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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 social media.

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 no single "correct" answer. The Talmud embraces multiple perspectives and outcomes, describing the opinions of Beit Hillel and Beit Shammai as "the words of the living God" (Eruvin 13b)—even when these opinions conflict.

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

Over 130 years ago, a young lawyer who would later become the first Jewish justice on the U.S. Supreme Court published an article warning about the dangers that new technologies could pose to privacy rights. In that influential Harvard Law Review article, Louis Brandeis expressed a fear that individuals would lose their "right to be let alone" and that "what is whispered in the closet shall be proclaimed from the house-tops." Brandeis would have a tremendous impact on the development of privacy rights, both in the United States and internationally.

Nowadays, a range of national and international laws intended to protect these rights are on the books. Yet the digital age has introduced a variety of new challenges to the privacy of individuals. Recent studies have shown that there is widespread concern about the amount of personal information collected through our online behavior–such as on social media platforms–as well as a lack of trust in how that data is stored and used. For example, Pew Research Center has found that "81% of the [American] public say that the potential risks they face because of data collection by companies outweigh the benefits."<sup>2</sup>

Social media networks argue that users are voluntarily using their platforms and consent to their privacy policies. But privacy advocates are especially concerned with the personal data that these companies collect from their users. That's because apps such as Facebook, Instagram, and TikTok tend to collect a tremendous amount of data from their billions of users,<sup>3</sup> while maintaining an unreliable track record of keeping this information safe.<sup>4</sup> And at a time when social media has become intertwined with so many aspects of our lives, staying away is not always a realistic option.

This year's case challenges you to address this concern and explore whether there should be limits in place regarding the types of data that social media platforms can collect, and for what purposes. You'll be introduced to a variety of Jewish legal and ethical principles that have engaged questions surrounding privacy rights for thousands of years. We invite you to engage in the challenge of applying these ideas to the complex realities of the 21<sup>st</sup> century.

Sincerely yours,

Yitzhak Bronstein Director of Maimonides Moot Court Competition

- 1 The Right to Privacy. Louis D. Brandeis; Samuel Warren. Harvard Law Review, Vol. 4, No. 5.
- 2 "Americans and Privacy." Pew Research Center. November 15, 2019.
- TikTok User Data: What Does the App Collect and Why Are U.S. Authorities Concerned? The Wall Street Journal. July 7, 2020
- 4 "Facebook parent Meta to settle Cambridge Analytica scandal case for \$725 million." Reuters. Dec. 23, 2022

### The Glendale Times

APRIL 7, 2024

#### Conflict Brewing Between Social Media App And Concerned Users

It all began when Alex Cohen noticed an advertisement on the social media app, iSocial, for a lightweight sleeping bag. On the one hand, it was a routine advertisement for an everyday item, and there wasn't anything that distinguished this ad from the countless advertisements he encountered online every day. But the timing felt suspicious to him, since he had sent a private message to a friend earlier that day about their upcoming camping trip expressing concern about the weight of their sleeping bags.

Alex was confident that besides for this private message, he had never posted on iSocial or anywhere else about lightweight sleeping bags. Was it possible that iSocial had access to the content of his private messages? If so, what other personal information might they be collecting about him?

After doing some research into iSocial's data collection, Alex came across an investigative news report that showed how iSocial could access a tremendous amount

of its users' personal data. iSocial had access to every piece of content that users posted on their profiles, even if they had selected a "private" profile that could only be viewed by users that they personally approved. Even more surprising to Alex, iSocial had permission to read all of his direct messages, which were private conversations with other users of the social network. iSocial also had the ability to draw keywords from audio notes that were included in direct messages. This data was then used to show users targeted ads like Alex had just seen, in addition to other uses.

Alex looked into ways of changing his app's privacy settings to limit the data that iSocial was collecting, but it turned out that there was no way to use the app without this data sharing. Maya Behar, a digital privacy expert at the University of Glendale, put it as follows: "There is simply no way to use the app without being forced to forfeit large amounts of personal information. All of this data can be used by iSocial, or sold to third parties without

users having any knowledge or input about where it ends up."

When Alex reached out to iSocial for clarification, all he received in reply was a form letter that linked to their privacy policy. This seemed to be a dead end— the privacy policy is a 50-page document written in legalese that is difficult for experienced lawyers to understand, let alone a casual user downloading the app on their smartphone.

Yet buried within the privacy policy, Alex found paragraphs that give iSocial wide latitude about collecting and sharing user data. All of the data that was collected could be used by iSocial for any purpose whatsoever. Essentially, anything that a user posted online, regardless of whether it was a public post or private message—text or audio message—could be used or sold by iSocial. In addition, iSocial had permission to view the precise location of users anytime that they were using the app, and in some cases even when they were not using the app.

While Alex readily admits that he consented to the privacy policy by checking the "I accept" option while downloading the app, he feels that he had been misled into accepting it: "If the privacy policy had been written in plain sentences, I would have been very hesitant to download the app. It would take an entire day for a typical user to actually read through the policy, and there's no way that is going to happen."

When reached for comment, a representative of iSocial responded as follows: "All of our users consent to the privacy policy before using the app. This ensures that the

privacy of our users is protected while also allowing us to make use of data in accordance with industry standards."

But Alex and a growing group of privacy advocates are not concerned with whether iSocial is meeting an industry standard, but about the standard itself. Their basic concern is simple: why should social media apps be allowed to collect, share, and profit from data and conversations that were never intended to be shared publicly? In their view, social media apps are collecting too much personal data about them that they have no control over. They feel strongly that users deserve the right to set reasonable limits over what these apps can use and sell. As one privacy advocate argued: "It's hard to live today without using social media, and it would certainly impact my social and professional life for the worse if I completely abstained from it. So it's only fair that I have some say about how the data is used."

iSocial has responded to this criticism by announcing that they are interested in hearing input about their privacy policy from a diverse range of stakeholders, including digital privacy advocates, policy experts, and thought leaders. "Data collection is an essential element of our business model, and it enables us to offer our app to millions of users free of charge. While we do not feel that we are in any way breaking the law or violating user privacy, we are always open to new ideas about how to best meet the needs of our users." According to iSocial's leadership, this process will play out in the coming weeks and play a significant role in shaping iSocial's data strategy moving forward.

#### The Role of the Beit Din

The Glendale Beit Din is one of the groups that has been invited by iSocial to share feedback about its privacy policy. They have been asked to offer guidance about a halakhic approach to this situation. In particular, the beit din has been asked by iSocial whether it is halakhically permitted to:

- 1. Collect data from posts on users' profiles, and if it is dependent on whether the profile is listed as "public" or "private." A public account can be viewed by anyone, and a private account can only be viewed by accounts that have been approved by the user.
- 2. Collect data from the direct messages (private conversations) sent between users.
- 3. Collect data about the precise location of its users.
- 4. Share or sell user data that is collected to third party companies.

#### **UNIT 1**

#### Privacy as a Divine and Human Value

#### Hazal

Hazal is an acronym for חבמינו זכרונם לברכה "Our Sages, may their memory be blessed." The term generally refers to the sages from the Talmudic period.

#### o garments

For the Torah's description of these bells, see Shemot 28:33-35.

#### I. PRIVACY AS A DIVINE AND HUMAN VALUE

<u>Hazal</u> understood privacy not only as human value, but also as something desired by God. The following *midrash*, commenting on the bells that the Kohen Gadol (High Priest) wore on the hem of his garments, frames privacy in this light.

#### SOURCE #1 D

#### ויקרא רבה כא:ח

אָמַר רַבִּי שִּמְעוֹן בֶּן יוֹחָאי אַרְבָּעָה דְבָרִים הַקָּדוֹש בָּרוּךְ הוּא שוֹנְאָן אַף אֲנִי אֵינִי אוֹהֲבָן... וְהַנִּכְנָס לְבִיתוֹ פַּתְאֹם וְאֵין צָרִיךְ לוֹמַר לְתוֹךְ בִּיתוֹ שֶׁל חֲבֵרוֹ...

רַבִּי יוֹחָנָן כַּד הֲוָה סְלֵיק לְמִשְאֵל שְּלָמִיהּ דְּרַבִּי חֲנִינָא הֲוָה מְבַעְבֵּעַ, עַל שוּם (שמות כח, לה): וְנִשְּמַע קוֹל.

