stealing even the slightest amount. It is forbidden to steal as a jest, to steal with the intent to return, or to steal with the intent to pay. All is forbidden, lest one habituate oneself to such conduct¹ (Geneiva 1:2).

This ruling is taken from a teaching in the Talmud.

“You shall not steal” even [if you do so only] in order to aggravate the victim. “You shall not steal” even [if you do so] in order to repay [the victim] a double payment (Bava Metzia, 61b).

1. It is interesting to note the Chabad custom not to “steal” the Afikoman at the seder on Pesach (see Hagadah Shel Pesach Im Likutei Taamim Uminhagim, Yachatz, s.v. afikoman). The Lubavitcher Rebbe references (ibid.) the teaching of the Talmud, *One who steals from a thief has a taste of theft* (Berachos 5b). Cf. Rama, Orach Chaim 696:8.

There are two ways to understand Rambam's ruling:

1 – Rambam maintains that this teaching of the Talmud is merely a Scriptural allusion to a Rabbinic law (asmachta), for the verse is surely out to teach us the actual prohibition against stealing (Lechem Mishnah, Geneiva 1:1).

2 – The Talmud's intent is to be understood in its simple manner (Magid Mishnah, Gezeilah V'avaida 1:3²).

To put it differently, there are two ways to read the Rambam: 1 – The first case is prohibited by Biblical law, and then the following three cases are prohibited, but only by Rabbinic law so that a person doesn't become accustomed to such conduct.³ 2 – All options of stealing mentioned by Rambam in this law are a continuation to the opening case where Rambam clearly writes that it is prohibited from the Torah.

The Alter Rebbe cites both opinions.

Even when a person steals an article with the intent of returning it—he merely desired to irritate his fellow briefly,⁴—or even if he has no intent to irritate his fellow at all and steals only as a joke—he violates a negative commandment. Some authorities maintain that such actions are prohibited only according to Rabbinic decree, lest one become habituated to such behavior (Choshen Mishpat, Gzeilah U'Gnievah, par. 3).

In his Kuntres Acharon, the Alter Rebbe implies that he understands Rambam to infer that they are biblical prohibitions.⁵ And answers a question that arises in the reading of the Rambam according to this understanding.

2. The Alter Rebbe (Choshen Mishpat, Gzeilah U'Gnievah, Kuntres Acharon 2) learns that the Magid Mishnah's explanation there, also applies here.

3. See Minchas Chinuch, Commandment 224. See also Chut Hameshulash, Responsa 17 from Hagahon Rabbeinu Chaim.

4. See Ketzos Hachoshen, Choshen Mishpat, 348:1, where he cites Rambam in his sefer Hamitzvos (negative commandment 244) who writes that this prohibition is even if one steals to irritate for just a brief moment (unlike the Shitah Mekubetzes (Bava Metzia 61b) who learns that the prohibition is against stealing to irritate for good). He continues that people must be careful from "a common practice" to take away (i.e., steal) other people's things just to anger (or get back at) them.

5. See Kuntres Acharon (ibid., 1) where he simply sources the law as Rambam.

Why would Rambam write a reason for the prohibition—“*lest one habituate oneself to such conduct*,”—which lends to an understanding that the prohibition is Rabbinical for the above mentioned reason?

See [Tur] Yoreh Deah, ch. 181, that it is Rambam’s methodology to explain the reason for scriptural [prohibitions]⁶ (Choshen Mishpat, ibid., Kuntres Acharon 2).

The Alter Rebbe also explains the source of Rambam’s ruling prohibiting stealing in jest.⁷

This is learned from the prohibition [mentioned in the Talmud] against stealing in order to repay a double payment. [If it is prohibited to steal temporarily in order to return it and then add a double portion to the victim, how much more so is it prohibited to steal just for laughs] (Ibid., Kuntres Acharon 1).

