



Shaming on Social Media

MAIMONIDES MOOT COURT COMPETITION SOURCEBOOK

Spring 2022

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What is the Maimonides Moot Court Competition?

The Maimonides Moot Court Competition is the premier program for students to engage with contemporary ethical questions using Jewish legal wisdom. Our competitions are structured around a detailed case alongside a sourcebook of traditional and modern Jewish texts. Students construct arguments from the curated texts to address the questions presented by the case. Cases in recent years have addressed timely issues including criminal justice, tainted money, and artificial intelligence.

Maimonides Moot Court Competition is powered by the Hadar Institute, which builds egalitarian Jewish communities around Torah study, Jewish practice, and the values of kindness and compassion.

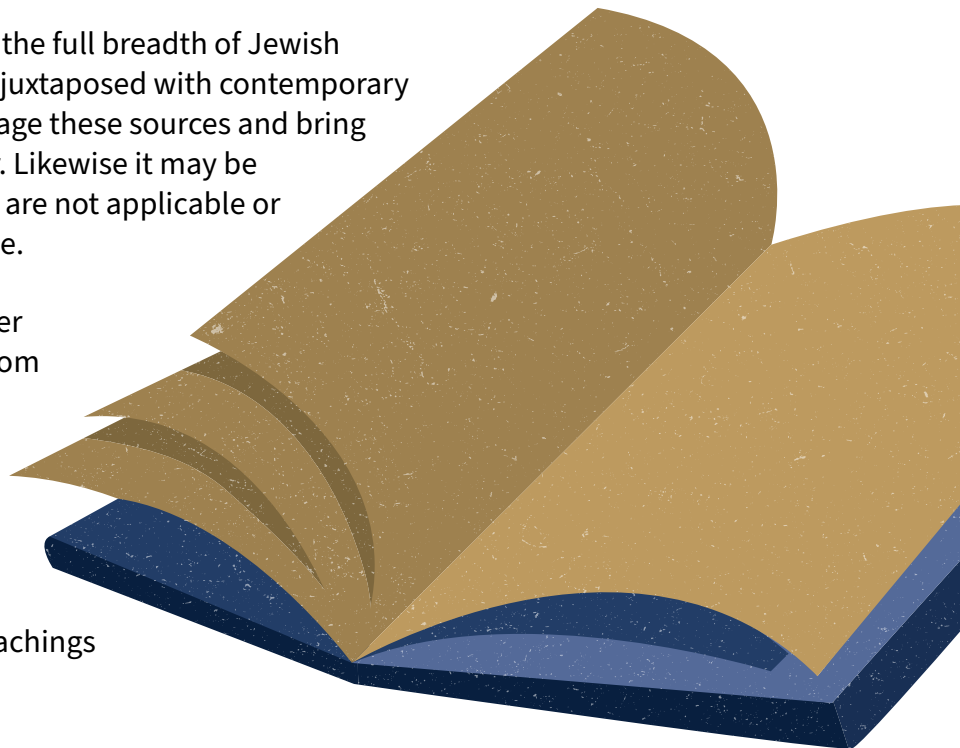
What is a *Beit Din*?

A *beit din* is a Jewish court of law which makes rulings in accordance with *halakhah*, or the collective body of biblical and rabbinical law. The role of the *beit din* is to apply halakhic precedent to the particular circumstances of the case to reach a ruling.

In the Maimonides Moot Court Competition, your team represents a *beit din* and you will be presented with a specific case. You will study the provided texts in the sourcebook to explore how Jewish tradition has approached the legal and ethical issues presented by the case. The aim is to articulate a position rooted in the provided texts—there is not necessarily a single “correct” answer. As the Talmud writes about the conflicting opinions of Beit Hillel and Beit Shammai—both “are the words of the living God” (Eiruvim 13b).

This sourcebook contains texts spanning the full breadth of Jewish tradition; ancient and medieval texts are juxtaposed with contemporary perspectives. A strong argument will engage these sources and bring them into conversation with one another. Likewise it may be important to explain why certain sources are not applicable or relevant in your understanding of the case.

There is a hierarchy of sources, with earlier sources carrying more weight. Sources from Tanakh, the Written Torah, are the most authoritative. Typically, later sources elucidate rather than dispute earlier resources. The power of later authorities stems from interpreting and applying earlier texts, much as your team will be doing. Collectively, these post-biblical teachings are known as the Oral Torah.



Introduction to the Case

According to the UN, an estimated one-third of teenagers worldwide have recently experienced bullying.¹ When it comes to cyberbullying, the problem is even more pervasive—according to a recent Pew survey, 58% of American teenagers have personally experienced abusive online behaviors, including offensive name-calling, the spreading of false rumors, and physical threats.²

Bullying often impacts everyone involved—those who are bullied, those who bully, and those who witness bullying. Its effects are linked to a number of negative outcomes, including decreased academic achievement and a detrimental impact on mental health, which can sometimes even be life threatening.³

While social media and the internet can operate as a platform for cyberbullying, this year's case asks students to explore whether these tools may be part of the solution as well. In recent years, high school students have taken to the internet to out their peers for behaviors they see as harmful. In one phenomenon, students have used “call-out pages” to expose racism among their peers. As the creator of one of these pages put it, *“I think it’s the only way to prove to them that actions do have consequences.”*⁴

However, this type of public call-out may have negative consequences of its own. The case this year invites you to explore the ethical questions facing a student in how to respond to bullying seen second-hand through a video on a friend's phone. Should she share the video with others and publicly out the bullies? Or would such a public act do more harm than good? What must she consider before making a decision?

Approaching this moral challenge through a lens of *halakhah* can offer unique insight into how to balance these competing factors at play. This sourcebook is structured into five units, each of which offers a distinct halakhic perspective on the case. We invite you to engage in the challenge of applying these texts to the realities of the 21st century.

Sincerely,
Yitzhak Bronstein
Director of Maimonides Moot Court Competition

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- 1 “New data reveal that one out of three teens is bullied worldwide.” UNESCO Institute for Statistics. January 10, 2018.
 - 2 “A Majority of Teens Have Experienced Some Form of Cyberbullying.” Pew Research Center. September 27, 2018.
 - 3 “Effects of Bullying.” stopbullying.gov. May 21, 2021.
 - 4 “High School Students and Alumni Are Using Social Media to Expose Racism.” The New York Times. June 16, 2020

Case

Over the past several weeks, a number of concerning videos have been shared among the students of Torah Academy High School. The videos themselves are short, and none of them are longer than 20 seconds. The content of the videos depict a pair of seniors bullying and taunting younger students, using language that is vulgar, insensitive, and possibly threatening as well.

Rachel, a sophomore at Torah Academy, is deeply upset about the videos that have been shared. Although she has not received them personally, she has seen three of these videos on the phones of friends.

Determined to do something about it, she attempts to bring the issue up with the school leadership. After meeting with a school official, she realizes that the administration is already aware of the issue, and that their plan amounts to little more than looking the other way until these seniors graduate later in the year. Moreover, Rachel is told that since none of the videos were filmed on school premises, it is unfortunately out of their control to do anything about it.

Along with a friend, Rachel tries to confront and rebuke the pair of bullies directly. The intervention does not last long—Rachel and her friend quickly become intimidated and are unable to follow through with their intended plan.

Disappointed, they feel out of options. The administration will not take action, and confronting the bullies directly is now practically out of the question.

It occurs to them that there is one last action they can take. Word had spread among schools in their region about an Instagram account called @exposingbullies.highschool. The stated goals of the page are to hold bullies accountable, and to deter others from bullying in the future, by outing their behavior publicly.

The page invites students to submit screenshots of problematic behavior, which are in turn shared to their audience of 12,000 followers, most of whom live in their city. The page allows people to submit anonymous images or videos. Before sharing the material, the page blurs out the sender's name but shares the personal information of the bullies. The page says it does its best to confirm the identities of the perpetrators before posting any identifying information.

Together, they begin to weigh the pros and cons of submitting the videos to this Instagram account. On the one hand, they acknowledge that the videos they have seen are quite short, and it's not possible to know the full context of what is happening. Moreover, they are aware of a recent article in the local newspaper about the consequences for a student who was outed on this Instagram page. The repercussions were swift and severe—their college acceptance was revoked, and they were removed from their youth movement's national leadership committee. These facts cause them to hesitate about posting these videos in a public forum.

On the other hand, the videos do seem to clearly depict verbal abuse, and even though there is no

physical violence depicted in what they have seen, the bullies do sound threatening. They are aware that bullying can have severe, even life-endangering consequences, and feel strongly that there is a responsibility to do *something*.

After much consideration, they determine that this is most likely their last resort: either they will submit the videos to this Instagram account to publicly out the bullies, or they will be out of options and have no choice but to drop the whole matter entirely.

Should the students submit the circulated videos to the @exposingbullies.highschool Instagram account along with identifying information of the two bullies?





Shaming on Social Media

UNIT 1 Judging Favorably | דן לכף זכות

Is there an obligation to offer people the benefit of the doubt? What if your instincts in the situation tell you otherwise?

This is an important question facing Rachel as she decides how to respond to the videos circulating around her school. How should she consider the fact that the videos are only 20 seconds long? On the one hand, the case tells us that the “videos do seem to clearly depict verbal abuse;” on the other hand, since the videos are so short it is impossible for her to understand the full context of what is occurring.

These sources below will help shed light on these questions. As you read them, reflect on the ways in which they can be applied to our case.

I. JUDGE PEOPLE FAVORABLY

The passage below includes several essential *mitzvot* (commandments) that will be explored in further detail throughout the sourcebook. In this unit, we will focus on how the bolded phrase is interpreted by the Talmud.

SOURCE #1

ויקרא יט:טו-יח

Vayikra 19:15-18

¹⁵לֹא-תַעֲשׂוּ עוֹל בְּמִשְׁפָּט לֹא-תִשָּׂא פָנֶי-
דָל וְלֹא תִהְדָּר פָּנֵי גָדוֹל בְּצִדְקַת-תִּשְׁפֹּט
עִמִּיתְךָ: ¹⁶לֹא-תִלְךָ רֵכִיל בְּעַמִּיךָ לֹא
תַעֲמֹד עַל-דָּם רֵעֶךָ אֲנִי ה' ¹⁷לֹא-תִשְׂנֹא
אֶת-אָחִיךָ בְּלִבְבְּךָ הוֹכַח תוֹכִיחַ אֶת-
עִמִּיתְךָ וְלֹא-תִשָּׂא עָלָיו חֶטְא: ¹⁸לֹא-תִקֵּם
וְלֹא-תִטֹּר אֶת-בְּנֵי עַמְּךָ וְאֶהְבֵּת לרֵעֶךָ
בְּמוֹךְ אֲנִי ה'.

¹⁵You shall not perform injustice in judgement: do not favor the poor or show deference to the powerful; **with righteousness shall you judge your kinsman.** ¹⁶Do not gossip among your people; do not stand by the blood of your fellow: I am God. ¹⁷You shall not hate your brother in your heart. You shall surely rebuke your kinsman, and you shall not bear a sin because of him. ¹⁸You shall not take vengeance, and you shall not bear a grudge against your people. You shall love your neighbor as yourself: I am God.

1. Are the various *mitzvot* listed in verses 15-18 related to one another? If so, how?
2. How do you understand “with righteousness shall you judge your kinsman” given its context?
3. Based on this passage, who would you say this obligation is directed towards?

As with many Torah verses, the phrase “with righteousness shall you judge your kinsman” can be understood in multiple ways. In the talmudic passage below, two possible interpretations are offered.

SOURCE #2 ס

תלמוד בבלי שבועות דף ל עמוד א

ת"ר (ויקרא יט, טו) בצדק תשפוט
עמיתך שלא יהא אחד יושב ואחד
עומד אחד מדבר כל צרכו ואחד
אומר לו קצר דברך.

ד"א בצדק תשפוט עמיתך הוי דן
את חבירך לכף זכות

תני רב יוסף בצדק תשפוט
עמיתך עם שאתך בתורה ובמצות
השתדל לדנונו יפה.

Talmud Bavli Shevuot 30a

The Sages taught: “with righteousness shall you judge your kinsman”—that there should not be a situation where one [litigant] sits and the other [litigant] stands; or that one not be allowed to speak all that is necessary and the other one be told to speak briefly.

Another interpretation: “With righteousness shall you judge your kinsman”—judge every person favorably.

Rav Yosef teaches: “with righteousness shall you judge your kinsman”—with regard to one who is with you in Torah and *mitzvot*, strive to judge them favorably.

SOURCE #3 ס

רש"י שם

הוי דן את חבירך לכף זכות - ולא
בדין בעלי דינים הכתוב מדבר
אלא ברואה חבירו עושה דבר
שאתה יכול להכריעו לצד עבירה
ולצד זכות הכריעו לזכות ואל
תחשדהו בעבירה

Rashi on Shevuot 30a

Judge every person favorably: The verse is not speaking about courtroom litigants, rather about one who sees their fellow doing something that can be interpreted negatively or positively. One should not suspect the person about performing a transgression.

○ Mishnah Avot 1:6

Pirkei Avot is a compilation of wisdom and ethics included in the Mishnah. It is unique in its arrangement and focus: it is organized by speaker (instead of by topic as is most of the Mishnah), and concerned primarily with ethical instruction and wisdom.

○ Rambam

Rambam (Maimonides) is an acronym for Rabbi Moses ben Maimon who lived in Spain and Egypt (1135-1204). His most significant work is the Mishneh Torah, a comprehensive codification of Jewish law from the Talmud. In addition, Rambam wrote a commentary on the mishnah and philosophical works, such as The Guided of the Perplexed.

The first explanation understands this verse as instructions for a judge to ensure a level playing field for the two litigants. However, the second explanation understands the phrase as a *broader* mitzvah which can be applied to all people. As Rashi explains, this interpretation is not limited to a courtroom, but can be applied to any circumstance where you see someone doing something that can be interpreted in multiple ways. In such a circumstance, we learn from the phrase “with righteousness shall you judge your kinsman” to judge such a person favorably.

1. Based on this passage, are there limits to when a person should strive to judge a person favorably?
2. How do you understand the teaching of Rav Yosef that the obligation to judge favorably applies to those “with you in Torah and *mitzvot*?”
3. Would the obligation to judge favorably apply to a stranger in the street? How about a classmate?

II. JUDGE SOME PEOPLE FAVORABLY?

In the next source, we will see another context in which the *mitzvah* to judge all people favorably appears.

SOURCE #4 ס

משנה אבות א:ו

יְהוֹשֻׁעַ בֶּן פֶּרַחְיָה אוֹמֵר, עֲשֵׂה לָךְ רֵב, וּקְנֵה לָךְ חֵבֵר, וְהָיוּ דִן אֶת כָּל הָאָדָם לְכַף זְכוּת:

Mishnah Avot 1:6^o

Yehoshua ben Perahyah said: Make for yourself a teacher, and acquire for yourself a friend, and judge all people favorably.

SOURCE #5

רמב"ם משנה אבות א:ו

והיו דין את כל האדם לכף זכות. ענינו כשיהיה אדם שלא תדע בו אם צדיק הוא אם רשע ותראהו שיעשה מעשה או יאמר דבר שאם תפרשהו על דרך אחת יהיה

Rambam^o on Mishnah Avot 1:6

Judge all people favorably: This situation refers to when you do not know whether the person is righteous or wicked, and you see them performing an action that can be interpreted for good or for bad. Take it for good and do not think bad about the

טוב ואם תפרשהו על דרך אחרת יהיה רע,
קח אותו על הטוב ולא תחשוב בו רע.