#### Vayikra Rabbah 21:8

Rabbi Shimon ben Yohai said: There are four things which the Holy Blessed One hates, and I too dislike them ... [the fourth thing is,] one who enters their house suddenly—there is no need to say someone who [suddenly] enters their neighbor's house! . . .

When Rabbi Yohanan went to inquire after the welfare of [his teacher] Rabbi Hanina, he would knock at the door, due to the verse [regarding the bells of the Kohen Gadol]: "Its sound shall be heard [when he goes in]" (Shemot 28:35).

The *midrash* connects the bells on the Kohen Gadol's garments to a teaching about not entering someone's house abruptly.

- » Why is it important not to enter a **home**—even your own home—suddenly? Why do you think this teaching is described as something that God "hates?"
- » How does this *midrash* understand the purpose of the bells worn by the Kohen Gadol?

## • build a window While the mishnah's term literally means that one may not "open" a window, it is describing a person creating an opening in the wall to function as a window.

#### O Bava Batra

The tractate of Bava Batra deals with laws related to property, inheritance, and related topics. Is this a value that can be applied more broadly? If so, how would you go about applying it to other situations?

#### II. HEZEK RE'IYAH: PROTECTING PRIVACY IN ONE'S HOME

As we have started to see, there is an emphasis in Rabbinic literature on safeguarding privacy within the home. The Talmud concretizes this idea and codifies it in legal terms.

One way our rabbis did so is through the principle of הֶּזֶּחְ רְאִיָה (hezek re'iyah, visual damage), which is all about protecting people from being observable within their homes. This idea is explored in various contexts throughout massekhet Bava Batra. Below, we will examine several of these passages to help us appreciate the standards of privacy that Hazal established.

First, it's important to understand that, in the time of the Mishnah, it was common for multiple houses to be constructed around a shared courtyard. The courtyard would be jointly owned by the households. The *mishnah* below will refer to this as "a courtyard that belongs to partners."

#### SOURCE #2 D

#### משנה בבא בתרא ג:ז

לא יִפְתַח אָדָם חַלּוֹנוֹתָיו לַחַצַר הַשּוּתָפִין...

לא יִפְתַּח אָדָם לַחֲצַר הַשָּׁתִּפִין פֶּתַח כְּנֶגֶד פֶּתַח וְחַלּוֹן בְּנֶגֶד חַלּוֹן. הָיָה קָטָן, לא יַצֲשֶׁנוּ גָדוֹל. אָחָד, לא יַצֵשֶׁנוּ שָׁנַיָם.

אֲבָל פּוֹתֵחַ הוּא לִרְשוּת הָרַבִּים פָּתַח בְּנָגֶד פָּתַח וְחַלּוֹן בְּנָגֶד חַלּוֹן. הָיָה קַטָן, עוֹשֶה אוֹתוֹ גָדוֹל. אָחַד, עוֹשֶה אוֹתוֹ שְׁנִים אָחַד, עוֹשֵה אוֹתוֹ שְׁנִים

#### Mishnah Bava Batra 3:7

A person may not build a window overlooking a courtyard that belongs to partners...

A person may not build an entrance opposite another entrance, or a window opposite another window, toward a courtyard that belongs to partners. If there was a small entrance, they may not enlarge it. If there was one entrance, they may not fashion it into two.

But one may build an entrance opposite another entrance or a window opposite another window toward the public domain. If there was a small entrance, they may enlarge it. If there was one entrance, they may fashion it into two.

## o someone else Since this type of visual damage is definitely prohibited, and nobody would even question whether this type of action is permissible.

- Why do you think the mishnah prohibits constructing a window that enables looking into someone else's house, rather than there being a prohibition against looking through the window?
- Why is it permissible to build a window or entrance if it is facing the public domain?

The Talmud first comments on the opening line of the *mishnah*, that one cannot build a window overlooking a courtyard that belongs to partners.

#### SOURCE #3 D

#### תלמוד בבלי בבא בתרא נט:

מַאי אִירְיָא לַחֲצַר הַשׁוּתָפִין אַפִּילּוּ לַחַצַר חַבִּירוֹ נָמֵי לַא

לָא מִיבַּעְיָא קָאָמַר לָא מִיבַּעְיָא לַחֲצַר חֲבֵרוֹ דְּלָא אֲבָל לַחֲצַר הַשּוּתָּפִין דְּאָמַר לֵיהּ סוֹף סוֹף הָא קֵא בָּעִית אִצְטְנוֹעֵי מִינַּאי בָּחָצֵר קָא מַשְמַע לַן דַּאֲמַר לֵיה עַד הָאִידָּנָא בָּחָצֵר הֲוָה בָּעִינָא אִצְטְנוֹעֵי מִינָּךְ הַשְּתָּא אֲפִילוּ בַּבִּיִת נָמֵי בָּעֵינָא אָצִטְנוֹעֵי מִינַך

#### Talmud Bavli Bava Batra 59b

Why did the *mishnah* specify a courtyard belonging to partners? One cannot build a window overlooking **any** person's courtyard!

It is not necessary to mention the case of a courtyard which fully belongs to someone else. But regarding a courtyard belonging to partners, [the person building the window] could say to [the other partner]: ultimately, you need to conceal yourself from me in the courtyard anyways.

Therefore, the *mishnah* teaches us that [the partner] may respond: Until now I needed to conceal myself from you in the courtyard. Now I will need to conceal myself from you even within my house.

The Mishnah specified a case where the courtyard belonged to partners in order to teach that **even** in this type of situation, the person is not allowed to build a window overlooking the courtyard. It is prohibited since it would enable the owner of the window to look into another person's home. Just because the

#### O Bilaam

The context of the Torah's narrative is as follows: Balak, the king of Moav, dislikes Benei Yisrael. He sends messengers to Bilaam, who is known for cursing people, asking him to curse Benei Yisrael. But rather than cursing Benei Yisrael, he offers a blessing.

#### Jacob see Rashi on Bemdbar 24:5

partners have agreed to share a courtyard does **not** mean that one of them can build a window looking into a partner's house.

- » What is the difference between the loss of privacy in a courtyard vs. a loss of privacy within one's home? Why are they treated differently?
- » Is online privacy more similar to a courtyard situation, or to the inside of one's home? How so?

The Gemara then comments on the second half of the *mishnah* above, regarding the source of the prohibition against building an entrance or window that looks into another person's home.

#### SOURCE #4 D

#### תלמוד בבלי בבא בתרא ס.

מְנָהָנֵי מִילֵּי אָמַר רַבִּי יוֹחָנָן דְּאָמַר קְרָא וַיִּשָּׁא בִּלְעָם אֶת עִינָיו וַיַּרְא אֶת יִשְׂרָאֵל שֹׁכֵן לִשְׁבָטָיו מָה רָאָה רָאָה שָאֵין פִּתְחֵי אָהָלֵיהֶם מְכָוּוֹנִין זָה לְזָה אָמַר רְאוּיִן הַלָּלוּ שֶׁתִּשְׁרֶה עֵלֵיהֵם שָׁכִינַה

#### Talmud Bavli Bava Batra 60a

From where do we derive this? Rabbi Yohanan says that the verse states: "And Bilaam" lifted up his eyes, and he saw Israel dwelling tribe by tribe; [and the spirit of God came upon him.]" (Bemidbar 24:2). What did he see? He saw that the entrances of the Israelites' tents were not aligned with each other. He said: these people are worthy of having the Divine Presence rest on them.

According to this understanding of the verse in Bemidbar, Bilaam was inspired by the fact that the tents of Benei Yisrael were not aligned. This layout of the tents ensured that everyone's privacy was protected. For this reason, Bilaam specifically mentions the tents of the Benei Yisrael in his blessing a few verses later: "How good are your tents, Jacob." (Bemidbar 24:5)

- » Why do you think that Bilaam was surprised to see the tents of Benei Yisrael arranged this way?
- What can we learn about hezek re'iyah from the fact the Talmud cites this verse as its source?

# • Rashbam Rabbi Shmuel ben Meir (Troyes, c. 1085 – c. 1158) published commentaries on Torah and Talmud that are focused on pshat (the contextual meaning of the text). He is the grandson of Rashi.