6. See also Rambam Gezeilah V’avaida 7:3.

7. See Kinyan Torah Behalacha (Hurwitz), vol. 2, ch. 102, where he questions Rambam’s source.

ספר קנין

THE BOOK OF ACQUISITION

THE IMPORTANCE OF LOCAL CUSTOM



וְזֶה עֵיקָר גָּדוֹל: בְּכָל דְּבָרֵי מִשְׁאָ וּמִתָּן - הוֹלְכִין אַחֵר לְשׁוֹן בְּנֵי
אָדָם בְּאוֹתוֹ הַמָּקוֹם, וְאַחֵר הַמִּנְהָג. אֲבָל מָקוֹם שָׁאִין בּוֹ מִנְהָג
יָדוּעַ, וְלֹא שִׁמּוֹת מִיַּחַדִּין, אֲלֹא יֵשׁ שְׁקוּרִין כָּךְ, וְיֵשׁ שְׁקוּרִין
כָּךְ - עוֹשִׂים כְּמוֹ שֶׁפָּרְשׁוּ חֲכָמִים בְּפָרָקִים אֵלּוּ (מכירה כו:ח).

Rambam doesn't always repeat himself in his Mishneh Torah, and relies on the learner's knowledge of a law mentioned previously, even if the law is once again relevant in a new context.¹ Nevertheless, we find that Rambam *does* repeat himself about a general principle regarding sales, in consecutive chapters of his Laws concerning Sales (mechira).

In chapter 26, which discusses the sale of landed property, Rambam concludes:

This is a fundamental principle: With regard to all matters of commerce and trade, we follow the commonly accepted meanings of the terms used by people of that place, and the local business

1. See Yad Melachi, Kellallei Harambam, par. 6.

customs. When, however, there are no local business customs or commonly accepted meanings of terms, and instead, one person will have this intent and another, another intent, we follow the guidelines explained by the Sages in these chapters (Law 8).

In chapter 27, which discusses the sale of movable property, Rambam concludes:

Do not let the fundamental principles governing these matters escape your eyes. These are the accepted local customs, and the commonly accepted meaning of terms for every particular entity. In a place where there is no local custom defined, and a term does not have a specific meaning that excludes a more encompassing conception, we follow these principles that were explained by our Sages, as stated previously (Law 11).

In chapter 27, which discusses the size of land sold, Rambam concludes:

All the above rules apply only in a place where there is no prevailing local custom, as we have explained. When, by contrast, there is a prevailing local custom, that custom should be followed. Similarly, we follow the implied meanings of the expressions used by the majority of the local people² (Law 15).

This begs the question, why is this principle that we follow the prevailing custom so important³ that Rambam repeats himself,⁴ and does not suffice with mentioning it once?

The Lubavitcher Rebbe addresses this question.

Rambam's "fundamental principle" that when it comes to commerce and business transactions, one follows the common terms and local custom is so novel and mind-jarring that Rambam has to repeat it over and over by the numerous topics that it is discussed, despite the similar nature of discussion.

2. See Even Ha'ezer (loc. cit.), who discusses why we follow the majority, if we rule that by money matters we don't follow the majority. See also Chazon Yechezkel, Bava Basra, 4:6.

3. See Hagahos Maimonis on Rambam 27:10, where he cross references some of the places that Rambam mentions this principle.

4. Note that this principle is also repeated in Shulchan Aruch three times when discussing these topics: Choshen Mishpat, 215:8, 218:19, 220:15. [See Be'er Hagoloh and Biurei HaGera, who cross reference the mention of this principle]. Although it is not so uncommon for laws to be repeated in Shulchan Aruch, which is not a codification of laws, as much as it is a guide on how to practice law (see Likkutei Sichos vol. 34, p. 138, fn. 4).

Seemingly, this ruling is completely astonishing: after the Torah compiles the rulings of the Jewish Sages regarding these topics, why would local business custom be of any value? Why should we consider the custom of some merchants, which is not congruent with the Torah principle [of trade]?⁵

[It is even more puzzling when] considering that [Rambam makes] no differentiation between the type of people of a city, if they are upstanding citizens, or [depraved citizens like] the citizens of Sodom and Amorah!... We find no mention that we only follow a custom after it is established that the citizens follow the Seven Noahide Laws!⁶

And then these laws regarding sales spill over to other areas of law. Is the money that changes hands in such a deal considered the buyer's or seller's, which will affect if marriage performed with this money is acceptable, and thus the woman is or isn't considered married (eshes ish).