אבל אם יהיה האדם נודע שהוא צדיק
מפורסם ובפעולות הטובות ונראה לו פועל
שכל עניניו מורים שהוא פועל רע ואין
אדם יכול להכריעו לטוב אלא בדוחק גדול
ואפשר רחוק הוא ראוי שתקח אותו שהוא
טוב אחר שיש שום צד אפשרות להיות
טוב ואין מותר לך לחשדו...

וכן כשיהיה רשע ויתפרסמו מעשיו ואחר
כן ראינוהו שיעשה מעשה שכל ראיותיו
מורות שהוא טוב ויש בו צד אפשרות רחוק
לרע ראוי להשמר ממנו ושלא תאמן בו
שהוא טוב אחר שיש בו אפשרות לרע ועל
זה נאמר כי יחנן קולו אל תאמן בו וגו'

וכשיהי' בלתי ידוע והמעשה בלתי מכריע
לא' משני הקצוות צריך בדרך החסידות
שתדין לכף זכות איזה קצה שיהיה משני
הקצוות

person.

But if the person is widely known to be righteous and of good deeds; and an action is observed that by all appearances indicates that it is a bad deed, and a person can only determine it to be good with great stretching and as a distant possibility, it is fit that you [still] take it as good, since there is a possibility that it is good. It is not permissible for you to suspect the person...

Similarly, when a person is widely known to be wicked, and afterwards we see them performing an action that appears to be good, but there is a distant possibility that it is bad; it is fit to protect oneself from the person and not believe that it is good, since there is a possibility for the bad. About this it is stated, "When he entreats with his voice, do not trust him" (Proverbs 26:25).

And when the person is not known and the action they perform can be interpreted towards either side, one must judge the person piously towards the favorable side.

While the *mishnah* says to judge *all* people favorably, Rambam adds more nuance to the discussion. He says this *mishnah* refers to a situation where someone we do not know does something that can be understood in a positive or negative light. However, different standards would apply if the person had a reputation as a righteous or wicked individual.

1. How would you apply Rambam's explanation of the *mishnah* to the facts of our case?
2. Based on the videos that Rachel has seen, would she have an obligation to judge the pair of seniors favorably? Why or why not?

III. OFFERING THE BENEFIT OF THE DOUBT

The next two sources—one from the Talmud, and one from the book of Shumel—are narratives related to offering the benefit of the doubt. In one of them, the benefit of the doubt is offered, even at a significant personal cost; in the other, the observer springs into action immediately before the facts have been verified.

SOURCE #6

תלמוד בבלי שבת דף קכז עמוד ב

תנו רבנן: הדין חבירו לכהן וכות
- דנין אותו לזכות. ומעשה
באדם אחד שיכר מגליל
העליון ונשכר אצל בעל הבית
אחד בדרום שלש שנים. ערב
יום הכפורים אמר לו: תן לי
שכרי, ואלך ואזון את אשתי
ובני. אמר לו: אין לי מעות.
אמר לו: תן לי פירות. אמר לו:
אין לי. תן לי קרקע - אין לי.
תן לי בהמה - אין לי. תן לי
כרים וכסתות - אין לי. הפשיל
כליו לאחוריו, והלך לביתו
בפחי נפש.

לאחר הקהל נטל בעל הבית
שכרו בידו, ועמו משוי שלשה
חמורים, אחד של מאכל, ואחד
של משתה, ואחד של מיני
מגדים, והלך לו לביתו. אחר
שאכלו ושתו נתן לו שכרו.

אמר לו: בשעה שאמרתי לי
"תן לי שכרי" ואמרתי "אין
לי מעות", במה חשדתני?

Talmud Bavli Shabbat 127b

The Sages taught: One who judges another favorably—should be judged favorably. There was an incident involving a person who came from the Upper Galilee and was hired to work for a homeowner in the South for three years. On the day before Yom Kippur, he said to the homeowner: Give me my wages, and I will go and feed my wife and children. The homeowner said to him: I have no money. The worker replied: In that case, give me my wages in the form of produce. He said to him: I have none. The worker replied: Give me my wages in the form of land. The homeowner replied: I have none. The worker said to him: Give me my wages in the form of animals. He replied: I have none. The worker said to him: Give me cushions and blankets. He replied: I have none. The worker slung his tools over his shoulder and went to his home in anguish.

After the festival of Sukkot, the homeowner took the worker's wages in his hand, along with a burden that required three donkeys, one laden with food, one laden with drink, and one laden with types of sweets, and went to the worker's home. After they ate and drank, the homeowner gave him his wages.

The homeowner said to him: When you said to me: Give me my wages, and I said: I have no money, of what did you suspect me? Why did you not suspect me of trying to avoid paying you? The worker answered, I said: Perhaps the opportunity to purchase merchandise inexpensively presented itself, and you

○ Torah study

The homeowner sought to avoid leaving an inheritance for his son by consecrating all of his property to the Temple.

אָמַרְתִּי: שָׁמָּה פֶּרֶקֶמְטִיא
בְּזוּל נִדְמָנָה לָךְ, וְלִקְחָתָּ
בָּהֶן. וּבִשְׂעָה שָׁאֲמַרְתָּ לִּי
"תֵּן לִי בְהֶמָּה", וְאָמַרְתִּי
"אֵין לִי בְהֶמָּה", בָּמָּה
חֲשַׁדְתָּנִי? אָמַרְתִּי: שָׁמָּה
מוֹשְׁכָּרֶת בְּיַד אֲחֵרִים.
בִּשְׂעָה שָׁאֲמַרְתָּ לִּי "תֵּן
לִי קֶרֶקֶע", וְאָמַרְתִּי לָךְ
"אֵין לִי קֶרֶקֶע", בָּמָּה
חֲשַׁדְתָּנִי? אָמַרְתִּי: שָׁמָּה
מוֹחַכָּרֶת בְּיַד אֲחֵרִים
הִיא. וּבִשְׂעָה שָׁאֲמַרְתִּי
לָךְ "אֵין לִי פִירוֹת", בָּמָּה
חֲשַׁדְתָּנִי? אָמַרְתִּי: שָׁמָּה
אֵינֶן מְעוֹשְׁרוֹת. וּבִשְׂעָה
שָׁאֲמַרְתִּי לָךְ "אֵין לִי
כָרִים וְכִסְתּוֹת", בָּמָּה
חֲשַׁדְתָּנִי? אָמַרְתִּי: שָׁמָּה
הַקֹּדֶשׁ כָּל נִכְסָיו לַשָּׁמַיִם.

אָמַר לוֹ: הֲעִבֹדָה! כָּךְ
הָיָה. הִדַּרְתִּי כָּל נִכְסֵי
בִּשְׁבִּיל הוֹרְקָנוֹס בְּנֵי שְׁלֹא
עָסַק בַּתּוֹרָה. וּכְשֶׁבִּאתִי
אֶצֶל חֲבֵירֵי בִּדְרוֹם הַתִּירוֹ
לִי כָּל נִדְרֵי. וְאַתָּה, בְּשֵׁם
שְׁדַנְתָּנִי לְזִכּוֹת, הַמָּקוֹם
יִדִּין אוֹתְךָ לְזִכּוֹת.

purchased it with the money that you owed me. The homeowner asked: And when you said to me: Give me animals, and I said: I have no animals, of what did you suspect me? The worker answered: I said: Perhaps the animals are rented to others. The homeowner asked: When you said to me: Give me land, and I said: I have no land, of what did you suspect me? The worker answered: I said: Perhaps the land has been leased to others. The homeowner asked: And when you said to me: Give me produce, and I said: I have no produce, of what did you suspect me? The worker answered: I said: Perhaps they are not yet tithed. The homeowner asked: And when I said: I have no cushions or blankets, of what did you suspect me? The worker answered: I said: Perhaps he consecrated all his property to Heaven.

The homeowner said to him: I swear by the Temple service that it was so. I had no money available at the time because I vowed and consecrated all my property on account of Hyrcanus, my son, who did not engage in Torah study.[○] When I came to my fellow residents in the South, the sages dissolved all my vows, [allowing the homeowner to use the funds]. And you, just as you judged me favorably, so may God judge you favorably.

Shiloh

Shiloh was the spiritual center of the Jewish people from the days of Joshua, until the Temple in Jerusalem was built during the reign of Solomon (Joshua 18:1).

1. What is your reaction to this story? Do you think the homeowner deserved to be judged favorably given the circumstances?
2. How might this passage help us understand the *mitzvah* to judge favorably?

The next source comes from the first chapter in the book of Shmuel. The opening verses describe how Hannah suffered tremendously as one of Elkanah's two wives. Hannah was childless, while her counterpart Peninah had many children and would taunt her. The passage below describes what happens next.

SOURCE #7 ס

שמואל א א:ט-כ

וַתֵּקֶם חָנָה אַחֲרֵי אֲכָלָהּ
בְּשִׁלָּה וְאַחֲרֵי שָׁתָה וְעָלִי
הַבֵּהֶן יֹשֵׁב עַל-הַפֶּסֶא עַל-
מְזוֹזַת הַיֵּכָל ה':¹⁰ וְהָיָא מְרַת
נַפֶּשׁ וַתִּתְפַּלֵּל עַל-ה' וּבָכָה
תְּבֻכָה: ¹¹וַתִּדְּרֹךְ נֶדֶךְ וַתֹּאמֶר ה'
צְבֹאוֹת אֱסֹרָאָה תִרְאֶהוּ בְּעֵינֵי
אֲמָתְךָ וּזְכַרְתָּנִי וְלֹא-תִשְׁכַּח
אֶת-אֲמָתְךָ וְנִתְּתָהּ לְאֲמָתְךָ
זָרַע אֲנָשִׁים וְנִתְּתִיו לָהּ כָּל-
יְמֵי חַיֶּיהָ וּמִזְרָה לֹא-יַעֲלֶה
עַל-רֹאשׁוֹ: ¹²וַיְהִי־הָ כִּי הִרְבְּתָה
לְהִתְפַּלֵּל לִפְנֵי ה' וְעָלִי שָׁמַר
אֶת-פִּיהָ: ¹³וַחֲנָה הָיָא מְדַבֶּרֶת
עַל-לִבָּהּ רַק שִׁפְתֶיהָ נִעֲוֹת
וְקוֹלָהּ לֹא יִשְׁמָע וַיַּחֲשֹׁבָהּ עָלֵי
לִשְׁכָּבָהּ: ¹⁴וַיֹּאמֶר אֵלֶיהָ עָלִי
עַד-מָתִי תִשְׁתַּבְּרִין הָסִירִי
אֶת-יֵינֶךָ מֵעַלֶיךָ: ¹⁵וַתַּעַן
חָנָה וַתֹּאמֶר לֹא אֲדֹנִי אִשָּׁה
קִשְׁת־רוּחַ אֲנֹכִי וַיֵּזֶן וְשָׁכַר
לֹא שָׁתִיתִי וְאִשְׁפָּךְ אֶת-נַפְשִׁי
לִפְנֵי ה': ¹⁶אֶל-תִּתֵּן אֶת-אֲמָתְךָ
לִפְנֵי בַת-בְּלִיעַל כִּי-מֵרֹב שִׁחִי
וּבְעָסִי דִּבַּרְתִּי עַד-הַנְּהָ: ¹⁷וַיַּעַן

I Shmuel 1:9-20

⁹After they had eaten and drunk at Shiloh,⁹ Hannah rose. The priest Eli was sitting on the seat near the doorpost of the temple of God. ¹⁰In her wretchedness, she prayed to God, weeping all the while. ¹¹And she made this vow: "God, if You will look upon the suffering of Your maidservant and will remember me and not forget Your maidservant, and if You will grant Your maidservant a son, I will dedicate him to God for all the days of his life; and no razor shall ever touch his head." ¹²As she kept on praying before God, Eli watched her mouth. ¹³Now Hannah was praying in her heart; only her lips moved, but her voice could not be heard. So Eli thought she was drunk. ¹⁴Eli said to her, "How long will you make a drunken spectacle of yourself? Sober up!" ¹⁵And Hannah replied, "Oh no, my lord! I am a very unhappy woman. I have drunk no wine or other strong drink, but I have been pouring out my heart to God. ¹⁶Do not take your maidservant for a worthless woman; I have only been speaking all this

o significant laws

The Talmud derives several laws from the description of Hannah's prayer, including the need to have intent (*kavanah*); the need to enunciate the words rather than only contemplate them; and that one recites the Amidah prayer silently.

עלי ויאמר לְכִי לְשָׁלוֹם וְאַלְקֵי
יִשְׂרָאֵל יִתֵּן אֶת־שְׁלָתְךָ אֲשֶׁר
שָׁאַלְתְּ מֵעַמּוֹ: ¹⁸וַתֹּאמֶר תִּמְצָא
שְׂפָתֶיךָ חֵן בְּעֵינֶיךָ וְתִלְךְ
הָאִשָּׁה לְדֹרְכָהּ וְתֹאכַל וּפְנֵיהָ
לֹא־הָיוּ־לָהּ עוֹד: ¹⁹וַיִּשְׁכְּמוּ
בַּבֹּקֶר וַיִּשְׁתַּחֲוּוּ לִפְנֵי ה' וַיָּשֻׁבוּ
וַיָּבֹאוּ אֶל־בֵּיתָם הַרְמָתָה
וַיֵּדַע אֶלְקָנָה אֶת־חֲנָה אִשְׁתּוֹ
וַיִּזְכְּרָה ה': ²⁰וַיְהִי לָתֵקֶפֶת
הַיָּמִים וַתֵּהָר חֲנָה וַתֵּלֶד בֵּן
וַתִּקְרָא אֶת־שְׁמוֹ שְׁמוּאֵל כִּי
מֵה' שְׁאֵלְתִּיו

time out of my great anguish and distress.”
¹⁷“Then go in peace,” said Eli, “and may
the God of Israel grant you what you have
asked.” ¹⁸She answered, “You are most kind
to your handmaid.” So the woman left,
and she ate, and was no longer downcast.
¹⁹Early next morning they bowed low
before God, and they went back home to
Ramah. Elkanah knew his wife Hannah
and God remembered her. ²⁰Hannah
conceived, and at the turn of the year bore
a son. She named him Shmuel, meaning, “I
asked God for him.”

1. What is your reaction to this story? Do you think Hannah deserved to be judged unfavorably given the circumstances?
2. Why do you think Eli interjected in verse 14? Was he justified in doing so?
3. How might this passage help us understand the *mitzvah* to judge favorably?

The Talmud learns many things from the verses above describing Hannah's prayer. The *halakhah* most relevant for our purposes is a teaching by Rabbi Elazar.

SOURCE #8 ס

תלמוד בבלי ברכות דף לא עמוד א-ב

אמר רב המנונא: כמה
הלכתא גברותא איבא
למשמע מהני קראי דחנה...
“ויאמר אליה עלי עד מתי
תשתכרין וגו’”. אמר רבי
אלעזר: מבאן לרואה בחברו
דבר שאינו הגון, צריך

Talmud Bavli Berakhot 31a-b

Rav Hamnuna said: How many significant laws^o can be derived from these verses about Hannah?... From “And Eli said to her: How long will you remain drunk?” (I Shmuel 1:14); Rabbi Elazar said: From here we derive that one who sees their fellow doing something improper needs to

להוכיחו... rebuke them...