#### o public domain See Arukh HaShulhan Orah Hayyim 150:7 for an application of this principle. The Arukh HaShulhan writes that it is permissible for an individual to build windows facing the courtyard of the synagogue since it is a gathering place for the community. But if the courtyard is sometimes used for private functions, then it is not permissible to do so.

Moving on, the Talmud addresses the conclusion of the *mishnah*, that this restriction on building windows or entrances does **not** apply when it is facing the public domain.

#### SOURCE #5

תלמוד בבלי בבא בתרא ס. אֲבָל פּוֹתַחַ הוּא לִרְשׁוּת הָרַבִּים פָּתַח בְּנָגֶד פָּתַח דְּאָמַר לֵיהּ סוֹף סוֹף הָא בָּעֵית אָצִטָנוֹעֵי מִבְּנֵי רָשׁוּת הַרָבִּים אָצִטָנוֹעֵי מִבְּנֵי רָשׁוּת הַרָבִּים

#### Talmud Bavli Bava Batra 60a

But one may build an entrance opposite another entrance or toward the public domain: Because [the person building the entrance can] say to the other person]: "ultimately, you must conceal yourself from the people of the public domain."

The Rashbam<sup>o</sup> explains this line as follows:

#### SOURCE #6 D

רשב"ם על פסחים קיב.

שרואין בביתך דרך פתח הבית ורוכבי סוסים וגמלים רואין בתוך חלונותי

#### Rashbam on Pesahim 112a

Since people can see into your home through the entrance, and people riding horses and camels can see into the windows.

Since the homeowner already needed to take into account that passersby from the street were able to look into their home, it is permissible for someone else to build an entrance facing their house. This new entrance doesn't actually make a difference, since their home was already viewable from the public domain.

- » Can this principle be applied to our online activity? What should be considered in view of the "public domain" on a social media app?
- » Should it make a difference if something was only intended to be shared with one's friends, as opposed to being shared publicly?

#### Rambam

Rambam (Maimonides) is an acronym for Rabbi Moshe 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 Guide of the Perplexed.

This prohibition against building a window overlooking another person's courtyard is recorded in the major codes of *halakhah*. For example, this is how the Rambam<sup>o</sup> records it.

#### SOURCE #7

#### משנה תורה, הלכות שכנים ז:ה

מִי שֶׁבָּא לִפְתֹחַ חַלּוֹן לַחֲצַר חֲבֵרוֹ בֵּין חַלּוֹן גְּדוֹלָה בֵּין חַלּוֹן קְטַנָּה בֵּין לְמַעְלָה בֵּין לְמַטָּה בַּעַל הָחָצֵר מְעַבֵּב עָלָיו. שֶהֲרֵי אוֹמֵר לוֹ תַּוִּיק לִי בִּרְאִיָּה וְאַף עַל פִּי שֶהִיא גְּבוֹהָה תַּעֲלֶה בַּפּלָם וִתִרָאָה:

#### Mishneh Torah, Neighbors 7:5

If a person builds a window, whether a large window or a small window, overlooking a courtyard belonging to a neighbor, that partner may prevent them from doing so, for they can tell the owner of the window: "You will be damaging me by looking at me." Even if the window is located high on the wall, [the neighbor may protest, saying:] "You can climb up on a ladder and look at me."

- » What exactly is the "damage" that occurs when someone builds a window overlooking a neighbor's home?
- » Can the **ability** to be looked at be considered a form of damage, even if the person is not actually looked at? Why or why not?
- » Can the case of the high window be applied to digital privacy for users of a social media app? If so, how?

#### III. WHAT TYPE OF HARM IS HEZEK RE'IYAH?

We have seen several texts that describe the prohibition against looking into another person's home—or even having the **ability** to look into another person's home. But why? What are the reasons that *halakhah* treats *hezek re'iyah* with such severity?

#### Ramban

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

#### o evil eye

The exact meaning of "evil eye" is subject to a wide-ranging debate. In some contexts, evil eye appears to be connected to the arousing of jealousy. For example, see Talmud Bavli Pesahim 50b, Bava Batra 2b.

The Ramban explains three reasons that *hezek re'iyah* should be considered an actual form of damage to another person.

#### SOURCE #8 D

#### חידושי הרמב"ן בבא בתרא נט.

וכל שכן בהיזק ראיה דנזקי אדם באדם הוא, אי משום עין רעה אי משום לישנא בישא אי משום צניעותא...

#### Ramban<sup>o</sup> on Bava Batra 59a

Certainly *hezek re'iyah* is a form of personal damage, whether due to "evil eye," harmful language, or modesty...

- » How do you understand how each of these three concepts apply to *hezek re'iyah*? What does it mean for *hezek re'iyah* to result in the evil eye, harmful speech, or [violations of] modesty?
- » Which of these concerns about *hezek re'iyah*, if any, can also be applied to digital contexts, such as a social media app? How so?

The final source in this section is from the Arokh HaShulhan, who further explains the concerns mentioned by the Ramban above.

#### SOURCE #9 D

#### ערוך השולחן חושן משפט קנד

קיי"ל דהיזק ראיה שמו היזק דרוב בני אדם מקפידין כשאחרים מביטים במעשיהם ובתשמישם ובמלאכתם דעין הרע שולט בהבטת אחרים... ועוד דיש הרבה מלאכות ותשמישים הצריכים צניעות וכשאחר מביט מונעו מעשייתו

#### Arokh HaShul<u>h</u>an, <u>H</u>oshen Mishpat, 154

The law is that *hezek re'iyah* is considered damage, since most people are particular about other people looking at their behavior, activities, and work, since an evil eye has power through other people's gaze... Furthermore, there are many forms of activity and work that require modesty, and if another person is watching, it prevents the person from doing them.

The Arokh HaShulhan clarifies the forms of damage mentioned by the Ramban. In addition to the concern about "evil eye," he mentions a more down-to-earth concern: that people are unable to make full use of their house if another person is watching them. One of the ways that *hezek re'iyah* can be harmful is by preventing a person from making full use of what belongs to them.

» Based on this explanation of the damage caused by *hezek re'iyah*, would you say it is relevant to the circumstances of our case, or does this type of damage only apply to the ability to look into a person's actual home?

#### Take a step back

Throughout this section, we have seen how our rabbis employed the idea of *hezek re'iyah* to ensure that people had privacy within their homes. In what ways is this principle relevant to our case? Can the privacy advocates make a claim that iSocial is violating the laws of *hezek re'iyah*? Does it depend on the type of data that they are collecting? Why or why not?



#### **UNIT 2**

#### **Privacy and Local Customs**

#### Meiri

Rabbi Menahem ben Shlomo Meiri (1249-1315) was a leading rabbinic figure in Catalonia, and published the Beit HaBehira commentary on the Talmud.

#### damage

Although
eavesdropping
may not be
considered a
form of visual
damage, there
are other
potential
concerns with
eavesdropping
that will be
explored later in
the sourcebook.

The previous unit examined the category of *hezek re'iyah* as one of the central ways that our rabbis strengthened privacy rights. We'll continue this discussion by exploring the following question—to what extent are the *halakhot* around privacy dependent on the cultural norms of a given place? Can a person choose to forgo their privacy and allow their neighbor to look into their home? Reflecting on these questions may help us determine whether a person can choose to forgo their right to privacy in other contexts, such as online.

The first source deals with whether eavesdropping should be considered a form of damage similar to *hezek re'iyah*. While many passages in the Talmud address **visual** damage, it makes no mention of the idea that eavesdropping can be considered a parallel form of damage. But why not? One explanation is offered below.

#### I. DOES EAVESDROPPING CAUSE DAMAGE?

#### SOURCE #10 D

#### בית הבחירה בבא בתרא ב.

ואין חוששין להיזק שמיעה כלל ר"ל שהקול נכנס משם לכאן להדיא מתוך דקות המחיצה שסתם בני אדם נזהרים בדבורם הם

#### Meiri<sup>o</sup> on Bava Batra 2a

We are not concerned with "listening damage" at all, since sound travels due to the thinness of walls. Because of this, most people are careful with how they speak.