Considering the stakes, it is extremely puzzling that we would consider what the common folk have to say over the principles that the Sages put forth!⁷

Because this is such an unconventional idea, Rambam repeats himself [in every set of rules] that this principle of following the local business customs is a fundamental principle of Torah (Toras Menachem 5748, vol. 1, p. 463-4, 468-9).⁸

5. Cf. Teshuvos Re'em (Rabbi Eliyahu Mizrachi), responsa 16.

6. See Rashba to Bava Metzia 73b.

7. Rabbi Moshe Feinstein gives a reason for this ruling: That we assume that whoever is involved in commerce accepted upon himself and stipulated that he will follow the local customs, therefore it also makes no difference if the custom was established by non-Jews (Igros Moshe, Choshen Mishpat vol. 1, responsa 72). See also Terumas Hadeshen, responsa 342.

8. See also Toras Menachem 5745, vol. 2, p. 1265; Sefer Hasichos 5752, vol. 1, p. 174.

ספר משפטים

THE BOOK OF JUDGMENTS

FORGIVING INTEREST



הורו מקצת הגאונים, שהלֹוה שִׁמַּח לַמִּלֻּה בְּרִבִּית שְׁלֶקַח מִמֶּנּוּ אוֹ שְׁעֵתִיד לֶקַח - אִף עַל פִּי שִׁקְנוֹ מִיָּדוֹ שִׁמַּח אוֹ נָתַן מִתְּנָה, אִינוֹ מוֹעִיל כָּלֹוִם; שֶׁכָּל רִבִּית שֶׁבְּעוֹלָם מִחִילָה הִיא, אֲבָל הַתּוֹרָה לֹא מִחִילָה, וְאַסְרָה מִחִילָה זֶה. וּלְפִיכָךְ אֵין הַמִּחִילָה מוֹעֵלֶת בְּרִבִּית, אֶפְלוּ בְּרִבִּית שֶׁל דְּבָרֵיהֶם. יֵרָאֶה לִּי, שֶׁאֵין הוֹרָאָה זֶה נְכוֹנָה. אֶלָּא מֵאַחֵר שְׂאוּמְרִים לַמִּלֻּה 'הַחֲזִיר לוֹ', וַיֵּדַע הַלֹּוה שֶׁדָּבָר אֲסוּר עָשָׂה, וְשִׁישׁ לוֹ לְטַל מִמֶּנּוּ - אִם רָצָה לְמַחֵל, מוֹחֵל כְּדָרֶךְ שֶׁמוֹחֵל הַגִּזָּל (מלווה ולווה ד:יג).

Rambam brings the opinion of the Geonim (the Sages just after the Talmudic era), who maintain that the payment of interest can never be forgiven to the lender. I.e., the borrower cannot say when borrowing or repaying a loan, “I know that you shouldn’t be charging me interest, but I am fine with making the interest payment,” or after the lender has the interest, and he wants to return it, the borrower can’t say that he is forgoing the return of the interest.

Rambam then goes on to argue with this opinion.

It appears to me that this ruling is incorrect. Instead, since the lender is told to return the interest, and he knows that he violated a prohibition, and the borrower has the right to collect the money,¹ if the borrower desires to waive the obligation to return the interest he may,² just as a person may waive the return of a stolen article (Malveh Veloveh 4:13).

There are two ways to understand Rambam's ruling:

The Avnei Nezer's approach: Interest is a monetary (*monanus*) consideration. The interest money belongs to the borrower, and if the lender has this money he is a thief.³ The lender has to now return this money like any other money that was stolen. If the borrower forgives the interest, the borrower is effectively saying that the lender has no money that belongs to him.⁴

The Lubavitcher Rebbe's approach: Interest is a legal observance (*issurin*) question. The interest money belongs to the lender. The Torah, however, does not want the lender to keep this money, and obligates him to return the money that he caused the borrower to surrender. If the borrower forgives the interest, the borrower is effectively saying that he is owed no money for the lender to fulfill his *Torah obligation* of returning anything.⁵

One possible practical difference is if the courts would go and seize the interest money from the lender (*yordin lenechasav*), in the event that he

1. See Machaneh Efraim (Ribis, ch. 10) for a discussion concerning precisely when Rambam would concede that the forgiveness helps. See also Igros Moshe, Yoreh Deah, vol. 3 (at the conclusion), commentary on Yoreh Deah 160, 6.