וַיַּעַן עָלַי וַיֹּאמֶר לִּי לְשָׁלוֹם,
אָמַר רַבִּי אֶלְעָזָר: מִכָּאן לְחוּשׁ
אֶת חֲבֵרוֹ בְּדִבְרֵי שְׂאִין בּוֹ, שְׂעָרֶיךָ
לְפָיִסוֹ. וְלֹא עוֹד, אֲלֵא שְׂעָרֶיךָ
לְבָרְכוֹ. שֶׁנֶּאֱמַר "וַיֹּאדָהּ יִשְׂרָאֵל יִתֵּן
אֶת שְׁלָתוֹ"

"Then go in peace"—Rabbi Elazar said: From here we derive that one who suspects their fellow about something they have not done, must appease them. Not only this, but they need to bless them, as it says: "May the God of Israel grant you what you have asked."

Rabbi Elazar is of the opinion that Eli acted properly by rebuking Hannah, even though it turned out that his judgement was incorrect and that Hannah was praying sincerely. In fact, Rabbi Elazar derives from this passage that we all have an obligation to rebuke someone we see acting improperly.

1. Is it clear from the passage in Shmuel that Eli is correct to rebuke Hannah? How so?
2. Contrast this teaching of Rabbi Elazar with the passage above from Shabbat 127b. Are they offering similar or different standards for when to judge favorably?
3. Rabbi Elazar says that one who falsely suspects someone must then offer them a blessing. Do you think this is sufficient to make up for the damage caused by the false accusation? Why or why not?

Take a Step Back

1. After learning these texts, how would you articulate the *mitzvah* to judge favorably? Are there limitations to this *mitzvah*?
2. Returning to our case, does Rachel have an obligation to judge the pair of seniors in the videos favorably? Why or why not?



Shaming on Social Media

UNIT 2 Rebuke | תוכחה

In the previous unit, we explored the *mitzvah* to judge a person favorably. We will now turn our attention to a related question that Rachel must think through: is there a responsibility to speak up when seeing someone act inappropriately? Must one give rebuke if they feel intimidated about speaking up? Is it ever better to remain silent rather than give rebuke?

The *mitzvah* to give rebuke appears in the same context as the obligation to judge favorably. Since rebuke is essential to understanding our case, we will explore this obligation from a number of perspectives. As you read these sources, reflect on the ways in which the parameters of the *mitzvah* relate to the specific details of our case.

I. THE SOURCE

SOURCE #9

ויקרא יט:טו-יח

Vayikra 19:15-18

¹⁵לֹא-תַעֲשֶׂוּ עוֹל בְּמִשְׁפָּט לֹא-תִשָּׂא
פְּנֵי-דָל וְלֹא תִהְדָּר פְּנֵי גָדוֹל בְּצִדֶּק
תִּשְׁפֹּט עִמִּיתְךָ: ¹⁶לֹא-תִלְךָ רֵכִיל
בְּעַמֶּיךָ לֹא תַעֲמֹד עַל-דַּם רֵעֶךָ אָנֹכִי
ה' ¹⁷לֹא-תִשָּׂא אֶת-אָחִיךָ בְּלִבְבְּךָ
הוֹכַח תוֹכִיחַ אֶת-עַמִּיתְךָ וְלֹא-
תִשָּׂא עָלָיו חֶטְא: ¹⁸לֹא-תִקֵּם וְלֹא-
תִטֹּר אֶת-בְּנֵי עַמְּךָ וְאָהַבְתָּ לְרֵעֶךָ
כָּמוֹךָ אָנֹכִי ה'.

¹⁵You shall not perform injustice in judgment: do not favor the poor or show deference to the powerful; with righteousness shall you judge your kinsman. ¹⁶Do not gossip among your people; do not stand by the blood of your fellow: I am God. ¹⁷You shall not hate your brother in your heart. **You shall surely rebuke your kinsman, and you shall not bear a sin because of him.** ¹⁸You shall not take vengeance, and you shall not bear a grudge against your people. You shall love your neighbor as yourself: I am God.

1. How do you understand the connection between the three clauses in verse 17?
2. What is the relationship between rebuke (verse 17), and the *mitzvah* to love your neighbor as yourself (verse 18)?

○ Ramban

Moshe ben Nahman (1194-1270), also known as Ramban, was a leading Torah scholar who lived in Spain and the Land of Israel. He wrote influential commentaries on the Torah and Talmud. Ramban also defended the Jewish people during the Disputation of Barcelona.

Immediately after the commandment to give rebuke, the Torah warns “not bear a sin because of him.” The commentaries on this verse offer multiple possibilities about what sin the Torah is warning about. In doing so, each of the following three commentaries articulates a different way of understanding the *mitzvah* to rebuke.

SOURCE #10 ס

רש"י שם

Rashi on Vayikra 19:17

ולא תשא עליו חטא.
לא תלבין את פניו בְּרִבִּים

You shall not bear a sin because of him:

Do not embarrass him publicly.

Rashi's understanding is that “you shall not bear a sin because of him” is a warning not to rebuke someone in a public manner. In this reading, the first part of the verse teaches the *mitzvah* to rebuke, while the second half of the verse warns us not to take the rebuke too far by embarrassing the individual.

1. According to Rashi's interpretation, what might have one assumed about the *mitzvah* of rebuke before reading the final clause in verse 17?

SOURCE #11 ס

רמב"ן שם

Ramban^o on Vayikra 19:17

”ולא תשא עליו חטא”
שיהיה עליך אשם כאשר
יחטא ולא הוכחת אותו...
ויאמר הכתוב אל תשנא את
אחך בלבבך בעשותו לך
שלא כרצונך אבל תוכיחנו
מדוע ככה עשית עמדי ולא
תשא עליו חטא לכסות
שנאתו בלבך ולא תגיד לו
כי בהוכיחך אותו יתנצל לך
או ישוב ויתודה על חטאו
ותכפר לו ואחרי כן יזהיר

Do not bear since because of him: for you will bear sin because of his transgression if you do not rebuke him... The verse is saying: do not hate your brother in your heart when he does something against your will, but instead you should offer rebuke, saying, “Why did you do this to me?” You will not bear sin because of him by covering up your hatred of him in your heart and not telling him, for when you rebuke him, he will apologize to you, or he will regret his action and admit his sin, and

○ Keli Yakar

Rabbi Shlomo Ephraim Luntschitz (1550-1619) was the rabbi of Prague. He is most known for his commentary on the Torah known as Keli Yakar, which means “precious object” (Proverbs 20:15).

שלא תנקום ממנו ולא תטור
בלבבך מה שעשה לך כי יתכן
שלא ישנא אותו אבל יזכור
החטא בלבו ולפיכך יזהירנו
שימחה פשע אחיו וחטאתו
מלבו ואחרי כן יצוה שיאהב
לו כמוהו:

you will forgive him. After this, the Torah warns that you are not to take vengeance against him, nor bear a grudge in your heart against him because of what he has done to you, for it is possible that even though you do not have hatred against him, you will still remember the sin in your heart; therefore the Torah admonished to erase your brother's sin and transgression. Afterwards, the Torah commands to love him as yourself.

According to Ramban, the verse is articulating the importance of giving rebuke, rather than keeping any hatred bottled up inside. The beginning of the verse warns against harboring the hatred internally. By speaking up, Ramban argues that rebuke has the potential to lead to a peaceful resolution. If done properly, it can lead to healing and love, which is why the following verse includes the *mitzvah* to love your neighbor as yourself.

1. According to Ramban, how should one understand the progression from verse 16 to verse 17, and then to verse 18?

The third perspective on this verse comes from Keli Yakar.

SOURCE #12

כלי יקר שם

Keli Yakar^o on Vayikra 19:17

ולפי שנאמר ולא תשא עליו
חטא מכלל שאם לא תוכיחו
או יהיה חטאו נשוא עליך וזה
לפי שכל ישראל ערבים זה בעד
זה, והמלוה לחבירו ונותן לו
ערב בזמן שהערב רואה שהלוה
מפזר ממונו הוא מוכיחו מיראת

Since it is written, “you shall not bear a sin because of him,” it implies that failure to rebuke will result in the sin being carried by you, for all of Israel are responsible for one another. One who acts as a guarantor for a loan and sees that the borrower is wasting

הערבות פן יצטרך לשלם בעבורו, כך
הערבות של כל ישראל גורם התוכחה ואם
אינו מקבלה אזי נקי הוא ממנו כי אין שורת
הדין נותן שיסבול אחד בעד חבירו שאינו
ברשותו, אך בדבר זה לבד נעשו ישראל
ערבים שבזמן שיש בידו למחות ואינו מוחה
אז דין הוא שיתפס בעבורו וישא עליו חטאו
אם לא יוכיחו משל משלו בזה במי שקודח
בספינה תחתיו צעקו עליו כל אנשי הספינה
מה זו אתה עושה, השיב להם הלא תחת
אני קודח אמרו לו אם יכנסו המים תחת
אז תטבע הספינה מכל וכל.

money fears being held responsible due to their
guarantee, and will therefore rebuke the borrower;
so too, the responsibility for all Israel should
motivate in rebuking a sinner. After the rebuke, one
can no longer be held responsible for his fellow's
transgression, as strict justice will not allow someone
to suffer for their fellow's actions. Only when one
has the ability to protest and fails to do so will they
be held responsible. A related parable is that of a
passenger on a ship drilling a hole under their seat.
The fellow passengers yell at him: "What are you
doing?!" The driller responds, "Am I not drilling
under my seat?" They will reply, "If water enters
under your seat, the whole ship will sink together."

According to Keli Yakar, the sin being described in verse 17 refers to the culpability a person will have if they do *not* rebuke. Just like the passengers on the boat, we are all in it together. If I see someone transgressing the Torah, I have the responsibility to intervene, since our fates are tied together.

1. How is the metaphor of drilling on the boat relevant to the discussion of rebuke? Do you think it is an appropriate metaphor?
2. Which of the three interpretations fits best into the context of these verses?
3. How do each of these three interpretations affect how Rachel should consider her decision about posting the videos publicly? Would they lead her in different directions?

II. THE LIMITS OF REBUKING

The following sources explore the parameters of the *mitzvah* to rebuke.

SOURCE #13 ס

תלמוד בבלי ערכין דף טז עמוד ב

מנין לרואה בחבירו דבר מגונה
שחייב להוכיחו שנאמר (ויקרא

Talmud Bavli Arakhin 16b

From where is it derived that one who sees their peer
doing something improper needs to rebuke them? It is

יט, יז) הוכח תוכיח הוכיחו ולא
קבל מנין שיחזור ויוכיחו תלמוד
לומר תוכיח מכל מקום יכול אפי'
משתנים פניו ת"ל לא תשא עליו
חטא

stated: "You shall surely rebuke your kinsman." If one rebuked but it was not accepted, from where is it derived that one must return and rebuke again? The verse states: "rebuke" (the Hebrew word for rebuke is repeated). One might have thought that one should continue rebuking even if their face changes color due to humiliation. Therefore, the verse states: "Do not bear sin because of him."

The Talmud states from the double language of rebuke in verse 17 ("הוכח תוכיח"), we derive the obligation to rebuke multiple times. However, the final clause in the verse puts an important limit on the *mitzvah*: one should not rebuke in a way which causes embarrassment.

1. Based on this passage, is it ever appropriate to rebuke someone in a way which causes embarrassment? Why or why not?
2. This Gemara says that one who **sees** their fellow doing something improper must rebuke them. Returning to our case, how might this apply to one who saw someone acting improperly on a video, though did not witness the act itself? Would there be the same obligation to rebuke? Why or why not?

This passage continues below, and transitions into the difficulty of rebuking someone properly.

SOURCE #14 ס

תלמוד בבלי ערכין דף טז עמוד ב

תניא א"ר טרפון (תמיהני) אני אם
יש בדור הזה שמקבל תוכחה אם
אמר לו טול קיסם מבין עיניך אמר
לו טול קורה מבין עיניך אמר רבי
אלעזר בן עזריה תמיהני אם יש
בדור הזה שיודע להוכיח.

ואמר רבי יוחנן בן נורי מעיד אני
עלי שמים וארץ שהרבה פעמים
לקה עקיבא על ידי שהייתי קובל

Talmud Bavli Arakhin 16b

It was taught: Rabbi Tarfon said: I would be amazed if there is anyone in this generation who can receive rebuke. If the one rebuking says: Remove the splinter from between your eyes, the other will reply: Remove the beam from between your eyes! Rabbi Elazar ben Azaryah says: I would be surprised if there is anyone in this generation who knows how to rebuke.

Rabbi Yohanan ben Nuri says: I call the heavens and the earth as witnesses that many times Akiva received lashes because of me, as I would complain about him before

עליו לפני רבן (שמעון ברבי) וכל
שכן שהוספתי בו אהבה לקיים
מה שנאמר (משלי ט, ח) אל תוכח
לץ פן ישנאך הוכח לחכם ויאהבך.

Rabban Shimon ben Gamliel. Certainly this increased his love for me, in fulfillment of the verse: “Do not rebuke a scorner lest they hate you; rebuke a wise person and they will love you” (Proverbs 9:8).

SOURCE #15

רש"י שם

Rashi on Arakhin 16b

שיודע להוכיח - דרך כבוד שלא
יהו פניו משתנין

That knows how to rebuke respectfully, without causing the person's face to change color [in embarrassment].

קיסם - כלומר עון קטן שבידך זה
יכול לומר לו טול אתה עון גדול
שבידך הלכך אין יכולין להוכיח
שכולן חוטאים

Splinter, meaning a small transgression. The other person could say, you have committed an even larger transgression! Therefore no one could rebuke, since everyone has transgressed.

While the obligation to give rebuke is clear from the Torah, this passage reflects that it is easier said than done—both regarding giving rebuke, and receiving it, too. On the one hand, rebuking in a way that does not cause embarrassment is extremely difficult. Moreover, there is a vulnerability in that we are all guilty of something. When we try to rebuke someone, they can bring to light that we are in no position to rebuke them.

1. How can one rebuke in a way which does not cause embarrassment?
2. None of us are perfect, as Rabbi Tarfon pointed out above. Given this reality, how is rebuke ever possible? How can we rebuke in a way which reflects our own fallibility?

The conclusion of this talmudic passage discusses how far to go when rebuking. When has one done enough and reached the limits of one's responsibility to rebuke?

SOURCE #16

תלמוד בבלי ערכין דף טז עמוד ב

Talmud Bavli Arakhin 16b

עד היכן תוכחה רב אמר עד
הכאה ושמואל אמר עד קללה
ורבי יוחנן אמר עד נזיפה.

Until what point should one rebuke? Rav says: Until [the rebuke leads to] hitting. Shmuel says: Until cursing. Rabbi Yohanan says: Until anger.

Exilarch

The exilarch (רִישׁ גָּלוּתָא) was the political head of the Jewish community in Babylon. The office of the exilarch oversaw important political roles, such as collecting taxes and appointing judges.