The Meiri explains that most people are sensitive to the ways that their voices carry through walls. Therefore, we can presume that they would have spoken more softly if they did not want to be overheard. For this reason, the Meiri explains that eavesdropping cannot be considered a form of damageo similar to hezek re'iyah.

## questions See Bava Batra 59b for a passage that is at the root of this debate.

- » Based on this explanation, what would the Meiri say about a place where people do **not** assume that their voices can be heard through walls? What about nowadays?
- » Is there a line that can get crossed between harmlessly overhearing another person, and when that eavesdropping can be considered a form of damage? If so, when is that line crossed?
- » Can this principle of the Meiri be applied to our case? Does it depend on whether or not social media users are generally "careful with how they speak?"

#### II. CAN PRIVACY RIGHTS BE WAIVED?

As we have seen, <u>Hazal</u> recognized the right not to be observable by other people within one's home. But what happens in a situation where a person **allows** their neighbor to invade their privacy? For example, what if a person builds a window overlooking their neighbor's home, and the neighbor seems to give their permission?

- » Based on the sources you have studied, should a neighbor have the right to give permission for someone else to build a window overlooking their home?
- » If so, what happens if the neighbor later changes their mind? Should they be able to force the other person to seal their window shut, even if they initially gave their permission?

Commentators disagree about the answers to these questions. First, we will see the position of the Rambam.

#### SOURCF #11 D

#### משנה תורה, הלכות שכנים ז:ו

הֲבֵי שֶּפֶּתַח חַלּוֹן לַחֲצֵר חֲבֵרוֹ וּמְחַל לוֹ בַּעַל הָחָצֵר אוֹ שֶּגִּלָּה הַּעְתּוֹ שֶׁהִנִּיחוֹ כְּגוֹן שֶׁבָּא וְסִיֵּעַ עִמּוֹ. אוֹ שֶיִּדַע הַנֵּזֶק וְלֹא עִרְעֵר. הֲבֵי זֶה הָחֵזִיק בַּחַלּוֹן וְאֵינוֹ יָכוֹל הָחֵזִיק בַּחַלּוֹן וְאֵינוֹ יָכוֹל

#### Mishneh Torah, Neighbors 7:6

If a person opened a window overlooking a courtyard belonging to a neighbor, and the owner of the courtyard waived their right to protest or displayed their willingness to consent—for example, if they helped them build the window, or if they knew about this [visual] damage and did not protest—then the person

#### hazakah

A "<u>hazakah</u>" is a presumed right to a certain privilege.

אַחַר כָּךְ לַחְזֹר וּלְעַרְעֵר עָלָיו לִסְתֹם.

has established their right to the window. The neighbor cannot come at a later date and force them to close it.

- » Why do you think the Rambam holds that one can lose their right to protest the window overlooking their property?
- » In what ways is this case applicable to users of social media apps? Do app users have a similar level of awareness that their privacy is being invaded as the neighbor in this case? Does it matter?

Some commentators disagree with the Rambam and argue that the neighbor never loses the right to insist that the window be removed. For example, the Ramban holds that waiving one's right to privacy is fundamentally different from other monetary matters where one is allowed to forgo their rights. He considers hezek re'iyah as a type of **personal** damage. We have already seen one excerpt from this passage (source 8), now we will see the context in which the Ramban makes this claim.

#### SOURCE **#12**

#### חידושי הרמב"ן בבא בתרא

נט.

לא אמרו חזקה בנזקין אלא בנזקי ממון... אבל קוטרא ובית הכסא שהוא עצמו ניזוק ומצטער בהם אין להם חזקה... והוא הדין וכל שכן בהיזק ראיה דנזקי אדם באדם הוא, אי משום עין רעה אי משום לישנא בישא אי משום צניעותא,

ועוד מי ידע כמה מטי ליה דלמחול

#### Ramban on Bava Batra 59a

We only say that a person can establish a <u>hazakah</u>° when it comes to monetary damages... but where a person creates smoke or makes an outhouse [near a person's home], where the damage affects the person and causes pain, they can never establish the right to continue doing so... and certainly *hezek re'iyah* is also a form of personal damage, whether due to evil eye, harmful language, or modesty.

Furthermore, who can determine how much they are forgoing [before the window is actually built]?

ועוד דאפילו מחל הניזק כיון דודאי אסור הוא למזיק להזיקו בראיה ולהסתכל בו לדעת ואין אדם יכול ליזהר בכך לעמוד כל היום בעצימת עינים, על כרחנו נאמר לזה סתום חלונד ואל תחטא תדיר

Moreover, even if the damaged party waives this right, it is certainly forbidden to cause *hezek re'iyah* by staring at them intentionally. It is impossible for a person to stand with their eyes closed for the entire day, so we are forced to say: close the window, so you do not sin.

The Ramban is of the opinion that the homeowner cannot have a window overlooking his neighbor's home, even if that neighbor initially gave them permission. He bases this opinion on three arguments.

- 1. Hezek re'iyah is not like monetary damage where the damaged party has the ability to forgo their rights to a claim. Hezek re'iyah is a type of personal damage where another person cannot establish a hazakah.
- 2. There are certain types of damages where a person can estimate in advance how much it will cost them. But privacy is different—it is impossible to determine what the *hezek re'iyah* will be until after the window is built. Therefore, the neighbor can claim that they did not realize how much damage the window would cause them.
- 3. Hezek re'iyah is not just a monetary matter, but a halakhic prohibition. Therefore, the neighbor's permission only goes so far. Regardless of whether the neighbor consents or not, it is forbidden for the owner of the window to look into their neighbor's home.
- » Why do you think the Ramban is of the opinion that a person cannot determine in advance how much damage their loss of privacy will cause? Do you agree with this claim?
- » Can this principle that the damages cannot be known in advance be applied to other contexts where one's privacy is violated? Could one say the same about social media users in our case?
- » If the Ramban is correct to describe hezek re'iyah as a halakhic prohibition and not just a monetary matter, would that impact what types of personal data can be collected by social media apps? Why or why not?

# • Shulhan Arukh Authored by Rabbi Yosef Karo (1488-1575), the Shulhan Arukh remains the most widely accepted compilation of halakhah. It is often the first source that is consulted when delving into a halakhic question.

#### Rema Rabbi Moses Isserles (1530-1572),also known as the Rema, was a halakhic authority in Krakow. He is most well known for his comments on the Shulhan Arukh, which have had a great influence on the Ashkenazi Jewish community to this day.

The Shulhan Arukho rules like the Rambam (and against the Ramban) that one **can** establish the right to keep the window. However, the Remao clarifies that even according to this position it is still forbidden to actually **look** through the window.

#### SOURCE #13 D

#### רמ"א על שולחן ערוך, חושן משפט קנד:ז

ואפי' למ"ד יש לו חזקה היינו לגופו של חלון דלא יוכל בעל החצר לסתמו או למחות בו

אבל הוא אסור לעמוד בחלון ולראות בחצר חבירו כדי שלא יזיקנו בראייתו ובזה איסורא קא עביד ולא מהני ליה חזקה וזה יוכל בעל החצר למחות בו

#### Rema on Shul<u>h</u>an Arukh, <u>H</u>oshen Mishpat 154:7

Even according to the opinion that one can establish the right [to keep a window overlooking a neighbor's house], it is only regarding the window itself that the neighbor cannot force the person to seal the window, or to protest it.

But it is forbidden to stand by the window and look into the courtyard of their neighbor, so that they do not cause *hezek re'iyah*. This matter is a prohibition and one cannot establish the right to do so, and the neighbor can protest this.

The Rema explains that even according to positions like the Rambam that you can establish the right to have the window, it is certainly forbidden to invade the neighbor's privacy by looking into their home.

- » Is this the only way to understand the Rambam's position? Why or why not?
- » Can this ruling be applied to the conflict in our case? What would be the equivalent of the social media app being allowed to build a window, but not being allowed to stare into a person's home?

#### Rashba

Rabbi Shlomo ben Avraham ibn Aderet (1235 - 1310) lived in Bareclona and was a leader of Spanish Jewry. In addition to publishing important commentaries, he also published many hundreds of responses to halakhic questions posed to him. He was a student of Ramban and Rabbeinu Yonah (who will be cited in the upcoming section).

#### III. WHAT IF PEOPLE DON'T CARE?

Our final section regarding *hezek re'iyah* addresses how to relate to this idea in a place where people are comfortable with windows or entrances that face their home.

