



Hands Off

There is a fundamental *Machlokes* between the *Mechaber* and *Rema* regarding the *Harchakos* between a man and his wife when she is a *Nida*. The *Shulchan Aruch* rules (Y.D. 195:15 & 16):

If he is ill and there is no one to care for him apart from his wife [who is a Nida], she may care for him. However, she must be as careful as she possibly can not to wash his face, hands, and legs or prepare his bed in his presence.

A husband may not touch his wife who is ill and is a Nida to care for her, for example, to sit her up or lie her down or support her.

The *Rema* cites a dissenting opinion:

Some say that if there is no one else to care for her, he may do whatever is necessary (Hagahos Sha'arei Dura and Hagahos Mordechai, Shabbos, Chap. 1 in the name of the Maharam) and this is the custom if there is a great need for it.

In other words, where the husband is ill, the *Shulchan Aruch* and *Rema* agree that if nobody else can attend to him, his wife may do so. However, if the wife is ill, the *Shulchan Aruch* forbids her husband from touching her whereas the *Rema* permits it if there is nobody else to attend to her and there is a "great need for it".

The *Machlokes* appears to be based on the degree to which we are concerned that physical touch will lead to intimacy. When both husband and wife are healthy, the concern is great, but if one of them is ill, there is less concern. When the husband is sick his *Yetzer haRa* isn't as strong, therefore, there is little concern that his wife attending to him will lead to forbidden intimate contact. However, according to the *Shulchan Aruch*, when the wife is ill, the husband's *Yetzer* may still lead him to transgress, whereas the *Rema* holds that it is unlikely that this will occur in the setting of the wife's illness.

The *Poskim* (see the *Levush*, for example) present an alternate approach to explain the *Machlokes*. They contend that it is based on the *Machlokes* as to whether physical touch of the *Arayos* (such as hugging and kissing and the like) is an *Issur d'Oraisa* of "Lo Sikrevu l'Galos Erva" (*Rambam, Hilchos Issurei Bi'ah* 21:1 and *Sefer haMitzvos La'avin* 353) or *d'Rabbanan* (*Ramban, Hasagos to Sefer haMitzvos*).

If it is merely an *Issur d'Rabbanan*, there is room to be lenient for a *Choleh sheEin Bo Sakana* (see *Shulchan Aruch, O.C.* 328). This explains the position of the

Rema. If it is an *Issur d'Oraisa*, it cannot be permitted. This is the position of the *Mechaber*. If it is an *Issur d'Oraisa* it should even be subject to the Halacha “*Yehareg v'Al Ya'avov*”, given that it is a matter of *Arayos*. The *Gra* raises this point in his *Hagahos*:

Even in a case of Pikuach Nefesh it should be forbidden, as stated in the second Perek of Pesachim: “One may be healed by anything except for [the three cardinal sins of Avoda Zara, Giluy Arayos, and Retzicha]... we see that even the Lav of Lo Sikrevu is forbidden in this sort of case.

The *Gra*'s comment contains two *Chidushim*: First, the *Issur* of *Lo Sikrevu* is included in the category of “*Arayos*”. Second, the *Issur* of *Nida* is included in that category (this is the subject of a *Machlokes* between *Rashi* and *Tosfos* at the beginning of *Maseches Gittin*).¹

This second approach necessitates a crucial clarification. If this matter is purely dependent upon whether physical touch constitutes an *Issur d'Oraisa* or *d'Rabbanan*, why is there any distinction between the husband being sick and the wife? In addition, the *Shulchan Aruch* in *Even haEzer* (20) rules like the *Rambam*, and the *Rema* does not disagree. This implies that he does not hold like the *Ramban*.²

The most common approach to explaining the *Rema* is that of the *Biur haGra* (*ibid.* 195:21):

This Lav only applies if he intends [to touch her] for Erva.³ If not, it is only a d'Rabbanan.