According to all three opinions cited, there is a limit at which point one no longer needs to give rebuke. If it reaches the point when the rebuker would be in danger, then the obligation to rebuke no longer applies.

1. Given the power imbalances in our case between Rachel and the pair of seniors, how does this final passage affect the decision that Rachel should make?

The next question we will address is whether one must give rebuke when the person knows that it will not be listened to. Does the fact that it won't lead to a change in behavior affect the obligation to give rebuke?

The two passages below seem to take different approaches to this question.

SOURCE #17 ס

תלמוד בבלי יבמות דף סה עמוד ב

כשם שמצוה על אדם לומר
דבר הנשמע כך מצוה על
אדם שלא לומר דבר שאינו
נשמע רבי אבא אומר חובה
שנאמר (משלי ט, ח) אל
תוכח לץ פן ישנאך הוכח
לחכם ויאהבך

Talmud Bavli Yevamot 65b

Just as it is a *mitzvah* for a person to say that which will be heeded, so is it a *mitzvah* for a person not to say that which will not be heeded. Rabbi Abba says: this is obligatory, as it is stated: "Do not rebuke a scorner lest they hate you; rebuke a wise person and they will love you" (Proverbs 9:8).

SOURCE #18 ס

תלמוד בבלי שבת דף נה עמוד א

אמר ליה רבי זירא לרבי
סימון: לזכיהנהו מר להני
דבי ריש גלותא. אמר ליה:
לא מקבלי מינאי. אמר
ליה: אף על גב דלא מקבלי
לזכיהנהו מר.

Talmud Bavli Shabbat 55a

Rabbi Zeira said to Rabbi Simon: Let my master rebuke the members of the house of the Exilarch.^o Rabbi Simon said to him: They will not accept rebuke from me. Rabbi Zeira said to him: Let my master rebuke them even if they do not accept it.

○ Mesilat Yesharim

Mesilat Yesharim ("The Path of the Just") is the most famous work of Rabbi Moshe Hayyim Luzzatto (1707-1746), a kabbalist. Mesilat Yesharim guides the reader step-by-step towards refining their character, and remains widely studied today.

The passage from Yevamot states that sometimes it is a *mitzvah* to remain silent than to give rebuke. However, the passage from Shabbat indicates that one should offer rebuke even if it will go unheeded.

1. What is the goal of giving rebuke? Is it ever worthwhile to give rebuke even if it does not lead to change? Why?
2. What does the passage in Yevamot mean when it says that at times it is a *mitzvah* to *not* say something?
3. In the second passage, why do you think Rabbi Zeira urges Rabbi Simon to offer rebuke, even though it will go unheard? Does the person *giving* rebuke benefit in some way by speaking up?
4. Is there a way to reconcile these two passages? How might the power dynamic between Rabbi Zeira and the Exilarch, a powerful political leader, affect whether one should rebuke in such a situation?

Mesilat Yesharim offers an explanation of the passage from Yevamot. Sometimes it is better to remain silent rather than to speak up and give rebuke, since the latter has the potential to backfire.

SOURCE #19

מסילת ישרים כ

הנה התורה צותה: "הוכח תוכיח את עמיתך", וכמה פעמים יכנס אדם להוכיח חטאים במקום או בזמן שאין דבריו נשמעים וגורם להם להתפרץ יותר ברשעם ולחלל ה' להוסיף על חטאתם פשע, הנה בכיוצא בזה אינו מן החסידות אלא לשתוק. וכך אמרו ז"ל: כשם שמצוה לומר דבר הנשמע, כך מצוה שלא לומר את שאינו נשמע.

Mesilat Yesharim^o 20

The Torah commanded: "you shall surely rebuke your fellow." Often a person attempts to rebuke sinners at a place or time when their words will not be heeded and this causes them to breach even further in their wickedness, to desecrate God, and to add transgression to their sin. In such cases, the only righteousness is silence. As our sages of blessed memory said: Just as it is a *mitzvah* for a person to say that which will be heeded, so is it a *mitzvah* for a person not to say that which will not be heeded.

1. According to Mesilat Yesharim, how can a poorly timed rebuke backfire and worsen a situation?

2. Is this something Rachel should be concerned about in our case? Why or why not?

Knowing when to speak up, and when to remain silent, is not an easy thing to determine. In the passage below taken from a 19th century responsa, the author of Ketav Sofer refers to this as the most difficult *mitzvah* of all.

SOURCE #20

שו"ת כתב סופר
 אורח חיים סימן נו

Responsa of Ketav Sofer,^o
 Orah Hayyim 57

ובאמת מצות תוכחה קשה
 היא מאוד לקיימה בתקונה
 יותר מכל המצוות כי צריך
 לשקול במאזני שכלו אם
 יוכיח או יפה השתיקה.

The reality is that the *mitzvah* of rebuke is
 extremely difficult to fulfill properly, more
 so than all other *mitzvot*, since one needs to
 balance whether to rebuke or it's better to
 remain quiet.

1. Why does the Ketav Sofer find the *mitzvah* of rebuke so difficult to fulfill properly?
2. Do you think it is as challenging as he makes it out to be? Why or why not?

III. HOW AND WHERE TO REBUKE?

The next section will explore more parameters about how to offer rebuke.

SOURCE #21 ס

משנה תורה,
 הלכות דעות ו:ו-ח

Mishneh Torah,
 Human Dispositions 6:6-8

[ו] בְּשִׁיחָטָא אִישׁ לְאִישׁ
 לֹא יִשְׁטָמְנוּ וְיִשְׁתַּקּוּ... אֶלָּא
 מִצָּנָה עָלָיו לְהוֹדִיעוֹ וְלִזְמַר
 לוֹ לְמָה עָשִׂיתָ לִּי כֵךְ וְכֵךְ
 וְלְמָה חָטָאתָ לִּי בְּדָבָר
 פְּלוּנִי. שְׁנֵאמַר (ויקרא יט יז)
 "הַזֹּכֵחַ תּוֹכִיחַ אֶת עַמִּיתְךָ."
 וְאִם חָזַר וּבִקֵּשׁ מִמֶּנּוּ לְמַחֵל
 לוֹ צָרִיךְ לְמַחֵל. וְלֹא יִהְיֶה

(6) If one person commits a sin against
 another person, the one sinned against
 shall not remain in silent hate against
 the sinner... rather on the contrary, it is
 obligatory to let them know and say: "Why
 have you done to me this and that, and why
 have you sinned against me?" for it says: "You
 shall surely rebuke your kinsman." If the
 sinner did repent and begged to be forgiven,

○ interpersonal matters

Mitzvot can be broadly classified as belonging to one of two categories.

Mitzvot dealing with interpersonal matters

(בין אדם לחבירו), or mitzvot dealing with one's relationship to God

(בין אדם למקום)

המוחל אכזרי...

[ז] הַרְוֹאָה חֲבֵרוֹ שְׁחָטָא אוֹ שֶׁהֵלֵךְ בְּדֶרֶךְ לֹא טוֹבָה מִצְוָה לְהַחְזִירוֹ לְמוֹטֵב וּלְהוֹדִיעוֹ שֶׁהוּא חוֹטֵא עַל עֲצָמוֹ בְּמַעֲשָׁיו הָרָעִים שְׁנֵאָמַר "הוֹכַח תּוֹכִיחַ אֶת עַמִּיתְךָ". הַמוֹכִיחַ אֶת חֲבֵרוֹ. בֵּין בְּדָבָרִים שֶׁבִּינוּ לְבִינוּ. בֵּין בְּדָבָרִים שֶׁבִּינוּ לְבֵין הַמָּקוֹם. צָרִיךְ לְהוֹכִיחוֹ בִּינוּ לְבֵין עֲצָמוֹ. וַיְדַבֵּר לוֹ בְּנִחָת וּבְלִשׁוֹן רַכָּה וַיּוֹדִיעוֹ שֶׁאִינוֹ אוֹמֵר לוֹ אֶלֶּא לְטוֹבָתוֹ לְהִבְיֹאוֹ לְחַיֵּי הָעוֹלָם הַבָּא. אִם קִבֵּל מִמֶּנּוּ מוֹטֵב וְאִם לֹא יוֹכִיחֵנוּ פַּעַם שְׁנִיָּה וּשְׁלִישִׁית. וְכֵן תָּמִיד חֵיב אָדָם לְהוֹכִיחוֹ עַד שֶׁיִּפְּהוּ הַחוֹטֵא וַיֹּאמֶר לוֹ אֵינִי שׁוֹמֵעַ. וְכָל שֶׁאֶפְשָׁר בִּידּוֹ לְמַחֲוֹת וְאִינוֹ מוֹחָה הוּא נִתְפָּשׁ בַּעֲוֹן אֱלֹו בֵּינוֹ שֶׁאֶפְשָׁר לוֹ לְמַחֲוֹת בָּהֶם:

[ח] הַמוֹכִיחַ אֶת חֲבֵרוֹ תִּתְחַלֶּה לֹא יְדַבֵּר לוֹ קָשׁוֹת עַד שֶׁיִּכְלִימֵנוּ שְׁנֵאָמַר "וְלֹא תִשָּׂא עָלָיו חֵטֵא"... כֵּךְ אָמְרוּ חֲכָמִים (סְנֵהֲדְרִין קז). "הַמְלַבֵּין פְּנֵי חֲבֵרוֹ בְּרָבִים אֵין לוֹ חֵלֶק לְעוֹלָם הַבָּא"... בְּמָה דְּבָרִים אָמֹרִים בְּדָבָרִים שֶׁבֵּין אָדָם לְחֲבֵרוֹ.

one must forgive them; and in doing so should not be cruel...

(7) One who sees their fellow sin or following an improper path, it is a *mitzvah* to return them toward the good, and to let them know that he is sinning against himself in pursuing wicked deeds, for it is written: "You shall surely rebuke your kinsman."

One who rebukes their fellow, whether it be regarding an interpersonal matter, or something between a person and God, it is essential that the rebuke be given only between the two of them; and that one speak calmly, using gentle language, telling the person that the rebuke is for their benefit, to bring them to life in the World to Come. If the person accepts it, good, and if not, they should rebuke a second or third time. One is obligated to continue even until the sinner strikes him, and says: "I will not listen." Anyone who is able to protest and does not, is considered responsible since they were able to protest.

(8) One who rebukes their fellow should not speak harshly at first to shame them, as it says "you shall not bear a sin because of him."... As the sages said (Sanhedrin 107a): one who embarrasses their fellow in public has no share in the World to Come... When does this apply? In interpersonal matters.○ But regarding heavenly matters, if one does not repent after a private rebuke,

Minhat Hinukh

Written by Rabbi Yosef Babad (1801-1874), Minhat HaHinukh is a commentary on the Sefer HaHinukh, which discusses the 613 mitzvot. The latter was published anonymously in 13th century Spain.

אֲבָל בְּדַבְרֵי שְׁמַיִם אִם לֹא
חֹר בּוֹ בִּסְתֵּר מִכְּלִימִין
אוֹתוֹ בְּרָבִים וּמִפְּרִסָּמִים
חֲטָאוּ וּמַחְרִפִּים אוֹתוֹ בְּפָנָיו
וּמִבּוֹיֵן וּמִקְלָלִין אוֹתוֹ עַד
שִׁיחֹר לְמוֹטֵב כְּמוֹ שֶׁעָשׂוּ כָּל
הַנְּבִיאִים בְּיִשְׂרָאֵל

we shame them publicly and publicize their transgression, and scorn and curse them, until they return to the good, as did the prophets of Israel.

In codifying the passages from the Talmud on rebuke, Rambam details how one should rebuke: first a person should speak gently, explaining that the rebuke is intended for their benefit. One is obligated to continue rebuking multiple times until the person being rebuked appears ready to respond with physical violence. Additionally, Rambam says that a rebuke must begin in private, and may only be escalated to a public rebuke if the person refuses to repent for transgressions against heaven.

1. What is the goal of rebuke according to Rambam? How do you know?
2. Why does Rambam distinguish between different types of transgressions regarding whether a person may give public rebuke?
3. Is bullying a transgression against heaven, or an interpersonal transgression? Can it be seen in more than one way?

In the passage below, Minhat Hinukh will explain that in his view, Rambam *does* allow for public rebuke even for interpersonal *mitzvot*.

SOURCE #22

מנחת חינוך רמ

וּנ"ל דְּמָה שֶׁחִילַק הַר"מ
וְהָרֵב הַמַּחְבֵּר בְּדַבְרֵים
שֶׁבֵּין אָדָם לַחֲבִירוֹ דְּאִסּוּר
לְהַכְלִימוֹ וּבֵין דְּבָרִים שֶׁבֵּין
אָדָם לְמִקּוֹם בִּי"ה דְּמַכְלִימִין
הֵינּוּ דּוּקָא אִם אִישׁ חוּטֵא
לַחֲבִירוֹ אֵין לַחֲבִירוֹ לְבִיּוּשׁוֹ

Minhat Hinukh^o 240

It seems to me when Maimonides and the Author [of Sefer HaHinukh] make a distinction between interpersonal matters where it is prohibited to shame, and between heavenly matters where one may shame, that is specifically for that particular person [who was was sinned against] that it is better

דמוטב שימחול על החטא כמבואר שם
בד' הר"מ [אבל] אם אדם רואה שחבירו
חוטא לאנשים אחרים נראה דמותר ג"כ
להכלימו אם אינו חוזר כי הנביאים ע"ה
הוכיחו בפרהסי' גם על עבירות שב"א
לחבירו וספרי הנביאים מלאים מזה

to forgive, as explained in Mishneh Torah. But if a
person sinned towards many other people, it appears
that it is permissible to shame them if they do not
repent, since the prophets of Israel rebuked publicly
also on interpersonal matters, and the books of the
prophets are filled with these examples.

The *Minhat Hinukh* says the question of whether to rebuke publicly depends on who the victim is. If you are the victim, then it is ideal to forgive. But if someone is sinning towards many others, then "it is permissible to shame them," as exemplified by the biblical prophets.

1. Why would the process of rebuke be different depending on whether you are the victim or an observer?

IV. REBUKE AS A PATH TO PEACE

Bereshit 21 offers an interesting example of rebuke in describing the interactions between Abraham and Avimelech, king of Gerar. In this chapter, Avimelech offers to make a treaty with Abraham. Abraham agrees, and then rebukes Avimelech.