#### SOURCE #14

#### שו"ת הרשב"א חלק ב סימן רסח

אם נהגו שלא להקפיד כלל על
היז' ראיה שעל הבתים וחצרות
מנהג בטעות הוא ואינו מנהג.
שאין מחול' ההקפדה אלא
בממונות שאדם רשאי ליתן את
שלו או ליזוק בנכסיו. אבל אינו
רשאי לפרוק גדרן של ישראל
ושלא לנהוג בצניעות ובגורם
להסתלק שכינה מלישראל הוא

#### Responsa of Rashba, 2:268

If the people are accustomed not to be concerned at all about hezek re'iyah for their houses and courtyards, this custom is mistaken and should not be considered a legitimate custom. For a person can only choose to forgo a monetary claim, but a person cannot remove the restrictions of Israel and behave immodestly, which causes the Divine Presence to depart from Israel.

Similar to the Ramban above, the Rashba writes that we do not have the right to forgo our privacy, since it's not just about our preferences. It's also a moral issue about what it means to live modestly.

Can this principle be applied to the realities of social media use today? For example, should social media apps be allowed to collect and share personal data from their users as long as the users consent to it? Why or why not?

The Rashba (and the Ramban) explained that one of the factors that must be considered is **modesty** (*tzni'ut*). This raises the prospect that it's not just a matter of it being prohibited for a person to **cause** *hezek re'iyah*, but that it might be inappropriate for the neighbor to allow themselves to be **seen** inside their home. What exactly is modesty, and where does this obligation to behave modestly come from? One source is the verse below.

#### SOURCE #15

#### מיכה ו:ח

#### Mikhah 6:8

הָגִּיד לְּךֶ אָדָם, מַה-טוֹב; וּמָה-יקוק דּוֹרֵש מִמְּךֶ, כִּי אִם-עֲשוֹת מִשְׁפָּט וְאַהֲבַת חֶסֶד, וָהַצָּגַעַ לְּכֵת, עִם־אֵלֹקִיך: God has told humanity what is good, and what is demanded of you—to do justice, to love kindness, and to walk modestly with your God.

- » Are there any clues from this verse about what it means to walk modestly? Does it have any bearing on our case?
- » Can a social user choose to reveal as much information about themselves as they please, or does this conflict with the value of modesty? How do you determine where to draw the line?

#### Take a step back o

Is hezek re'iyah a fixed and limited halakhah, or does it have relevance for discourse around digital privacy? What can we extrapolate from the laws of hezek re'iyah onto our case? Furthermore, what insights for our present reality can we glean from the debate about whether a person can forgo their right to be protected from hezek re'iyah?



#### UNIT 3

#### Rekhilut, Confidentiality, and Revealing Secrets

In the previous section, we explored whether eavesdropping could be understood as a similar form of damage to *hezek re'iyah* (visual damage). But even if one takes the position that it is **not** a form of damage, there are other significant halakhic concerns with hearing or sharing information about other people.

In this section we will explore these concerns through the prohibition of רְבִילוּת (rekhilut, talebearing). We will investigate what the parameters of this prohibition are, and if they have relevance for the way that iSocial collects and shares the data of its users.

The source of rekhilut is a biblical verse, which is where our investigation will begin.

#### I. WHAT IS *REKHILUT*?

#### SOURCE #16 D

#### ויקרא יט:טו-יח

<sup>16</sup>לא־תֵלֶךְ רָכִיל בְּעַמֶּיךְ לֹא תַצְמֹד עַל־דַּם רֵעֶךְ אֲנִי ה׳: 17לא־תִשְּנָא אֶת־אָחִיךְ בִּלְבָבֶךְ הוֹכַחַ תּוֹכִיחַ אֶת־עֲמִיתֶךְ וְלֹא־ תִשָּׁא עָלָיו חֵטְא: <sup>18</sup>לא־תִקּם וְלֹא־תִטֹר אֶת־בְּנֵי עַמֶּךְ וְאָהַבְתָּ לְרַעֲךָ בַּמוֹךָ אֵנִי ה׳:

#### Vayikra 19:15-18

<sup>16</sup>**Do not go as a talebearer among your people**; do not stand by the blood of your fellow: I am God. <sup>17</sup>You shall not hate your brother in your heart. You shall surely rebuke your kinsman, and you shall not bear a sin because of them. <sup>18</sup>You shall not take vengeance, and you shall not bear a grudge against your people. You shall love your neighbor as yourself: I am God.

- » Are there any textual clues in this passage that shed light on how to understand the prohibition of rekhilut?
- » What is the relationship between the two clauses of verse 16 (the prohibition of *rekhilut* and the prohibition not to stand by the blood of one's fellow)?

#### **UNIT 3** | *Rekhilut*, Confidentiality, and Revealing Secrets

#### TalmudYerushalmi

Compiled in northern Israel, the Talmud Yerushalmi is an elucidation of the Mishnah, like the Babylonian Talmud. It is generally considered less authoritative than the Babylonian Talmud.

The Talmud Yerushalmi understands the prohibition of *rekhilut* based on its closeness to the word for "peddler."

#### SOURCE **#17** 🗖

#### תלמוד ירושלמי פאה א:א

תַּנִּי רָבִּי נְחֶמְיָה שֶׁלֹּא תְהֵא בְּרוֹכֵל הַזֶּה מַטְעִין דְּבָרִיו שֶׁל זָה לִזָה וּדָבַרִיו שֵׁל זָה לְזָה.

#### Talmud Yerushalmi<sup>o</sup> Peah 1:1

Rabbi Nehemiah taught: do not be like a peddler (*rokhel*) who carries things from one person to another and vice versa.

- » Based on this explanation, what is the prohibition of rekhilut?
- » Would this prohibition of rekhilut apply to iSocial's ability to collect or sell the data of its users? Why or why not?

In the following text, the Rambam draws a connection between the two *mitzvot* in verse 16: *rekhilut* and "do not stand by the blood of your fellow." He then describes a typical case of *rekhilut* and related prohibitions.

#### SOURCE #18 D

#### משנה תורה, הלכות דעות ז:א-ב

 הַמְרַגּל בַּחֲבֵרוֹ עוֹבֵר בְּלֹא תַּעֲשֶה שֻנֶּאֱמֵר "לֹא תֵלֵךְ רָכִיל בְּעַמֶּיךְ וְאַף עַל פִּי שָאֵין לוֹקִין עַל דָּבָר זֶה עָוֹן גָּדוֹל הוֹא וְגוֹרֵם לַהְרֹג נְפְשׁוֹת רַבּוֹת מִיִּשְׁרָאֵל. לְכָךְ נִסְמָךְ לוֹ "וְלֹא תַעֲמֹד עַל דַּם רַעֲרַ"

2. אֵי זָהוּ רָכִיל. זֶה שֶׁטוֹעֵן

#### Mishneh Torah, Human Dispositions 7:1-2

- 1. One who shares gossip about another person violates a negative commandment, as it is written: "Do not go as a talebearer among your people." Although the punishment of lashes is not inflicted for violating this prohibition, it is a grave sin, and is the cause of many deaths from Israel. For this reason it is written adjacent to: "Do not stand by the blood of your fellow."
- 2. Who is a violator of *rekhilut*? One who

#### O Hafetz Hayyim

Written by Rabbi Yisrael Meir Kagan (Belarus, 1838 - 1933), <u>H</u>afetz <u>H</u>ayyim (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 <u>H</u>afetz <u>H</u>ayyim published enduring works on halakhah, including his Mishnah Berurah commentary on the Shulhan Arukh.

דברים והולך מוה לוה וְאוֹמֵר כָּךְ אָמֵר פְּלוֹנִי כָּךְ וִכָּדְ שְׁמַעְתִּי עַל פְּלוֹנִי. אַף עַל פִּי שהוא אַמֶת הַרֵי זֵה מַחַרִיב את העולם.