2. See Meiri (Bava Metzia 61b) for a discussion if by forgoing and forgiving the financial payment, the prohibition against taking the interest is also waived, or only the financial payment is forgiven, while the prohibition has still been transgressed. See also Perisha, Yoreh Deah, 160:8; Igros Moshe, ibid., 160:7.

3. See also Mishnah Lamelech, Malveh Veloveh 4:4; Machaneh Efraim (Ribis, ch. 2).

4. Birchas Shemuel, Bava Metzia, 48; Avnei Nezer, Yoreh Deah, responsa 168.

5. Likkutei Sichos vol. 12, p. 117. For further discussion on the Rebbe's understanding, see Imrei Tzvi (Gruzman), vol. 2, ch. 34.

doesn't want to return the money. If it is a monetary consideration, where the borrower's money is in the lender's hands, then the courts would go seize the money.⁶ If it's a question of legal observance, then the courts wouldn't go seize the interest money.⁷

Another possible practical difference is the attitude the Rabbi has to give to a case where there are unresolved questions if there is a question of interest or not. If the interest is purely a monetary question, then the guiding principle would be to be lenient (*safek mamona l'kula*) and to follow the rule that one who wants to expropriate has the burden of proof (*hamotzie mechaveiro alav hara'ayah*). If it is a legal observance question, then the guiding principle would be to always assume there is a problem (*safek isur d'oiraisa*).⁸

6. The Avnei Nezer (ibid.) is thus left with an internal contradiction in the Shulchan Aruch, on the one hand, the Shulchan Aruch rules that the interest *can* be forgiven (Yoreh Deah 160:5), and on the other hand, he rules that the courts don't go and seize the money (161:5). According to the second way of understanding Rambam's (and those who follow in his ruling) opinion, this question is resolved. On the one hand, it is only a Torah obligation to return the money, therefore, the courts don't go to seize the money. On the other hand, it is money that the lender surrendered that has to be returned, and if the lender forgives this money, he is essentially saying that there is no money owed for the lender to fulfill his obligation (Likkutei Sichos, ibid., fn. 22).

7. See Machaneh Efraim (Ribis, ch. 1) that even if it's a legal observance question, the courts would go and seize the money, for the courts are authorized to seize money even for the fulfillment of a commandment. See also Tzemach Tzedek, Piskei Dinim, p. 339 (notes on Rambam).

8. See Shach, Yoreh Deah 177:68; Avnei Nezer, ibid., 155:2-4. See also Shaarei Yoisher, shaar 5, chs. 2-4, 25.

ספר שופטים

THE BOOK OF JUDGES

MIRACLES IN THE MESSIANIC ERA



אַל יַעֲלֶה עַל הַלֵּב שְׁבִימוֹת הַמָּשִׁיחַ יִבָּטֵל דְּבַר מִמְּנִהְגּוֹ
שֶׁל עוֹלָם, אוֹ יִהְיֶה שֵׁם חֲדוּשׁ בְּמַעֲשֵׂה בְּרֵאשִׁית, אֲלֵא
עוֹלָם כְּמִנְהַגּוֹ נוֹהֵג (מַלְכִּים וּמַלְחָמוֹת וּמֶלֶךְ הַמָּשִׁיחַ יב:א).

Rambam begins the last chapter of his Mishneh Torah describing how the world will look in the messianic era.

Do not presume that in the Messianic age any facet of the world's nature will change or there will be innovations in the work of creation. Rather, the world will continue according to its pattern¹ (Melachim, uMilchamos, uMelech haMoshiach² 12:1).

Rambam then goes on to explain that the prophetic visions of the prophets are merely metaphoric. For example:

1. This premise that *the world will continue according to its pattern* is a debate in the Talmud, and there seems to be internal contradictions in Rambam's rulings (see Lechem Mishnah, Teshuva 8:7; Likkutei Sichos vol. 27, p. 197ff.).