SOURCE #23

בראשית כא:כה-לד

²⁵והזכח אברהם את-אבימלך על-
אדות באר המים אשר גזלו עבדיו
אבימלך: ²⁶ויאמר אבימלך לא ידעתי
מי עשה את-הדבר הזה וגם-אתה לא-
הגדת לי וגם אנכי לא שמעתי בלתי
היום: ²⁷ויקח אברהם צאן ובער ויתן
לאבימלך ויכרתו שניהם ברית: ²⁸ויניח
אברהם את-שבע כבשת הצאן לבדקו:
²⁹ויאמר אבימלך אל-אברהם מה הנה
שבע כבשת האלה אשר הצבת לבדקו:
³⁰ויאמר כי את-שבע כבשת תקח
מדי בעבור תהיה-לי לעדה כי חפרתי

Bereshit 21:25-34

²⁵Then Abraham rebuked Avimelech for the well of
water which the servants of Avimelech had stolen.
²⁶Avimelech said, "I do not know who did this; you
did not tell me, nor have I heard of it until today."
²⁷Abraham took sheep and oxen and gave them to
Avimelech, and the two of them made a covenant.
²⁸Abraham then set seven ewes of the flock by
themselves, ²⁹and Avimelech said to Abraham,
"What are these seven ewes that you have placed by
themselves?" ³⁰He replied, "You are to accept these
seven ewes from me as proof that I dug this well."
³¹Therefore he called that place Beer-sheva, because

אֶת־הַבְּאֵר הַזֹּאת: ³¹עַל־כֵּן קָרָא לַמָּקוֹם
הַהוּא בְּאֵר שָׁבַע כִּי שָׁם נִשְׁבְּעוּ שְׁנֵיהֶם:
³²וַיָּכַרְתּוּ בְרִית בֵּין אַבְרָהָם וְיִצְחָק
אֲבִימֶלֶךְ וּפִיכֹל שָׂר־צָבָאוּ וַיָּשְׁבוּ אֶל־
אֶרֶץ פְּלִשְׁתִּים: ³³וַיִּשָּׁע אֲשֶׁל בֵּין שָׁבַע
וַיִּקְרָא שָׁם בְּשֵׁם ה' אֵל עוֹלָם: ³⁴וַיָּגֵר
אַבְרָהָם בְּאֶרֶץ פְּלִשְׁתִּים יָמִים רַבִּים:

both of them took an oath there. ³²They established a covenant in Beer-sheva. Then Avimelech and Phicol, chief of his troops, rose and returned to the land of the Philistines. ³³He planted a tamarisk at Beer-sheva, and proclaimed there the name of the Lord, God of the Universe. ³⁴Abraham resided in the land of the Philistines for many days.

The following *midrash* derives from this passage a general principle about the nature of rebuke.

SOURCE #24

בראשית רבה נד:ג

אָמַר רַבִּי יוֹסִי בַר חֲנִינָא הַתּוֹכַחַת
מְבִיאָה לַיָּדִי אֲהֶבָה, שְׁנֵאמַר: הוֹכַח לְחָכָם
וַיֵּאָהֱבֵהוּ, הִיא דַּעֲתִיָּה דְרַבִּי יוֹסִי בַר חֲנִינָא
דְּאָמַר כָּל אֲהֶבָה שְׂאִין עִמָּה תּוֹכַחָה אֵינָה
אֲהֶבָה. אָמַר רִישׁ לְקִישׁ תּוֹכַחָה מְבִיאָה
לַיָּדִי שְׁלוֹם, וְהוֹכַח אַבְרָהָם אֶת אֲבִימֶלֶךְ,
הִיא דַּעֲתִיָּה דְאָמַר כָּל שְׁלוֹם שְׂאִין עִמּוֹ
תּוֹכַחָה אֵינּוּ שְׁלוֹם.

Bereishit Rabbah 54:3

Rabbi Yose bar Hanina said: "Rebuke leads to love, as it says 'Rebuke a wise person and he will love you.'" Rabbi Yose bar Hanina is consistent, since he said: "Any love that does not include rebuke is not love." Reish Lakish said: "Rebuke leads to peace, [as it says] 'Abraham rebuked Avimelech.'" [Reish Lakish] is consistent, since he said: "Any peace that does not include rebuke is not peace."

While we might not immediately associate giving rebuke with peace or love, the *midrash* teaches that they are intrinsically connected.

1. How does this *midrash* understand the relationship between Abraham rebuking Avimelech, and the continuation of the passage? Does this affect your understanding of what it means to give rebuke?
2. What may have happened here if Abraham did not rebuke Avimelech?
3. Is it always possible to offer rebuke in a way that leads to peace and/or love?
4. Can this *midrash* be applied to the circumstances of our case? If so, how?

While the two sources above speak about the connection between rebuke and peace, the following talmudic passage describes what can happen when rebuke is *not* given.

תלמוד בבלי שבת דף קיט עמוד ב

אמר רבי חנינא: לא חרבה
 ירושלים אלא בשביל שלא הוכיחו
 זה את זה, שנאמר: "היו שריה
 כאילים לא מצאו מרעה". מה איל
 זה, ראשו של זה בצד ונבו של זה,
 אף ישראל שבאותו הדור כבשו
 פניהם בקרקע ולא הוכיחו זה את
 זה

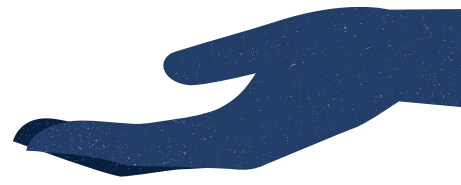
Talmud Bavli Shabbat 119b

Rabbi Hanina said: Jerusalem was destroyed only because the people did not rebuke one another, as it is stated: "Her ministers were like stags that found no pasture, [and they walked without strength before their pursuer]" (Lamentations 1:6). Just as a stag turns its head towards the other's tail, so too, the people of Israel in that generation lowered their faces to the ground and did not rebuke one another.

1. What is the connection you think this passage is making between not rebuking, and the eventual destruction of Jerusalem? How does one lead to the other?

○ Take a Step Back ○

1. Which of the sources above are most relevant for our case?
2. Does Rachel have an obligation to offer rebuke? Has she fulfilled it already?
3. Does sending the video to the Instagram account qualify as rebuke? If so, does it meet the criteria for how rebuke should be offered?



Shaming on Social Media

UNIT 3 The Responsibility to Intervene | לא תעמוד

In our case, Rachel and her friend feel the need to intervene after seeing the videos circulating around their classmates. In the sources below we will explore this responsibility through the *mitzvah* of “do not stand by the blood of your fellow” (Vayikra 19:16). This verse appears in the same context as two other *mitzvot* we have explored: the obligation to judge favorably, and the obligation to rebuke.

In addition, we will explore whether this obligation applies in a situation when the full details are not known, and a person must make a decision whether or not to intervene after hearing a rumor.

I. THE OBLIGATION TO INTERVENE

SOURCE #26

ויקרא יט:טו-יח

¹⁵לֹא-תַעֲשׂוּ עֹנֵל בְּמִשְׁפָּט לֹא-תִשָּׂא
פְּנֵי-דָל וְלֹא תִהְדָּר פְּנֵי גָדוֹל בְּצִדְקָה
תִּשְׁפֹּט עַמִּיתְךָ: ¹⁶לֹא-תִלְךָ רֵכִיל
בְּעַמֶּיךָ לֹא תַעֲמֹד עַל-דַּם רֵעֶךָ אֲנִי
ה' ¹⁷לֹא-תִשָּׂא אֶת-אָחִיךָ בְּלִבְבְּךָ
הִזְכֹּחַ תִּזְכֹּר אֶת-עֲמִיתְךָ וְלֹא-תִשָּׂא
עָלָיו חֲטָא: ¹⁸לֹא-תִקֵּם וְלֹא-תִטּוֹר
אֶת-בְּנֵי עַמְּךָ וְאֶהְבֶּתָ לְרֵעֶךָ כָּמוֹךָ
אֲנִי ה'.

Vayikra 19:15-18

¹⁵You shall not perform injustice in judgement: do not favor the poor or show deference to the powerful; with righteousness shall you judge your kinsman. ¹⁶Do not gossip among your people; **do not stand by the blood of your fellow**: I am God. ¹⁷You shall not hate your brother in your heart. You shall surely rebuke your kinsman, and you shall not bear a sin because of him. ¹⁸You shall not take vengeance, and you shall not bear a grudge against your people. You shall love your neighbor as yourself: I am God.

1. Verse 16 contains two transgressions: (1) not to gossip (2) not to stand by the blood of one's fellow. How do these *mitzvot* relate to each other?
2. From the context of this verse, how would you interpret the phrase: “do not stand by the blood of your fellow”?

○ Sifra Kedoshim

Sifra is a *midrash* on the book of Vayikra. It is *mi-drash halakhah*, which is focused on expounding the parameters of the *mitzvot*. It is also known as *Torat Kohanim* ("The Torah of the Priests"). It was composed in the 2nd-3rd century CE and is cited in many talmudic passages.

An early *midrash* (as well as the Talmud in Sanhedrin 73a) understand this verse as a broad *mitzvah* obligating one to intervene to save the life of somebody in danger:

SOURCE #27

ספרא קדושים פרק ד

ומנין שאם אתה יודע לו
עדות שאין אתה רשאי
לשתוק עליו? תלמוד
לומר "לא תעמוד על דם
רעך". ומנין אם ראית טובע
בנהר או לסטים באים עליו
או חיה רעה באה עליו,
חייב אתה להצילו בנפשו?
תלמוד לומר "לא תעמוד על
דם רעך"

Sifra Kedoshim Chapter 4

From where is it derived that if you have information to testify on behalf of someone, that you are not permitted to remain silent? The verse teaches: "Do not stand by the blood of your fellow." From where is it derived that if you see someone drowning in the river or threatened by robbers or attacked by a wild animal, that one is obligated to rescue them? The verse teaches: "Do not stand by the blood of your fellow."

This *midrash* understands the transgression of "standing by the blood of one's fellow" to be a broad *mitzvah* about the need to intervene to save someone if one has the ability to do so.

1. Why is failing to speak up included in the prohibition of "do not stand by the blood of your fellow?"
2. Are these examples relevant to the decision facing Rachel in our case? Why or why not?

The Talmud makes clear that, not only is there an obligation to intervene, but that if one does not intervene, then one is held responsible on some level for the harm that ensues.

SOURCE #28

תלמוד בבלי שבת דף נד עמוד ב

כל מי שאפשר למחות לאנשי
ביתו ולא מיחה נתפס על אנשי

Talmud Bavli Shabbat 54b

Whoever can protest their household
but does not protest, is seized for [the

o Gedaliah

Gedaliah was appointed governor of Judah, after the Babylonians destroyed the Temple in Jerusalem. As we will see below, Gedaliah and those with him were killed, and the remaining people scattered. A communal fast (Tzom Gedaliah) is observed on the day after Rosh Hashanah, commemorating this tragedy.

ביתו באנשי עירו
נתפס על אנשי עירו
בכל העולם כולו
נתפס על כל העולם
כולו

actions of] their household. From the people of their city—they are seized for [the actions of] the people of their city; if the whole world—the person is seized for [the actions of] the whole world.

In this striking passage, the Talmud suggests that whoever has the ability to protest—and doesn't—is complicit in the offense and ultimately held responsible. It is not sufficient to stand on the sidelines; if one is able to help prevent a harmful action from occurring, then one must do everything in their power to do so.

1. What type of situation do you think this passage is referring to? Does it matter whether the protest would be effective or not?
2. Why is one held responsible for the actions of others?
3. Given the circumstances of our case, is this passage applicable? Why or why not?

II. RESPONDING TO UNCONFIRMED DANGERS

While the sources above articulate a clear obligation to intervene in a case where the individual faces clear harm, they do not address what to do in a situation where there is ambiguity about whether the other person is in danger or not.

A passage from the Talmud below explores this question. In order to understand the biblical reference, we must first explore a narrative from the book of Jeremiah, in which Gedaliah^o is warned by Yohanan of a deadly threat.

SOURCE #29 □

ירמיה מ:יג-טז

Jeremiah 40:13-16

¹³וַיֹּזְחֶנָּה בֶּן־קָרֵחַ וְכָל־שָׂרֵי
הַחֲיָלִים אֲשֶׁר בַּשָּׂדֶה בָּאוּ
אֶל־גְּדַלְיָהוּ הַמִּצְפָּתָה:
¹⁴וַיֹּאמְרוּ אֵלָיו הִידֵעַ תִּדְעַ כִּי
בַעֲלִיסוֹ מֶלֶךְ בְּנֵי־עַמּוֹן שָׁלַח
אֶת־יִשְׁמָעֵאל בֶּן־נְתַנְיָה

¹³And Yohanan the son of Kareah and all the officers of the armies who were in the field, came to Gedaliah in Mizpah. ¹⁴And they said to him, "Do you know that Baalis the king of the children of Ammon sent Ishmael the son of Nethaniah to assassinate

לְהַכְתִּיךָ נָפֶשׁ וְלֹא־הֶאֱמִין לָהֶם גְּדַלְיָהוּ
בֶּן־אַחִיקָם: ¹⁵וַיּוֹחֲזֵן בֶּן־קָרַח אָמַר אֶל־
גְּדַלְיָהוּ בְּסֵתֶר בְּמִצְפָּה לֵאמֹר אֲלֶכָה נָא
וְאֶכֶה אֶת־יִשְׁמָעֵאל בֶּן־נְתַנְיָה וְאִישׁ לֹא
יָדַע לָמָּה יַכְכָּה נָפֶשׁ וְנִפְצֹו כָּל־יְהוּדָה
הַנִּקְבְּצִים אֵלֶיךָ וְאַבְדָּה שְׂאֵרֵית יְהוּדָה:
¹⁶וַיֹּאמֶר גְּדַלְיָהוּ בֶּן־אַחִיקָם אֶל־יּוֹחָנָן
בֶּן־קָרַח אֶל־[תַּעֲשֵׂה] אֶת־הַדָּבָר הַזֶּה
כִּי־שָׁקֵר אַתָּה דֹבֵר אֶל־יִשְׁמָעֵאל:

you?” But Gedaliah the son of Ahikam did not believe them. ¹⁵And Yohanan the son of Kareah said to Gedaliah secretly, in Mizpah, saying, “Let me go now and I will slay Ishmael the son of Nethaniah, and no one shall know. Why should he put you to death, and all the Judahites gathered around you will be scattered, and the remnant of Judah be lost?” ¹⁶Gedaliah the son of Ahikam said to Yohanan the son of Kareah, “Do not do this thing for you speak falsely about Ishmael.”

Gedaliah is warned by Yohanan about the threat from Ishmael, but refuses to believe that it is true. In the next chapter, we learn that Yohanan was correct to warn Gedaliah: Ishmael arrives and assassinates Gedaliah and the people who were with him. Ishmael and his men throw the dead bodies into a pit.

SOURCE #30 ס

ירמיה מא:ט

Jeremiah 41:9

וְהַבּוֹר אֲשֶׁר הִשְׁלִיךְ שָׁם יִשְׁמָעֵאל אֶת־
כָּל־פְּגְרֵי הָאֲנָשִׁים אֲשֶׁר הִכָּה בְּיַד־
גְּדַלְיָה...

The pit into which Ishmael had cast all the corpses of the men whom he had slain **by the hand of Gedaliah...**

The passage below from Niddah 61a notes the bolded phrase in the verse above. What does it mean that the people Ishmael killed were “slain by the hand of Gedaliah?”

SOURCE #31 ס

תלמוד בבלי נדה דף סא עמוד א

Talmud Bavli Niddah 61a

תנא הוא הבור שמילא ישמעאל בן
נתניה חללים דכתיב (ירמיהו מא,
ט) והבור אשר השליך שם ישמעאל

That was the pit which Ishmael ben Nethaniah filled with corpses, as it is written “The pit into which Ishmael threw all the corpses of the men killed by

את כל פגרי אנשים אשר הכה
בִּיד גְּדַלְיָה וְכִי גְּדַלְיָה הָרְגָן וְהָלֵא
יִשְׁמָעֵאל הָרְגָן אֲלֵא מִתּוֹךְ שֶׁהָיָה לוֹ
לְחוֹשׁ לַעֲצַת יוֹחָנָן בֶּן קֶרֶחַ וְלֹא חָשׂ
מֵעֵלָה עָלָיו הַכְּתוּב כֹּאִילוֹ הָרְגָן.