יש עון גדול מוה עד מאד והוא בַּכַלֵל לַאו זָה וְהוּא לַשוֹן הַרַע. וָהוּא הַמְסַפֵּר בָּגְנוּת חֲבֵרוֹ אַף עַל פִּי שאומר אמת. אבל האומר שֶׁקֶר נִקְרָא מוֹצִיא שֵׁם רַע עַל חֲבֶרוֹ. אֲבַל בַּעַל לַשוֹו הָרַע זָה שֵיוֹשֵב וָאוֹמֵר כַּדָ וְכַדְ עַשֵּה פִּלוֹנִי וְכַדְ וְכַדְ הַיוּ אַבותיו וכָד וכָד שַמַעתי עַלַיו וָאַמַר דִבַרִים שֵׁל גַּנָאי.

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 *motzi* shem ra. One who speaks lashon hara is one who sits and says, "So-and-so did this, and his parents were such-and-such and I heard this about them," and says words of disgrace.

- Why do you think the prohibition of gossip is regarded with such severity?
- Why is this type of speech destructive whether the gossip is true or false?

Many centuries later, the Hafetz Hayyimo built upon this description of rekhilut when articulating his own definition.

#### SOURCE #19 D

#### חפץ חיים, חלק שני: הלכות איסורי רכילות. כלל א

איזהו רכיל? זה שטוען דברים מָזָה לָזָה וְהוֹלֶךְ וְאוֹמֶר: כַּדְ אֲמַר פַלוני עַלֵּידָ, כַּדְ עַשַה לְדַ פַּלונִי, בָּדָ וָכַדְ שַׁמַעתִּי עַלֵיו שֵעשַה לְבָ, אוֹ רוֹצֶה לַעְשׁוֹת לְבָ. אַף

#### Hafetz Hayyim, Rekhilut, Principle 1:2

Who is a violator of *rekhilut*? One who makes claims, and goes from one person to another, saying, "So-and-so said this about you," or "this is what so-and-so did to you," or "I heard about someone who

#### **UNIT 3** | *Rekhilut*, Confidentiality, and Revealing Secrets

#### HalakhotKetanot

A collection of responsa authored by Rabbi Ya'akov Hagiz (1620– 1674), a halakhic authority born in Morocco. Rabbi Hagiz was a fierce opponent of Sabbatai Zevi, who claimed to be the Messiah. עַל פִּי שֶׁאוֹתוֹ דָּבָר אֵין גְנוּת עַל מִי שֶׁמְסַפֵּר, אַף לְפִי דִּבְרֵי הָרוֹכֵל,וְאִלּוּ הָיוּ שוֹאֲלִין לוֹ בְּעַצְמוֹ... אָפָלוּ הַכֵי רַכִיל מָקרֵי

did this to you," or "[so-and-so] wants to do this to you." Even if the thing being discussed is not derogatory about the person, and even if the person themselves would have shared the same thing [had they been asked about it]... nonetheless it is *rekhilut*.

- » Why do you think speech can be considered *rekhilut* according to the <u>Hafetz Hayyim</u> even if the person would have willingly shared this information about themselves?
- » Does this definition affect whether *rekhilut* should be a concern for social media apps that collect or use their users' data? Why or why not?

Until now, we have seen that *rekhilut* is intrinsically connected to **passing on** information. But what about a situation where one spies on another person, but never **shares** that information with others? On the surface, that may seem unlikely to fall under the umbrella of *rekhilut* based on the sources above. Yet at least one major authority ruled otherwise.

The context of this ruling is regarding the prohibition against reading the mail of another person without their permission, which we will explore in greater depth in the subsequent unit.

#### SOURCE #20

#### שו"ת הלכות קטנות חלק א סימן רעו

Halakhot Ketanot,° 1:276

נראה שיש איסור לבקש ולחפש מסתוריו של חבירו ומה לי לא תלך רכיל לאחרים או לעצמו It seems that to seek out and to search for the secrets of another person is forbidden what difference is there regarding "do not be a talebearer" whether [the secret is revealed] to others or to themselves!

» How would Rabbi Hagiz define the prohibition of *rekhilut*? Why is it prohibited even if one doesn't pass on the information to other people?

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» Does this understanding of *rekhilut* affect whether or not social media apps can collect information about their users? If so, how?

As we have begun to see, the prohibition of *rekhilut* may not be as clear cut as it initially seemed. Below we will see one more text, a passage from the Talmud that limits the circumstances where the prohibition of *lashon hara* applies, which may also have implications for our own case.

#### SOURCE #21 D

#### תלמוד בבלי ערכין טז.

אמר רבה בר רב הונא כל מילתא דמיתאמרא באפי תלתא לית בה משום לישנא בישא מ"ט חברך חברא אית ליה וחברא דחברך חברא אית ליה

#### Talmud Bavli Arakhin 16a

Rabbah bar Rav Huna said: Any matter that was said in the presence of three people does not have the status of harmful speech. What is the reason? Since your friend has a friend, and your friend's friend has a friend.

Rabbah bar Rav Huna teaches that if a person shares information about themselves in front of a group of three people, one can assume that they anticipate the information will not be kept secret. As such, it is not prohibited to pass along that information to others. The Rambam rules in accordance with this opinion, that the speaker understands that information shared with three or more people will eventually become known to others. (Mishneh Torah, Deiot 7:5)

- » Why is information shared in front of three other people no longer considered gossip? Should there be exceptions to this rule?
- » If someone shares personal information about themselves on social media, should that information be considered as if it was said before three people? What factors might it depend upon?

#### Rashi

Rashi is an acronym for Rabbi Shlomo Yitzhaki (1040-1105, France), the most studied commentator of the Torah and Talmud.

#### **II. CONFIDENTIALITY AND REVEALING SECRETS**

While the legal definition of *rekhilut* may have specific parameters, the following texts highlight that one should be concerned about hearing or revealing sensitive information about another person, even if it's not technically *rekhilut*. The first text is a passage from the Talmud that picks up on a verse describing God speaking to Moshe.

#### SOURCE #22 D

#### תלמוד בבלי יומא ד:

אָמַר רַבִּי מוּסְיָא בַּר בְּרֵיהּ הְרַבִּי מַסְיָא מִשְּמֵיהּ דְּרַבִּי מוּסְיָא רַבָּה: מִנִּיִין לָאוֹמֵר דְּבָר לַחֲבִירוֹ שָהוּא בְּבַל יֹאמֵר עַד שֶׁיֹאמֵר לוֹ: לֵךְ אֶמוֹר — שֶׁנֶאֱמַר: "וַיְדַבֵּר ה' אֵלָיו מֵאֹהֶל מוֹעֵד

#### Talmud Bavli Yoma 4b

Rabbi Musya, grandson of Rabbi Masya, said in the name of Rabbi Musya the Great: From where is it derived that one who tells something to another person, that the person should not repeat it to others unless the speaker said to him: "Go and tell others?" As it is stated: "God spoke to him from the Tent of Meeting, saying" (Vayikra 1:1).

#### SOURCE #23

#### רש"י על יומא ד:

תלמוד לומר לאמר לא אמור הדברים אלא אם כן נותן לו רשות

#### Rashi<sup>o</sup> on Yoma 4b

The word "saying" (*leimor*) should be read as: "don't say" (*lo amor*) these things unless you are given permission.

Rashi explains that the Talmud understands the word for "saying" creatively, to imply that Moshe was not allowed to share what God said to him, unless he was given explicit permission. This was not only a lesson for Moshe but for all people, that we should not repeat things that people tell us without receiving their explicit permission.

» Do you think this passage is referring to a specific type of information that should not be repeated without permission, or is it a general guideline?

#### **UNIT 3** | *Rekhilut*, Confidentiality, and Revealing Secrets

#### Sha'areiTeshuvah

Sha'arei
Teshuvah
("The Gates of
Repentance") is
the most famous
work written
by Rabbi Yonah
ben Abraham
Gerondi, also
referred to as
Rabbeinu Yonah.
He was a Spanish
rabbi who
lived in the 13<sup>th</sup>
century.

» Would a social media app selling digital data to a third party be considered to be repeating that information? Why or why not?

Below is another example of a text warning about passing on sensitive information to others, even if it is done in a manner that violates *rekhilut*.