2. The name of these chapters of laws, as found in early manuscripts of Rambam's Mishneh Torah.

This that it says in Yishaya (11:6): “The wolf will dwell with the lamb, the leopard will lie down with the young goat,” these words are a metaphor and a parable. The interpretation of the prophecy is as follows: Israel will dwell securely together with the wicked gentiles who are likened to a wolf and a leopard (ibid.).

Raavad has a terse objection.

Doesn’t it say in the Torah (Vayikra 26:6): and I will eliminate wild animals from the land? (gloss to Rambam ibid.).

If this is not a change in nature, Raavad argues, then what is?

Radbaz has a simple solution to this objection.

This is no objection. Just like the other scriptural verses are metaphorical, so is this verse metaphorical. It hints at the eradication of the evil nations (commentary to Rambam ibid.).³

The Mirkeves HaMishnah, however, explains Raavad’s objection, which doesn’t allow for Radbaz’s explanation.

Raavad’s intention [with writing that “it says in Torah”] is that words of Torah are not to be understood allegorically (unlike verses of the Prophets, which may be explained allegorically), and the Torah verse never loses its simple understanding (ibid.).⁴

Ramban explains the prediction that the animals will be eradicated in a pretty natural manner.

Wild beasts will not come into their land. Because there will be an abundance and a large amount of good, and the cities will be fully settled, beasts will not come into inhabited places (Commentary to Vayikra 26:6).⁵

With this explanation, we can explain that Rambam finds no contradiction from this verse to a natural state that will be in the messianic era:

3. See also Migdal Oz on Rambam (loc. cit.).

4. The Abarbenel finds a source for Raavad’s position in the Toras Kohanim (Vayikra loc. cit.), where it seems obvious that it is not metaphorical (Yeshuos Meshicho, quoted in Sefer Halikutim in the back of Rambam, Frankel edition). See Likkutei Sichos vol. 7, p. 188ff. for a full analysis of the Toras Kohanim.

5. Ramban there also mentions another idea, that many of the messianic predictions are not really new, for *it was* the nature of the world before the sin of Adam and Eve. See also Netzach Yisroel ch. 50.

When the Jews will be settled in their land and the land is occupied, then naturally the animals will not roam the land (i.e., they will be eradicated), since animals have a natural fear of humans, as the verse says, “fear and dread of you will be upon all the animals of the earth” (Bereishis 9:2; Mirkeves HaMishnah ibid.).

Despite Rambam's explanation in his Mishneh Torah that the verses are to be understood metaphorically to accommodate his explanation of a natural future, in a letter Rambam makes clear that this is not definite.

All these prophetic predictions that I explain metaphorically, this is not definitive. No prophecy came to me from G-d notifying me that it is just a metaphor, nor do I have a tradition from the sages that all these things are just a metaphor... These things are not foundations of our faith, and what a person believes about this [discussion, if it is metaphoric or not] is not something to be perturbed by. Rather, a person must wait for the basics of the belief (i.e., that Moshiach will come), when we will see it all with our eyes, speedily in our days, and we will then see if it is metaphoric or not (Iggeres Techiyas Hameism, ch. 6).

Thus, Rambam himself sees place for a supernatural experience in the messianic era.⁶

To conclude with Rambam's conclusion of his Mishneh Torah:

In that era, there will be neither famine or war, envy or competition for good will flow in abundance and all the delights will be freely available as dust. The occupation of the entire world will be solely to know God. Therefore, the Jews will be great sages and know the hidden matters, grasping the knowledge of their Creator according to the full extent of human potential, as it states (Yishaya 11:9): “The world will be filled with the knowledge of God as the waters cover the ocean bed.”

6. There are, in fact, many midrashic sources that suggest a supernatural experience in the messianic era, and Rambam himself maintains that there will be the resurrection of the dead, which is against nature. The Lubavitcher Rebbe concludes that Rambam holds of two periods in the messianic era, a first, basic period, where there will be no change to the nature of the world, which Rambam speaks of in his Mishneh Torah, and a second, more advanced stage, where there will be miraculous experiences (Likkutei Sichos vol. 27, p. 191ff.).

לעילוי נשמת
החסיד התמים
ר' רפאל שלמה ע"ה
ב"ר קלונימוס קלמן ז"ל



נפטר בשם טוב
י"א אייר ה'תשפ"ב
ת' נ' צ' ב' ה'