אמר רבא האי לישנא בישא אע"פ
דלקבולי לא מבעי מיחש ליה מבעי

the hand of Gedaliah." But did Gedaliah kill them?
Ishmael killed them! Rather since he (Gedaliah)
should have been concerned by advice of Yohanan ben
Kareah and he was not concerned, Scripture considers
it as though he had killed them.

Rava says: This type of malicious speech, although one
should not accept it, one should be concerned by it.

The Talmud derives from the language of the verse that Gedaliah bore some responsibility for the murders of his men, since he did not heed the warning given to him. As Rava explains, although one should not be quick to accept malicious speech, one should heed it.

1. What distinction do you think Rava is making here? What is the difference between "accepting" malicious speech and being "concerned" by it?
2. How does this relate to Gedaliah's obligation to have intervened in this narrative?
3. Does this relate to the sources on "judging favorably" explored in an earlier section? How so?

The passage continues with a story about how to assess one's response to an unconfirmed risk.

הָנָהוּ בְּנֵי גַלִּילָא דְנִפְק עֲלֵיהֶו קְלָא
דְּקָטוּל נַפְשָׁא, אֲתוּ לְקַמְיָה דְּרַבִּי
טַרְפוֹן, אָמְרוּ לֵיהּ: לְטַמְרִינָן מַר! אָמַר
לְהוּ: הֵיכִי נַעֲבִיד? אִי לֹא אֲטַמְרִינְכוּ
- חֲזוּ יִתְיִיכוּ, אֲטַמְרִינְכוּ - הָא אָמַר
רַבָּנָן הָאִי לִישְׁנָא בִישָׁא, אָף עַל
גַּב דְּלִקְבּוּלִי לֹא מִבְּעִי - מִיחָשׁ לִיה
מִבְּעִי, זִילוּ אֲתוּן טַמְרוּ נַפְשֵׁיכוּ.

There were some Galileans about whom a rumor
spread that they killed a person. They came before
Rabbi Tarfon and said to him, "hide us!" He said to
them, "What should I do? If I do not hide you, the
authorities will see you and execute you. [But] the
rabbis warned about malicious speech, although one
should not accept it, one should be concerned by it.
Go hide yourselves!"

In this passage, Rabbi Tarfon is approached by people about whom there was a rumor they had killed someone. Rabbi Tarfon was conflicted: on the one hand, he did not want these people to be unjustifiably killed (if they were truly innocent). On the other hand, the rabbis warn that one must be concerned that a negative rumor is true. Rabbi Tarfon decided not to aid in hiding the Galileans.

1. How does Rabbi Tarfon's dilemma relate to the dilemma facing Rachel in our case?
2. How do you understand his decision not to hide the Galileans, while telling them to hide themselves? What is he aiming to accomplish?

○ **Take a Step Back** ○

1. Based on the sources above, does Rachel have an obligation to intervene in our case? If so, have the actions which she has already taken satisfied her obligation?
2. How can these texts on assessing risk inform Rachel's decision making?

Shaming on Social Media

UNIT 4 Lashon Hara | לשון הרע

One of the key issues Rachel must consider regarding whether to share the videos with the @exposingbullies.highschool Instagram account is whether that would be a violation of *rekhilut* (gossip) or *lashon hara* (wicked speech). What are the parameters of these prohibitions, and do they apply in a situation in which one is sharing negative information in order to prevent harm from taking place?

Our first source is a familiar passage which we have already examined in previous units. Now we will focus on the bolded phrase in verse 16.

SOURCE #32 □

ויקרא יט:טו-יח

¹⁵לֹא-תַעֲשֶׂוּ עוֹל בְּמִשְׁפָּט לֹא-
תִשָּׂא פְנֵי-דָל וְלֹא תִהְדָּר פְּנֵי
גָדוֹל בְּצֹדֶק תִּשְׁפֹּט עִמִּיתְךָ:
¹⁶לֹא-תִלֵּךְ רֵכִיל בְּעַמִּיךָ לֹא
תַעֲמֹד עַל-רֵעִים רָעַךְ אָנִי ה';
¹⁷לֹא-תִשָּׂא אֶת-אָחִיךָ בְּלִבְךָ
הוֹכַח תּוֹכִיחַ אֶת-עַמִּיתְךָ וְלֹא-
תִשָּׂא עָלָיו חֶטְא: ¹⁸לֹא-תִקֵּם
וְלֹא-תִטּוֹר אֶת-בְּנֵי עַמְּךָ וְאֶהְבֶּתָּ
לְרֵעֶךָ כָּמוֹךָ אָנִי ה':

Vayikra 19:15-18

¹⁵You shall not perform injustice in judgement: do not favor the poor or show deference to the powerful; with righteousness shall you judge your kinsman. ¹⁶**Do not gossip among your people;** do not stand by the blood of your fellow: I am God. ¹⁷You shall not hate your brother in your heart. You shall surely rebuke your kinsman, and you shall not bear a sin because of him. ¹⁸You shall not take vengeance, and you shall not bear a grudge against your people. You shall love your neighbor as yourself: I am God.

In the Mishneh Torah, Rambam draws a connection between the two parts of verse 16:

SOURCE #33 □

משנה תורה, הלכות דעות ז:א
המרגל בחברו עובר בלא תעשה

Mishneh Torah, Human Dispositions 7:1

One who shares gossip against their fellow violates a

o flogging

Lashes are generally the punishment for transgressions for which no other punishment is specifically mentioned in the Torah. The Talmud goes into great detail specifying the transgressions which warrant lashes; the rabbis also reduce the maximum number of lashes one can receive from 40 to 39. (Makkot 22a)

שְׁנֵאֵמַר "לֹא תֵלֵךְ רֵכִיל
בְּעַמֶּיךָ." וְאֵף עַל פִּי
שֶׁאִין לֹקֵין עַל דְּבַר
זֶה עֲזֵן גָּדוֹל הוּא וְגוֹרֵם
לְהִרְגַּ נַפְשׁוֹת רַבּוֹת
מִיִּשְׂרָאֵל. לְכֹךְ נִסְמַךְ
לוֹ "וְלֹא תַעֲמִיד עַל דַּם
רֵעֶךָ."

negative commandment, as it is written:
"Do not go around as a gossip among your people." And although the punishment of flogging^o is not inflicted for violating this charge, it is a grave sin, and is the cause of many deaths among Israel. For this reason it is written adjacent to: "Do not stand by the blood of your fellow."

Rambam treats the prohibition of gossip with great severity. In the first section above, he writes that the prohibition of spreading gossip can have life-or-death consequences. For this reason, it comes prior to the *mitzvah* not to be a bystander when someone's life is in danger. Below, Rambam further specifies the parameters of these prohibitions.

SOURCE #34

משנה תורה, הלכות דעות ז:ב-ג

[2] אִי זֶהוּ רֵכִיל. זֶה שֶׁטּוֹעֵן
דְּבָרִים וְהוֹלֵךְ מִזֶּה לָזֶה
וְאוֹמֵר כֵּךְ אָמַר פְּלוֹנִי כֵךְ וְכֵךְ
שֶׁמַּעֲתִי עַל פְּלוֹנִי. אֵף עַל פִּי
שֶׁהוּא אֵמֶת הָרִי זֶה מַחְרִיב
אֶת הָעוֹלָם. יֵשׁ עֲזֵן גָּדוֹל מִזֶּה
עַד מְאֹד וְהוּא בִּקְלָל לָאו
זֶה וְהוּא לְשׁוֹן הָרַע. וְהוּא
הַמְסַפֵּר בְּגִנוּת חֲבֵרוֹ אֵף עַל
פִּי שֶׁאוֹמֵר אֵמֶת. אֲבָל הָאוֹמֵר
שֶׁקֶר נִקְרָא מוֹצִיא שֵׁם רַע עַל
חֲבֵרוֹ.

אֲבָל בַּעַל לְשׁוֹן הָרַע זֶה
שִׁיּוֹשֵׁב וְאוֹמֵר כֵּךְ וְכֵךְ עֹשֶׂה

Mishneh Torah, Human Dispositions 7:2-3

(2) Who is a violator of *rekhilut* (gossip)?
One who makes claims, and goes from this person to that person, saying, "So-and-so said this, and I heard that from so-and-so." Even though it is true, this is destructive for the world. There is an even worse transgression which is included in this prohibition, and that is *lashon hara*, one who spreads disgrace about someone else, even by telling the truth. If they are lying, that is called *motzei shem ra* (defamation).

One who speaks *lashon hara* is one who sits and says, "So-and-so did this, and

○ Pithei Teshuvah

Written by Rabbi Tzvi Hirsh Eisenstadt (1812-1868), Pithei Teshuva is a commentary on the Shulhan Arukh. It cites responsa on laws discussed in the Shulhan Arukh.

○ Magen Avraham

Rabbi Avraham Gombiner (1635-1682) was a leading halakhic authority in Poland. He is most famous for writing the Magen Avraham commentary on the Orach Hayyim section of Shulhan Arukh.

פְּלוּנִי וְכָךְ וְכָךְ הָיוּ
אֲבוֹתָיו וְכָךְ וְכָךְ שָׁמַעְתִּי
עָלָיו וְאָמַר דְּבָרִים שֶׁל
גִּנְאִי. עַל זֶה אָמַר הַכֶּתוּב
(תְּהִלִּים יב:ד) "יִכָּרֶת ה'
כָּל שִׁפְתֵי חֲלָקוֹת לְשׁוֹן
מְדַבֶּרֶת גְּדֻלוֹת":

his parents were such-and-such and I heard this about them," and says words of disgrace. About this the verse says: "May God cut off all flattering lips, the tongue that speaks proud things" (Psalms 12:4)

[3] אָמְרוּ חֲכָמִים שֶׁלֹּשׁ
עֲבֻרוֹת נִפְרָעִין מִן הָאָדָם
בְּעוֹלָם הַבְּאֵר וְאֵין לוֹ חֵלֶק
לְעוֹלָם הָבָא. עֲבוֹדַת
בּוֹכָבִים וְגִלּוּי עֲרִיּוֹת
וְשִׁפְכוֹת דָּמִים. וְלִשׁוֹן
הָרַע בְּנִגְדַּת בָּלָם.

(3) The sages said: There are three transgressions for which a person is punished in this world and causes them to lose their portion in the World to Come. They are: idolatry, adultery, and murder. But *lashon hara* is parallel to all of these.

1. How does Rambam articulate the differences between *rechilus*, *lashon hara*, and *motzi shem ra*?
2. In the final line above, Rambam says *lashon hara* is parallel (בְּנִגְדַּת) to grave sins, including murder. How do you understand the word "parallel" here?
3. Why do you think these types of speech are forbidden regardless of whether the gossip is true or false?
4. According to Rambam, does one violate one of these prohibitions by sharing positive information about someone else? If so, which prohibition(s)?

Undoubtedly, speaking *lashon hara* is a grave sin. However, this is not the only perspective that Rachel must consider. On the flipside, the Pithei Teshuvah introduces another concern which may be relevant to our case. In particular, he warns about a situation where one avoids speaking up on behalf of someone in order to avoid possibly speaking *lashon hara*.

SOURCE #35

פתחי תשובה אורח חיים קנו

הנה המגן אברהם וכן בספרי
המוסר האריכו בחומר איסור

Pithei Teshuvah[○] Orach Hayyim 156

The Magen Avraham[○] and others
expounded on the severity of *lashon*

לשון הרע, וראיתי לנכון להעיר לאידך גיסא, שיש עון גדול יותר מזה, וגם הוא מצוי ביותר, וזהו מי שמונע עצמו מלגלות אוזן חברו במקום שיש צורך להציל עשוק מיד עושקו, מפני שחושש לאיסור לשון הרע, כגון הרואה מי שאורב לחבירו להרגו בערמה, או שחותר מחתרת באישון לילה ואפלה בביתו או בחנותו של חברו, ומונע את עצמו מלהודיע לחבירו ולהזהירו בעוד מועד, מפני שחושב שהוא בכלל איסור לשון הרע, ובאמת שהנוהג כן גדול עונו מנשוא, ועובר על לא תעמוד על דם רעך... והכלל בזה שהדבר מסור ללב אם כונתו לרעת האחד הוא לשון הרע אבל אם כוונתו לטובת השני להצילו ולשמרו הוא מצוה רבה.

hara, and I felt compelled to note that, on the other hand, there is a greater transgression that is also very prevalent, and that it is not to give one's friend information when there is a chance to save the oppressed from their oppressor because of the fear of transgressing *lashon hara*. For instance, one who sees another person set a covert trap to kill someone, or sees someone dig a tunnel in the darkness of night into the house or store of their neighbor, and then holds backs from telling his friend and warning them in time, because they are afraid that this would violate *lashon hara*, and in truth, one who behaves this way, their sin is too great to bear and they transgress the prohibition of "do not stand by the blood of your fellow"... The general principle is that if the intention is to cause harm to the first person then it is *lashon hara*, but if the intention was for the benefit of the second person, and to save and protect them, then it is a great *mitzvah*.

Conflicting concerns emerge from Rambam and Pithei Teshuvah. On the one hand, the sin of *lashon hara* is severe and must not be overlooked. However, there is also a concern of causing harm by not speaking up. Here, the Pithei Teshuvah warns against a person acting as a bystander, rather than possibly speaking *lashon hara* by informing their friend that they are in harm's way.

1. Given these sources, would Rachel violate the prohibition of *lashon hara* by posting the videos online?
2. Should Rachel be more concerned about the violation of *lashon hara* or the prohibition of "do not stand by the blood of your neighbor?"
3. Is the concern of the Pithei Teshuvah relevant to Rachel's circumstances? Why or why not?

The final text comes from the Hafetz Hayyim. He addresses the precise circumstances in which one may pass on negative information about an individual.

◦ **Hafetz Hayyim**

Written by Rabbi Yisrael Meir Kagan (Belarus, 1838 - 1933), *Hafetz Hayyim* (literally: “one who desires life”) is viewed authoritatively on matters of proper speech. Its title comes from a verse in the book of Psalms: “Who is the one who desires life, who loves days to see goodness? Guard your tongue from evil and your lips from speaking deceitfully” (Psalm 34:13-14). In addition to this work, the *Hafetz Hayyim* published enduring works on *halakhah*, including his *Mishnah Berurah* commentary on the *Shulchan Arukh*.

SOURCE #36 ס

חפץ חיים, לשון הרע, כללי

אם אחד ראה אדם, שעשה
עולה לחברו, בגזל שגזלו או
עשקו או הזיקו, בין אם הנגזל
והנזק יודעים מזה או לא. או
שבשו, או שצערו והונה אותו
בדברים. ונודע לו בברור, שלא
השיב לו את הגזלה ולא שלם
לו את נזקו ולא בקש פניו
להעביר לו על עונו, אפלו ראה
דבר זה ביחיד, יכול לספר
הדברים לבני אדם כדי לעזר
לאשר אשם לו ולגנות המעשים
הרעים בפני הבריות, אך יזהר,
שלא יחסרו אלו השבעה פרטים,
שנבארים בסמוך. ואלו הן:

(א) שיראה זה הדבר בעצמו,
ולא על ידי שמיעה מאחרים,
אם לא שנתברר לו אחר כך,
שהדבר אמת.