#### SOURCE #24 D

#### שערי תשובה ג:רכה

וחייב האדם להסתיר הסוד
אשר יגלה אליו חברו דרך
סתר אף על פי שאין בגלוי
הסוד ההוא ענין רכילות. כי
יש בגלוי הסוד נזק לבעליו
וסבה להפר מחשבתו
כמו שנאמר (שם טו) הפר
ממחשבות באין סוד.
והשנית כי מגלה הסוד אך
יצא מדרך הצניעות והנה
הוא מעביר על דעת בעל
הסוד. ואמר שלמה המלך
עליו השלום מגלה סוד הולך

#### Sha'arei Teshuvah 3:225°

A person is obligated to hide a secret that is revealed to them confidentially by their fellow, even though there is no matter of talebearing involved in revealing that secret. For there is damage to the holder of the secret by its being revealed, and it [can cause him] to abort his plan, as it is stated, "Plans are aborted without a secret" (Proverbs 15:22). Secondly, because revealing a secret is a departure from the path of modesty, and this surely violates the will of the holder of the secret. And King Solomon said, "One who reveals secrets is a talebearer" (Proverbs 20:19).

Rabbeinu Yonah writes that if one has private information about another person, it's essential to keep it secret, even if it's not technically *rekhilut*. This is for two reasons: (1) If the secret gets out, it will cause harm to the person. (2) It is a violation of modesty to reveal information about another person, and we can assume that people do not want their secrets to get out.

- » Should this prohibition of keeping secrets extend to digital data? If so, what type of information qualifies as "secret?"
- » Can either of these two reasons cited by Rabbeinu Yonah be applied to limit the type of data social media apps can collect or share? Why or why not?

Below, we will see one more text that highlights the extent to which a person should be careful not to overhear speech that is not intended for them.

#### O Sefer Hasidim

Sefer Hasidim ("Book of the Pious") is a foundational text of the Hasidei Ashkenaz, a mystical and ethical movement in the German Rhineland during the 12th and 13th centuries. Sefer Hasidim is a guide to everyday life and an essential source of information about the lives of German Jewry during this period.

#### **SOURCE #25**

#### ספר חסידים תסא

אחד התפלל בחצר בית הכנסת, והיו ראשי הקהל יושבין בישיבה. אמר לו החכם: מוטב לך להתפלל בבית, שמא ראשי הקהל מדברים דבר שאינם רוצים שידע אדם

#### Sefer Hasidim #461°

A person was praying at a synagogue, and the leaders of the congregation were sitting together. A sage said to him, "It would be better for you to pray at home, lest the leaders of the congregation say something that they do not want others to know about."

Even though we would typically regard praying at a synagogue very highly, here the individual is told that it would be better to pray at home to avoid overhearing potentially sensitive information.

» Does this warning from the sage have relevance for iSocial? For example, must a social media app try to be careful not to "overhear" information which is not intended for them? How could iSocial practice this principle?

#### Take a step back

While we initially defined *rekhilut* as talebearing, we have seen how the prohibition may in fact apply to a wider range of circumstances. Does *rekhilut* have relevance to iSocial's data collection, and if so, how can social media apps collect data from their users in a way that does not conflict with the idea of *rekhilut*? Moreover, even if collecting or sharing data is not technically *rekhilut*, are there other considerations iSocial must take into account before doing so?

#### **UNIT 4**

#### The *Herem* of Rabbeinu Gershom

#### Herem

In rabbinic literature, a "herem" refers to a ban or excommunication. For its use in biblical contexts, see Shemot 22:19 and Joshua 6:18.

#### Rabbeinu Gershom

Rabbi Gershom ben Yehudah (c. 960-1040) was a leading halakhic authority for the Jews of Mainz, as Ashkenazi Jewish life became more independent from the Jewish communities in Spain and Babylonia.

#### o given at Sinai Teshuvot HaRosh 43:8

#### Sefer Kol Bo

The author of Sefer Kol Bo ("All is Within") is unknown. It is a halakhic work written in the 13<sup>th</sup> or 14<sup>th</sup> century.

#### I. THE HEREM OF RABBEINU GERSHOM

In addition to the concerns around *hezek re'iyah*, *rekhilut*, and revealing confidential information that we have seen in the previous units, there is another potential halakhic issue that needs to be addressed regarding iSocial's data collection policies. Reading the private correspondence of another person was explicitly forbidden by a leading 11<sup>th</sup> century halakhic authority, Rabbeinu Gershom.

This prohibition was included in a list of restrictions that relate to a wide range of topics. Although there is a great deal of debate regarding the specifics of some of these restrictions—and whether Rabbeinu Gershom is indeed the source of all of them—they are widely regarded as halakhically binding by later generations throughout Ashkenaz and beyond. For example, one halakhic authority went so far as to consider these restrictions of Rabbeinu Gershom "as if they were given at Sinai."

In this section, we'll explore this particular ban of Rabbeinu Gershom and consider whether it is applicable to the online contexts discussed in our case. One early source of this ruling of Rabbeinu Gershom appears in Sefer Kol Bo.

#### SOURCE #26

ספר כלבו סימן קטז

Sefer Kol Bo #116°

ושלא לראות בכתב ששולח אד לחבירו בלא ידיעתו ובלא רשותו

And that one should not look at a letter sent to another person without their knowledge or permission.

- » From the simple meaning of this prohibition, would it also include content shared on social media platforms? Why or why not?
- » How about private messages sent through social media apps?

#### UNIT 4 | The Herem of Rabbeinu Gershom

#### Rabbi Meir of Rothenberg

Also referred to as Maharam of Rothenburg. Rabbi Meir ben Baruch (c. 1215-1293) was a leading rabbinic authority of his generation and a key contributor to the Tosafot commentary on the Talmud. He responded to many hundreds of halakhic questions, continuing to do so even after he was unjustly imprisoned, until the end of his life.

#### Rabbi <u>H</u>ayyimShabtai

Rabbi <u>H</u>ayyim Shabtai (1656-1747) was a leader of the Jewish community in Salonica, and responded to thousands of questions which came to him from around the world. A similar version of this decree appears in the writing of Rabbi Meir of Rothenberg, a leading 13th century halakhic authority—but with one potentially significant difference.

#### **SOURCE #27** D

שו"ת מהר"ם מרוטנברג # סימן אלף כב

חרם שלא לראות בכתב חבירו ששולח לחבירו בלא ידיעתו אסור. ואם זרקו מותר.

#### Responsa, Maharam of Rothenberg #1022

A ban on not seeing a letter sent from one person to another, which is forbidden. But if the person threw it out, then it is permitted.

- » According to this version of the decree, why do you think it is permissible to read someone else's letter once it is thrown out?
- » Should online correspondence be considered like a letter that has been thrown out? What if a digital message was deleted—is that comparable to a physical letter that has been thrown in the garbage? Why or why not?

#### II. THE SOURCE OF THE BAN

In order to better understand whether the ban of Rabbeinu Gershom is relevant to our case, we need to consider its rationale. Why is it forbidden to read the correspondence of another person? Is this ban an entirely new restriction, or is it rooted in another prohibition? If the latter, which prohibition does it fall under?

The answers to these questions are subject to debate. Let's begin with the first question, regarding the source of this prohibition against reading another person's mail. In the previous section, we explored one possibility—that the source of this prohibition falls under the umbrella of *rekhilut* (Source 20).

But there are other options as well that may have ramifications for our case. One possibility is that rather than being a form of gossip, the proper framework for thinking about this type of case is theft. This is the position of Rabbi <u>Hayyim Shabtai</u> cited below. The context is a case where a person referred to as "Levi" intercepted a letter from a messenger that was intended for someone else.

#### SOURCE #28

#### שו"ת תורת חיים חלק ג סימן מז

ולפי הנראה מסתמא שלוי שעשה זה היה לשום תועלת המגיע לו מזה הפועל, והוה ליה דמשתמש משל חבירו בלי ידיעתו, ואפילו לדבר מצוה ובדרך שאלה אסור... והוה ליה שואל שלא מדעת והוי גזלן.

#### Responsa Torat Hayyim, 3:47

Seemingly, Levi did this since there was some benefit they were gaining from doing so. It is like using something that belongs to someone else without their knowledge, and even for the purpose of a *mitzvah* this type of borrowing is forbidden... It is like borrowing without the consent of the owner, which is a form of theft.

According to Rabbi Shabtai, the person intercepting the letter might be gaining from it at the expense of the intended recipient. Similar to other instances of borrowing an object without the permission of the owner, this should be regarded as theft.