The *Gra* is clearly not referring to the principles of *Davar she'Eino Miskaven*, as invoked elsewhere (though some do mistakenly explain his comment in that way). Rather, he intends to say that the *Issur* of physical touch of an *Erva* is only applicable when it is instigated by the *Yetzer haRa*, or an act of “*Chiba*” that could lead to intimacy. A physical contact that is purely technical in nature is only an *Issur d'Rabbanan*, perhaps as a safeguard to prevent people from transgressing the *d'Oraisa* (as even an exchange that is devoid of *Chiba* (affection) may lead to affectionate touch and beyond.) Since it is only a *d'Rabbanan* it is waived for a *Choleh*.

In light of this explanation, we can also answer why *Yehareg v'Al Ya'avov* does not apply, even according to those who apply it to *Issurim d'Rabbanan*. Since it is an

¹ We should also point out that even if it is an *Issur d'Rabbanan* it may still be subject to *Yehareg v'Al Ya'avov* if it is an act of “*Kirvas Arayos*”. See the *Pischei Teshuva* (*ibid.*) 16 in the name of the *Atzei Arazim* and others.

² See the *Shach* (*ibid.* 157:10) who discusses the *Rema*'s position.

³ *I.e.*, for intimate purposes.

act that is devoid of *Chiba* or any intent of *Arayos* (and is only forbidden as a safeguard) it is not included in the category of *Arayos* at all.

In any event, the *Rema's* leniency only applies when there is a clear need for it. This is also evident in the following ruling of the *Rema* in which he again disagrees with the *Shulchan Aruch*. The *Shulchan Aruch* rules that a doctor may not palpate his wife's pulse when she is a *Nida*. The *Rema* counters:

According to what I wrote that we are accustomed to permitting it if she needs him to attend to her, it would certainly be permitted to palpate her pulse if there is no other doctor and she needs him and her illness is a matter of Sakana (this is inferred by the Beis Yosef from the wording of the Ramban in Siman 127.)

The *Rema* states explicitly that this ruling follows from his ruling above. However, he adds an important caveat here: "[if] her illness is a matter of *Sakana*". If anything, this appears to contradict his previous ruling that we may be lenient even for a *Choleh sheEin Bo Sakana*!

The *Tzemach Tzedek* answers that there is a difference between an act that has a clear benefit, which is permitted even for a *Choleh sheEin Bo Sakana*, and an act which may not, such as palpating a patient's pulse, which is only permitted in a case of *Sakana*.

This distinction requires further elucidation: The severity of the *Issur* in these cases depends on the "*Kirva*" to the *Erva* that results from the touching. We cannot compare an act of emergency first aid to a routine medical procedure. Likewise, we cannot compare a clearly defined act, such as touching a patient's arm to find his vein [for insertion of a catheter or injection] to attaining a general impression of his health by palpating his body. In short, each case must be judged independently.⁴

Famously, the *Shach* asserts that even according to the *Rambam* physical contact that is not *Derech Ta'ava* or *Chiba* is only an *Issur d'Rabbanan*. The *Minhag* follows the *Shach*. However, the *Shach* also agrees with the *Rema* that it is only permissible for a husband to palpate his wife's pulse when she is a *Nida* if it is a situation of *Sakana*.

Many *Poskim* follow the *Shach* and *Rema* in this regard. However, it is not unanimous. See the *Toras haShelamim* and other *Acharonim* who follow the *Shulchan Aruch* and *Rambam's* position.

⁴ As an aside, according to the *Aruch haShulchan* there is no contradiction in the *Rema*. In the second case, he is discussing the *Shulchan Aruch's* ruling, whereas his position is to be lenient even for a *Choleh sheEin Bo Sakana*.

Even those who are lenient like the *Rema* must still fulfill two conditions:

1. We do not uniformly permit physical interactions unless it is a matter of *Pikuach Nefesh*. Each case is judged on its merit based on *Hora'as Chacham*.
2. It is only permitted if there are no other options. The exact parameters of "having no other option" warrants independent discussion, including questions of whether needing to spend money, exert effort, or experience embarrassment is considered "another option". We will discuss this in a future essay, *b'Ezras Hashem*.