(ב) שיזהר מאד, שלא יחליט
תכף את הענין בדעתו לגזל
ועשק או להזיק וכיוצא בזה, רק
יתבונן היטב את עצם הענין,
אם הוא על פי דין בכלל גזל או
הזק.

(ג) שיוכיח את החוטא מתחלה
(ובלשון רכה, אולי יוכל להועיל
לו, וישיב על ידי זה את דרכיו,
ואם לא ישמע לו, אז יודיע
לרבים את אשמת האיש הזה,

Hafetz Hayyim,

***Lashon Hara*, Principle 10**

If a person saw someone harming their fellow, whether robbing them, wronging them, or causing them damage, whether the one robbed or damaged knew of it or not; or if the person shamed them or harmed them with words. If it became clear that the person did not return the theft or reimburse them for the damage and did not beseech them to forgive the transgression—even if the person saw this thing alone—they can relate it to others in order to help the one who was wronged and to condemn these evil deeds before people; but they must be sure to fulfill the following seven conditions:

1. They witness the incident themselves and not hear of it from others, unless it becomes clear to them afterwards that the thing is true.
2. They take great care not to immediately determine the thing to be theft or wronging or damage or the like, without carefully analyzing whether it is legally theft or damage.
3. Gently rebuke the sinner first, perhaps it will be effective and the person will improve their ways. If the person does not listen, then they should inform the public of this person's guilt, and how the person

מה שיהויד על רעהו.

deliberately harmed someone else.

(ד) שלא יגדיל העוולה יותר ממה שהיא.

4. They should not exaggerate the wrong beyond what it is.

(ה) שיכוון לתועלת...ולא להנות, חס ושלום, מהפגם ההוא, שהוא נותן בחברו, ולא מצד שנאה, שיש לו עליו מקבץ.

5. The intention should be to benefit [others], and not to benefit themselves, God forbid, and given due to a prior hatred.

(ו) אם הוא יכול לסבב את התועלת הזאת גופא (עצמה) בעצה אחרת, שלא יצטרך לספר את ענין הלשון הרע עליו, אזי בכל גוני אסור לספר.

6. If they can bring about this benefit another way, without needing to speak badly of the individual, then it is certainly forbidden to speak the *lashon hara*.

(ז) שלא יסובב על ידי הספור הזק להנדון יותר מכפי הדין, שהיה יוצא, אלו הועד עליו באפן זה על דבר זה בבית דין

7. They should not cause the person more damage than is justified, that they would suffer if the matter were brought before a court.

1. Which of these conditions apply to the circumstances of our case?
2. Do any of these conditions *not* apply in Rachel's circumstances? If so, which ones?
3. Would it be possible for Rachel to upload the video online and fulfill all seven of these conditions?

Take a Step Back

1. Is it *lashon hara* to share the videos with the @*exposingbullies.highschool* Instagram account?
2. How should Rachel weigh the violation of *lashon hara* against the violation of *lo ta'amod* (standing by the blood of one's fellow)?
3. Which source speaks most directly to the circumstances of our case? How so?

Shaming on Social Media

UNIT 5 Shaming | ביוש

Our final unit dives deeper into a key question that Rachel must consider before deciding what to do with the videos she has seen. This is the question of shaming: under what circumstances, if any, is one allowed to humiliate another person?

This issue was brought up earlier in the context of rebuke, where the Talmud derived from “you shall not bear a sin because of him” (Vayikra 19:17) that one should not rebuke to the point where one causes humiliation. Below, we will examine this question more thoroughly, considering modern-day examples where a *beit din* might use shaming as a legal tool.

I. THE SEVERITY OF SHAMING

Our starting point is the talmudic passage below, which spells out the stakes of this discussion in stark language.

◦ *tanna*

While the term *tanna* often refers to authorities whose views are recorded in the Mishnah (1st-3rd centuries CE), in this case it refers to a professional reciter. The *tanna* had a vital role in the talmudic academy: to memorize the oral tradition and be able to recite it before the teacher (in this case, Rav Nahman bar Yitzhak) on command.

SOURCE #37 ס

תלמוד בבלי
בבא מציעא דף נח עמוד ב
תני תנא קמיה דרב נחמן בר
יצחק כל המלבין פני חברו
ברבים כאילו שופך דמים
א"ל שפיר קא אמרת דחזינא
ליה דאזיל סומקא ואתי
חורא

Talmud Bavli Bava Metzia 58b

A *tanna*[◦] taught before Rav Nahman bar Yitzhak: Anyone who humiliates another person in public, it is as though they spilled their blood. [Rav Nahman] said to [the *tanna*]: You have spoken well, as we see [when a person is humiliated] the red leaves their face and they become pale.

The Talmud compares embarrassing someone publicly to outright murder. As we consider circumstances in which shaming someone may be necessary, it is essential to keep in mind the severity with which the Talmud treats humiliation.

○ **excommunication**

Shamta is a type of excommunication that a *beit din* could impose, requiring the community to distance from the individual. In addition, the individual would have to take on mourning practices, such as not getting a haircut or washing their clothes. Rambam lists 24 transgressions in the Mishneh Torah which could justify excommunication (Laws of Talmud Torah 6:14).

1. Do you agree with this statement that humiliation is akin to murder? What is Rav Nahman bar Yitzhak trying to convey? Is this hyperbole—why or why not?

Perhaps one of the reasons that shaming someone is treated so severely is that it can have lasting consequences. The passage below cites a debate regarding the lasting effects of excommunication, a severe type of public shaming.

SOURCE #38 □

תלמוד בבלי

מועד קטן דף יז עמוד א

מאי שמתא אמר רב
שם מיתה ושמואל אמר
שממה יהיה ומהניא ביה
כי טיחיא בתנורא ופליגא
דריש לקיש דאמר ריש
לקיש בשם שנקנסת
במאתים וארבעים ושמונה
איברים כך כשהיא יוצאה
יוצאה ממאתים וארבעים
ושמונה איברים

Talmud Bavli

Moed Katan 17a

What is the meaning of excommunication^o (*shamta*)? Rav said: Death is there (*sham mita*); Shmuel said: The person will be a desolation (*shemamah*), and it has the effect of fat in an oven. This disagrees with Reish Lakish, for Reish Lakish said: Just as excommunication enters through all two hundred and forty-eight organs, so too when it leaves, it leaves from all two hundred and forty-eight organs.

SOURCE #39 □

רש"י שם

ומהניא כי טיחיא בתנורא
- כשומן שטוחין את
התנור ונבלע בתוכו שאין
יוצא לעולם

Rashi on Moed Katan 17a

Like fat in an oven: like fat smeared in an oven and absorbed within it, that never fully leaves.

Rav draws a connection between excommunication and death. Shmuel draws a linguistic connection to the word for desolation. In doing so, the Talmud articulates a disagreement between Shmuel and Reish Lakish about the nature of excommunication.

1. How would you articulate the disagreement between Shmuel and Reish Lakish about the lasting effects of excommunication? What are they disagreeing about?

The passage continues with a case of when excommunication was applied.

SOURCE #40 ס

תלמוד בבלי

מועד קטן דף יז עמוד א-ב

ההוא אֶלְמָא דְהָוָה קָא מַצְעֵר
לִיה לְהָהוּא צוּרְבָא מְרַבְנָן אֶתָּא
לְקַמִּיָּה דְרַב יוֹסֵף אָמַר לִיה זִיל
שְׁמַתִּיָּה אָמַר לִיה מְסַתְפִּינָא
מִינִיָּה אָמַר לִיה שְׁקִיל פְּתִיחָא
עֲלִיָּה כָּל שָׁבִין דְּמְסַתְפִּינָא מִינִיָּה
אָמַר לִיה שְׁקִלְיָה אֶתְתִּיָּה בְּכַדָּא.
וְאֶתְתִּיָּה בִּי קִבְרִי וְקִרִי בֵּיה
אֶלְפָא שְׁפוּרִי בְּאַרְבָּעִין יוֹמִין
אֲזִיל עֲבִיד הָכִי פֻקַּע כְּדָא וּמִית
אֶלְמָא

מאי שְׁפוּרִי? שְׁנַפְרָעִין מִמֶּנּוּ.

מאי תְּבַרָא? אָמַר רַב יִצְחָק
בְּרִיה דְּרַב יְהוּדָה תְּבַרִי בְּתִי
רָמִי דְּתַנִּיָּא אָמַר רַבִּין שְׁמַעוֹן בֶּן
גַּמְלִיאֵל כָּל מְקוֹם שֶׁנִּתְּנוּ חֻקִּים
עֵינֵיהֶם אוֹ מִיתָה אוֹ עוֹנִי.

Talmud Bavli

Moed Katan 17a-b

There was a violent person who caused suffering to a certain Torah scholar. He came before Rav Yosef. Rav Yosef said to him: “Go and excommunicate him.” He replied: “I am afraid of him.” [Rav Yosef] said: “Go and give him a summons [to court].” [The scholar replied:] “All the more so I am fearful of him.” Rav Yosef replied: “Take [the summons] and place it in a jug, and set it down in a cemetery, and sound a thousand *shofar* blasts over the course of forty days.” He went and did this. The jug burst and the violent man died.

Why *shofars* [at an excommunication ceremony]?

Since punishment (*shenifra'in*) is extracted from [the excommunicated person].

Why broken blasts [of the *shofar*]?: Rav Yitzhak bar Rav Yehudah said: [The excommunication] breaks [even] tall buildings, as it is taught: Said Rabban Shimon ben Gamliel: Wherever the Sages set their eyes [to denounce] a person, it causes either death or poverty.

1. What can this story tell us about the justifications for publicly denouncing someone else? Is intimidation seen as a legitimate concern by Rav Yosef?
2. Do the actions that Rav Yosef recommends correspond to the details of our case? If so, how?
3. How do you understand the final line in this passage, that excommunication leads to death or poverty?

○ **a get**

A “get” is a halakhic divorce document. Since a *get* is traditionally given from a husband to their wife, the power discrepancy can be exploited by men who refuse to give their wife a divorce. A recalcitrant husband may use the *get* as a bargaining chip in divorce proceedings, or refuse to give a *get* altogether, thereby preventing their wives from the ability to remarry. *Get*-refusal is widely understood as a form of domestic abuse. A woman trapped in such a marriage is called an *agunah* (literally: “chained”). The Organization for the Resolution of Agunot, an advocacy group which seeks to free *agunot*, is involved in about 300 *agunah* cases.

○ **Rabbeinu Tam**

Rabbeinu Tam (1100-1171) was a grandson of Rashi and one of the leading Tosafists, who wrote commentaries on the Talmud.

The following passage in the Shulhan Arukh details a situation in which publicly denouncing an individual is permissible. As you read the *halakhah*, consider why publicly denouncing this individual is permitted in these circumstances.

SOURCE #41 □

**שולחן ערוך
אבן העזר עא:א**

חייב אדם לזון בניו
ובנותיו עד שיהיו בני
שש אפילו יש להם נכסים
שנפלו להם מבית אבי
אמם ומשם ואילך זנן
כתקנת חכמים עד שיגדלו
ואם לא רצה גוערין בו
ומכלימין אותו ופוצרין
בו ואם לא רצה מכריזין
עליו בצבור ואומרים פלוני
אכזרי הוא ואינו רוצה לזון
בניו והרי הוא פחות מעוף
טמא שהוא זן אפרוחיו

**Shulhan Arukh
Even HaEzer 71:1**

A man is obligated to provide sustenance to his sons and daughters until they are six years of age, even if they own property that came to them through their mother’s father’s house. From then and on, we provide for them as a decree of the sages until they are adults. If he does not want to, we denounce him and shame him and antagonize him [until he does]. If he does not want to, we denounce him in public and say, “So-and-so is cruel and does not want to provide for his children! He is worse than a non-kosher bird that provides for its chicks!”

1. Given the severity of shaming an individual, why do you think the Shulhan Arukh permitted it in this situation?

II. SHAMING A GET REFUSER: TWO MODERN-DAY CASES

Nowadays, it is rare for a *beit din* to resort to public shaming or excommunication. But there is a notable exception to this rule: recalcitrant husbands who refuse to give a *get*.[○] The willingness to publicly denounce the husband in such a situation stems from Rabbeinu Tam.[○] Below is one such case which appeared before the Chief Rabbinate of Israel.

שו"ת יביע אומר חלק ז
אבן העזר סימן כג

הערעור שלפנינו בבית הדין הגדול סובב
הולך על פסק בית הדין האיזורי בירושלים
בתאריך ט' סיון תשמ"ד. והעובדות הן
כדלהלן

האשה נשואה לבעלה זה עשרים שנה, ולא
זכו להבנות זמ"ז, במשך חמש עשרה שנה
טופלו על ידי רופאים ורפואות, והכל ללא
הועיל, עד שנאשו הרופאים מלטפל בהם,
ולפי הנראה זהו באשמת הבעל, וכן האשה
טוענת בפניו, ודורשת להתגרש ממנו
בטענת בעינא חוטר לידה. ביה"ד האיזורי
פסק בזמנו (ט' סיון תשמ"ב), כי הבעל חייב
לגרש את אשתו בג"פ, אך אין לכופו לגרש.
אולם הבעל נתן כתף סוררת לפסה"ד,
ולא אבה לגרש, למרות שכבר נפרדו זמ"ז.
האשה פנתה שוב לביה"ד האיזורי לשוב
ולעיין בהחלטתם, ולמצוא דרך לכפות על
הבעל לגרשה כי לא נשאר לה סיכויים
להנשא וללדת רק למספר שנים מועטות,
בגלל שהיא בגיל למעלה מארבעים שנה....

בערעור שנידון לפנינו בתאריך י"ד טבת
תשמ"ה, לא מצאנו יסוד מספיק לכופו על
הבעל לגרש, אבל דיברנו על לב הבעל
שהוא שומר תורה ומצות, כי יטה למוסר

Rav Ovadiah Yosef, Yabia Omer 7,
Even HaEzer 23

The appeal before us, the Supreme Rabbinical
Court of Israel, revolves around a decision of
the Regional Beit Din in Jerusalem on the 9th of
Sivan, 5744 (1984). The facts of the case are as
follows:

The woman in question has been married to
her husband for twenty years, but was childless.
For fifteen years they were treated by doctors
and through medications. All this was to no
avail, until the doctors despaired of successfully
treating them. The problem is evidently to
be ascribed to the husband, and so has the
wife herself argued in his presence, and so
she requests to be divorced from him on the
grounds of her legitimate desire for children.
The regional Beit Din at the time (9th Sivan
5742) ruled that the husband must grant his
wife a *get*, but that he could not be coerced
to do so. However, the husband rejected the
court's decision and did not wish to execute
a *get*, despite the fact that they had already
separated. The wife turned to the regional Beit
Din to review their decision and to find a way to
coerce the husband to divorce her, since only a
few years remained for her to remarry and have
children, as she was above the age of forty...

In the appeal which was presented before us on
14th Tevet 5745, we did not find sufficient cause
to compel the husband to divorce his wife. We
did, however, try to persuade the man, who is

אזנו, ולציית לפסק הדין, כי מצוה לשמוע דברי חכמים שחייבוהו לגרש, ואל יעגן את אשתו לחנם. ונתנו לבעל אורכה של שלשה חדשים שיתן גט לאשתו, אך בראותינו שעברו יותר משלשה חדשים ואין עונה ואין קשב, החלטנו לעשות לו הרחקה דרבינו תם, כמבואר בספר הישר (בחלק התשובות סי' כד) וז"ל: תגזרו באלה חמורה על כל איש ואשה מזרע ישראל הנלוים אליכם, שלא יהיו רשאים לדבר עמו ולא לארחו ולהאכילו ולהשקותו וללוותו ולבקרו בחוליו, ועוד תוסיפו חומרות על כל אדם אם לא יגרש את אשתו, עכ"ל.

...והוספנו על החומרות הנ"ל שעל כל גבאי בתי הכנסת בסביבות מקום מגוריו של הבעל שלא להושיבו בבית הכנסת, ושלא להעלותו לס"ת, ושלא לשאול בשלומו, ולא לחלוק לו שום כבוד, ולהתרחק מעליו ככל האפשר עד אשר יכנע לבבו וישמע לקול מורים ויתן גט לאשתו כדמו"י ולשחררה מעגינותה. וכן החלטנו פה אחד, עם חברי ועמיתי הגאונים רבי אליעזר יהודה וולדינברג, ורבי יצחק קוליצ שליט"א. וכן נעשה מעשה, ואז נכנע הבעל ונתן הגט לאשתו כדמו"י

religiously observant, to follow the proper path and obey the decision of the court, for it is a *mitzvah* to heed the words of the Sages who obliged him to divorce his wife, and that he has chained his wife needlessly. And we gave the husband an extension of three months within which to grant a *get* to his wife. However, when we saw that three months passed without response, we instituted the separations of Rabbeinu Tam as found in the Sefer HaYashar which states: "Decree by force of oath on every Jewish man and woman under your jurisdiction that they not be allowed to speak to him, host him in their homes, feed him or give him to drink, accompany him or visit him when he is ill. In the event that he refuses to divorce his wife, you may add further restrictions upon him."

...We added to these sanctions, that no *gabbai* of any synagogue in the area where the husband resides be allowed to seat him in the synagogue, or call him to the Torah, or ask after his welfare, or grant him any honor, and all people are to distance themselves from him as much as possible, until his heart submits and he heeds to the voices of those instructing him that he grant his wife a divorce in accordance with the Law of Moses and Israel, and thereby free her from her chains. This decision was adopted unanimously with my friends and colleagues Rabbi Eliezer Yehudah Waldenberg and Rabbi Yitzhak Kolitz. And so it was done, at which time the husband submitted and granted his wife a divorce in accordance with the Law of Moses and Israel.

The second case we will look at involves Dr. Oded Guez, who refused to give his wife a *get*. Eventually, a *beit din* issued a *herem* (excommunication) against Guez based on the precedent of Rabbeinu Tam.

As part of the *herem*, the *beit din* ordered the publication of Guez' name, photo and personal details, which spread quickly via Whatsapp and social media. Days later he was fired from his position at Bar-Ilan University. The spokesperson for the Chief Rabbinate of Israel explained the decision to publicize his personal details on social media as follows:

SOURCE #43

פנחס טננבאום,
דוברו של הרב הראשי (2016)
ההחלטה נעשתה בכאב רב אך לא
נותרה ברירה אחרת, כל מה שניסו
קודם לכן לא הועיל... בית דין לא
מפרסם מודעות וגם לא מכיר את
המילה שיימינג. הוא פועל על פי
המושגים ההלכתיים של הרחקות
דרבנו תם, שמטרתן להפעיל לחץ
חברתי על המנוודה כדי שיבצע את
החלטת בית הדין. במקרה המדובר
בית הדין נתן אישור לאישה לפרסם
והיא בחרה לממש את ההיתר
בדרכיה, זו כבר החלטה שלה היכן
ובאילו כלים לפרסם.

Pinhas Tannenbaum,
spokesperson for the Chief Rabbi (2016)

The decision was made with much pain, but there was no other choice. Everything that was attempted prior to this was ineffective... The rabbinical court does not publish advertisements and does not know the word "shaming." It employed the halakhic concepts of distancing established by Rabbeinu Tam, which aim to exert social pressure on the excommunicated individual, so that they carry out the court's decision. In this case in question, the court gave permission to the wife to publicize the matter, and she chose to implement this permission in her own way [i.e. using social media]. This is fully her decision, [to choose] where and with which tools to publicize the matter.

1. In what ways is our case analogous to the cases above where a husband refuses to give their wife a *get*? In what ways is our case different?
2. Should there be different standards of shaming when the denouncement is coming from a *beit din*, rather than from an individual? Why or why not?
3. Are there potential risks in allowing the public shaming of individuals? If so, what are they?

III. CREATING MODERN-DAY STANDARDS

In our final text, we will see a text below from Rav Yuval Cherlow, who attempts to formulate guiding principles for when shaming should be permitted in the modern-day.

"שיימינג" -

הדרכה הלכתית מקוצרת,
רב יובל שרלו

לשון הרע והלבנת פנים הינם נושא מהותי ביותר בחיינו... לפני הכל, צריך לזכור שעוסקים כאן בנושא שהוא דיני נפשות של ממש, ולדעת חלק מהראשונים הוא קשור להיהרג ואל יעבור.

...חשוב להדגיש כי האתיקה היהודית סוברת כי המונח "זכות הציבור לדעת" הוא מונח מעוות. אין לציבור זכות לדעת כל דבר בתחומים הפרטיים של בני אדם. האתיקה היהודית כן מכירה ב"חובת הציבור לדעת", כלומר: הדברים שחובה שהציבור יידע - חובה לפרסם. לא תמיד קל להבחין בין השניים אולם חשוב שזה יהיה נר לרגלי המפרסם.

ארבעה תנאים הכרחיים צריכים להתקיים בתחום פרסום "שיימינג":

אמת - כותב השיימינג צריך לכתוב את האמת, רק את האמת הרלוונטית ואת כל האמת הרלוונטית. אסור לאדם לכתוב דברים שהוא לא יודע (הוא יכול לכתוב "אני משער" או "אני מעריך" או "יש הטוענים כך, אך אני מדגיש שאני לא יודע את זה" וכד'). במסגרת המילה "אמת" מדובר גם על נקיות ממניפולציות, על הבחנה

Shaming:

Abridged Halakhic Guidance,
Rav Yuval Cherlow

Lashon hara and humiliation are essential issues in our lives... Before anything else, it should be mentioned that we are dealing here with matters of literal life and death, and that some of the early authorities held that one must allow oneself to be killed rather than violate.

...It is important to emphasize that Jewish ethics holds that the concept of "the public's right to know" is a misnomer. The public does not have a right to know everything about people's private lives. Jewish ethics does recognize "the obligation of the public to know," namely, those things that the public must know—it is an obligation to publicize them. It is not always easy to differentiate between the two, yet it is important that this be a guiding light for the one publicizing.

Four necessary conditions need to be met in order to publicly shame someone.

Truth: The shaming writer must write the truth, only the relevant truth, and the whole relevant truth. It is forbidden for a person to write something they do not know to be true (one can write, "I suppose" or "I assume" or "there are those who claim, though I emphasize that I do not know for certain"). The word "truth" implies not manipulating at all between facts and interpretation. This halakhic principle is based on the Torah's demand, "Distance yourself from falsehood." This means not only not to lie, but

Proportionality

For another context in which proportionality is a decisive factor in reducing harm, see: Mishneh Torah, Murder and the Preservation of Life 1:13.

בין עובדות לפרשנות. יסוד הלכה זו מבוסס על תביעת התורה "מדבר שקר תרחק", לאמור: לא רק לא לשקר, אלא גם להתרחק מן השקר. זה הדבר היחיד שהתורה כותבת עליו במפורש שיש להתרחק ממנו.

נחיצות - אם אין נחיצות לפרסום הדברים בפומבי, ויש דרכים אחרות לפתור את הבעיה ביעילות דומה - חובה ללכת בדרך זו, ולא להפיץ דיבת בני אדם ברבים; לעומת זאת, אם קיימת נחיצות של ממש לפרסום - אסור לשתוק, והתורה ציוותה עלינו "לא תעמוד על דם רעך" וכן "ובערת הרע מקרבך".

מידתיות - עצם העובדה שמותר, ואולי אף חובה, לפרסם את הדברים ברבים - אינה פותרת את המפרסם מלעשות זאת במידה הנחוצה בלבד. עובדות שאינן הכרחיות, אף אם הן אמת, והן פוגעות במי שלא ראוי לפגוע בו - אסורות בפרסום.

זהירות - מלגרום נזק גדול יותר דווקא על ידי הפרסום,

also to distance oneself from falsity. This is the only thing that the Torah explicitly commands that one distance oneself from.

Necessity: If it is not necessary to publicize the matter, and there are other ways to solve the problem with similar efficiency, then one must take that path, and not spread slander about people publicly; on the other hand, if there is real necessity to publicize, then it is forbidden to remain silent, and the Torah has commanded us, "Do not stand by the blood of your fellow," and "You must purge the evil from among you" (Devarim 17:7).

Proportionality: The fact that it is permitted—and perhaps even an obligation—to publicize matters in public, does not relieve the publicizer of doing so only in the required proportion. Facts that are not necessary, even if they are true, and harm someone who does not deserve to be harmed, are forbidden to be publicized.

Caution: From causing greater harm specifically through publicizing, and inflicting more harm on the offender

ולהביא בפגיעה בפוגע הרבה יותר
מאשר ראוי לפגוע בו.

...יש לדעת כי כדאי להשתמש
בכלי זה כמה שפחות. וכאשר נעשה
שימוש כזה הדברים שהובאו לעייל
הם קווים כלליים שיכולים לסייע
לנו לשמור על התנהגות שהולמת
את האתיקה ההלכתית גם במפגש
המורכב שבין החובה להציל עשוק
מיד עושקו ובין איסור הלבנת פנים
ולשון הרע.

than is appropriate.

...One should utilize this tool [of shaming] as little
as possible. When used in this way quoted above,
these general guidelines can help us maintain
halakhic ethics even in these complex matters,
including the duty to save the oppressed from their
oppressor, as well as the prohibition of humiliating
someone and *lashon hara*.

1. Are the four guidelines that Rav Cherlow articulates all applicable to our case?
2. In what ways are they similar or different from the parameters set by the Hafetz Hayyim?
3. Are there other guidelines *not* listed above that you think it is important to consider? If so, what would you add?
4. Rav Cherlow articulates the tension between the “duty to save the oppressed” and the prohibition of speaking *lashon hara*. In our case, which of these obligations should win out? How so?

○ Take a Step Back

1. Which of the above texts is most relevant for deciding how Rachel should proceed in our case?
2. Based on these sources, is the public shaming of the two seniors permissible in our case? Why or why not?

Appendix: Supplemental Reading

The articles below are suggested readings to broaden your understanding of the case. However, you are not required to read these texts or include them in your arguments.

1. A Majority of Teens Have Experienced Some Form of Cyberbullying

Pew Research | Sept. 27, 2018 | Monica Anderson

59% of U.S. teens have been bullied or harassed online, and a similar share says it's a major problem for people their age. At the same time, teens mostly think teachers, social media companies and politicians are failing at addressing this issue.

2. Cheerleader Prevails at U.S. Supreme Court in Free Speech Case

Reuters | June 23, 2021 | Andrew Chung

Should schools be allowed to penalize high school students for their behavior on social media? In a case that made it to the U.S. Supreme Court, a student sued their school district after she was kicked off of the cheerleading squad for comments she made on Snapchat. It was the first time in more than 50 years that a high school student won a free-speech case in the Supreme Court.

Justice Breyer cited some specific behavior that may require schools to act including severe bullying or harassment, threats aimed at teachers or other students, and rule-breaking. Breyer made clear, however, that schools have less power over off-campus speech than on-campus speech. "When it comes to political or religious speech that occurs outside school or a school program or activity, the school will have a heavy burden to justify intervention," Breyer wrote in the ruling.

3. Religious Divorce Dispute Leads to Secular Protest

The New York Times | January 3, 2011 | Mark Oppenheimer

This article spotlights a modern-day *agunah* case, in which the Jewish community in Washington DC and Maryland rallied to pressure the recalcitrant husband to deliver a get. The husband, Aharon Friedman, worked for a powerful United States congressman. The case received national news coverage.

Rabbi Shmuel Herzfeld of Washington, who supports Ms. Epstein, wrote to Jon Traub, the Republican staff director of the Ways and Means Committee, accusing Mr. Friedman of "psychological terrorism." Rabbi Herzfeld urged Mr. Traub to "tell Aharon to give the get immediately," and warned that "it is appropriate to also rally in the vicinity of Aharon's work place."

4. High School Students and Alumni Are Using Social Media to Expose Racism

The New York Times | June 16, 2020 | Taylor Lorenz and Katherine Rosman

This article explores "call-out pages" used by high school students on social media platforms to expose racism among their peers.

These lists often contain students' full names, school information, social media profiles, contact information, the college they plan to attend if available and sometimes screenshots or an overview of their racist behavior. "Some people say, 'You're ruining their lives,'" Karina Carbajal, 22 and the creator of one of the Google Docs, told Forbes. "I think it's the only way to prove to them that actions do have consequences."

5. Effects of Bullying

May 21, 2021 | StopBullying.Gov

Bullying can affect everyone—those who are bullied, those who bully, and those who witness bullying. This government resource offers an overview of the negative outcomes associated with bullying.

6. Is Social Media Fueling a Women's Rights Revolution in the Orthodox Jewish Community?

Religion and Politics | March 30, 2021 | Avital Chizhik-Goldschmidt

This article describes the newfound role of social media in campaigns to pressure recalcitrant husbands to free agunot.

"Social media works. Activism works. Pressure works," Orthodox feminist activist Adina Miles-Sash posted earlier this month on Instagram when one agunah finally received her divorce, which many credited to social media pressure. Speaking to gett refusers, Miles-Sash wrote: "We will have you fired from your job. We will publicly humiliate you. We will find ways to have you arrested. And we will not rest until every prisoner is set free."

7. Second Chances, Social Forgiveness, and the Internet

The American Scholar | March 1, 2009 | Amitai Etzioni

Reflecting upon the changes ushered in by the digital age, Amitai Etzioni explores the difficulties of moving on from our wrongdoings in a world in which details of our misconduct are easily searchable online.

These developments disturb privacy advocates and anyone who is keen on ensuring that people have the opportunity for a new start. Beth Givens, director of the Privacy Rights Clearinghouse, says that Internet databases cause a "loss of 'social forgiveness.'"

8. שיימינג לסרבני גט? כמו בשטעטל של פעם

מקור ראשון | רחלי מלק בודה | February 26, 2016

השיימינג של סרבני גט ברשתות החברתיות החליף את חרם הקהילות של פעם, והתחושה היא שמדובר במהפכה. במציאות שבה כל ילד, אישה או גבר יכולים לבייש אדם בלחיצת כפתור, עולה השאלה האם מדובר במחיר חברתי יקר מדי או שזוהי מחויבות ציבורית