- In what ways is reading the letter of another person without their permission similar or different from theft? Does it make a difference if the third party reads the letter before or after the intended recipient has had a chance to read it? Why or why not?
- » Consider how this framework can be applied to digital data—does a social media user own their digital data? Can collecting or selling data be considered to be "borrowing without the consent" of the user—and therefore a form of theft? Why or why not?

Rabbi Shabtai continues that reading a document that belongs to someone else can cause damage to the intended recipient. Despite the fact that this type of damage might be considered to be indirect, he writes as follows:

אך מ"מ ראוי לייסרו למי שעשה פועל כזה, כיון שעבר על חרם קדמונים דלגדור גדר. ועוד שאף שאמרו גרמא בנזיקין פטור היינו שאם עשאו פטור מתשלומין, אבל לכתחלה אסור לגרום שום היזק, ואין ספק שפועל כזה רוב פעמים גורם היזק רב לגלות סודות האדם, ואף אם לא יהיה בממון יהיה בדבר אחר, ולכן ראוי לעשות סייג ולגדור אחר, ולכן ראוי לעשות סייג ולגדור

Nonetheless it is proper to penalize someone who acts like this, since it violates the earlier ban. Furthermore, even though we generally say that one is exempt from paying for indirect damages that one causes, it is still forbidden to cause damage. Undoubtedly, in the majority of cases that one acts like this and reveals the secrets of another person, it causes damage. Even if it's not financial damage, it will be regarding another matter, and therefore it's proper to build a fence [around this type of behavior] and to penalize someone who acts like this, according to what the

#### UNIT 4 | The *Herem* of Rabbeinu Gershom

#### o deception

For example, see Talmud Bavli Hullin 94a-b



#### Pele Yo'etz

Rabbi Eliezer
Papo (1785–1828)
was a leader of
the community
of Silistra in
Bulgaria. He is
most well known
for writing Pele
Yo'etz, an ethical
work and guide
to everyday life
first published in
Constantinople.

#### Rabbi <u>H</u>ayyimPalachi

Rabbi Hayyim
Palachi (17881868) was the
chief rabbi of
Izmir, Turkey.
He published
more than 70
works on a wide
range of subjects
in Salonica,
Istanbul,
Jerusalem, and
Izmir.

גדר ולייסר למי שעשה כזאת כפי הנראה לב"ד צורך לפי הענין, והנשארים ישמעו ויראו

beit din decides is warranted, and so others will hear about it and see.

- Consider the circumstances of the case where the social media user is shown an advertisement for a product based on the content of a direct message that they sent. Can this be considered a form of "damage," similar to what Rabbi Shabtai is describing above? Why or why not?
- » Are there any other ways that social media users can be considered to be "damaged" by having their data collected or shared?

Above, Rabbi Shabtai used the principle of "borrowing without the consent of the owner" to classify this case as theft. However, a contemporary of his, Rabbi Eliezer Papo, used a different classification of theft to address these cases. This category is called אָנֵיבַת דַעַת (geneivat da'at, the theft of knowledge), which usually refers to cases of deception. Below we will see this term used to refer to a broader range of cases.

#### SOURCE #29 D

#### פלא יועץ, ערך גניבה

ויש מין גניבה אחרת שדשו בה רבים, הלא היא גניבת דעת הבריות. ויש מינים ממינים. הכלל הוא שכל שמשתדל לידע מה שבלב חבירו ברוב דברים, הדברים "גניבת דעת" איקרי, ואסור.

#### Pele Yo'etz, Theft

There is a type of theft that many have committed, which is *geneivat da'at*, and it takes many forms. The general rule is that trying to learn what is in the heart of another person regarding most matters is called *geneivat da'at*, and is forbidden.

» Does either category of theft—borrowing without consent, or *geneivat da'at*—apply to the circumstances of our case? Why or why not?

In addition to the possibilities cited above, Rabbi <u>Hayyim Palachio</u> offers another possibility for where Rabbeinu Gershom's ban comes from: a violation of "love your neighbor as yourself."

#### SOURCE #30

שו"ת חקקי לב, חלק א, יורה דעה, סימן מט

ומעתה יש לנו לחקור מאיזה טעם אסר ר"ג דבר זה דאם נאמר משום מ"ש ז"ל ע"פ ואהבת לרעך כמוך מאן דעלך סני לחברך לא תעביד

#### Responsa <u>H</u>ikekei Lev, Yoreh Deah #49

Now we need to determine what is the reason that Rabbeinu Gershom forbade this matter, if it is because of what it is written regarding "love your neighbor as yourself"—"that which is hateful to you, do not do to another" (Shabbat 31a).

- » If we take this approach for understanding the basis of Rabbeinu Gershom's ban, how does it affect whether it applies to the circumstances of our case?
- » Is collecting or selling digital data a violation of "that which is hateful to you do not do to another?" Why or why not?

#### **III. THE LIMITS OF THE BAN**

Now that we have a better understanding of where the ban of Rabbeinu Gershom comes from, we can address more nuanced cases. Can the recipient of a letter pass on information contained in the letter, even if they do not have the permission of the sender? What about a situation where it does not seem that the sender ever desired confidentiality?

The Arokh HaShulhan addresses a case like this regarding a postcard.

#### SOURCE #31

#### ערוך השולחן,יורה דעה שלד:כא

ושלא לקרוא מכתב חברו שלא ברשותו, אלא אם כן זרקו. ואני מסתפק בזמן הזה, שהרבה שולחים מכתבים פתוחים על הבי דואר, אם מותר לקרוא בהם, כיון שאינו מסתיר אותו

#### Arokh HaShulhan, Yoreh Deah 334:21

One should not read the letter of another person without their permission, unless they threw it out: I am unsure nowadays, since many people send letters that are open on a postcard, if it is permissible to read them, since they are not hidden.

#### UNIT 4 | The *Herem* of Rabbeinu Gershom

- » Why do you think the Arokh HaShulhan is unsure how to rule in this case?
- » Based on the sources we have seen so far, should the ban of Rabbeinu Gershom apply to postcards?
- » Should posts shared on social media platforms be considered similar to the case of the postcard? What about if it wasn't a public post, but a private message?

#### 🔾 Take a step back 🔾

We have seen a wide range of explanations for what underlies the ban of Rabbeinu Gershom, including *rekhilut*, theft, and it being a violation of "love your neighbor as yourself." Based on the texts you have seen, should any type of digital data be protected by Rabbeinu Gershom's ban? Why or why not?



#### **UNIT** 5

#### Are Privacy Policies Legally Binding?

#### policy

See the appendix for contemporary data on the prevalence of users reading privacy policies. In the previous sections, we addressed a variety of halakhic concerns with collecting and sharing personal information. In this final unit, our focus will be on one aspect of iSocial's defense—that all users who have downloaded the app have consented to their privacy policy.

As described in the case, the iSocial privacy policy is a complex 50-page legal document. Presumably, most users accept the policy without skimming through the document, let alone carefully reading the entire policy.

What is the legal standing of a contract where one of the signatories does not fully understand what they are committing to? Are they held responsible for agreeing to the contract, or is the agreement null and void because of the misunderstanding? Before taking a look at the sources below, which position makes more sense intuitively to you?

#### I. IS IGNORANCE A LEGAL DEFENSE?

The first passage we will see deals with a divorce case where the husband was obligated in the *ketubah* (marriage contract) to provide his former wife with a designated sum of money when the marriage ended. However, he was an uneducated person and claims that he did not understand the terms of the *ketubah* at the time that he agreed to it.

#### SOURCE #32

שו"ת הרשב"א חלק א סימן תרכט

נשאל ביהודי עם הארץ שבא לגרש את אשתו ואמרו לו בית דין שיפרע לה כתובתה. ואמר שלא הבין Responsa, Rashba 1:829

A question regarding an uneducated person who came to divorce his wife, and they told him to pay the amount listed in her *ketubah*. He said that he did not

כשקרא החזן הכתובה והמתנ' ולא הבין התנאי. ואמר כי שאלו את פי הרב רבי מאיר ז"ל

understand when the *ketubah* was read aloud by the cantor, and he did not understand the conditions that he agreed to. It is said when they asked Rabbi Meir, he replied that we listen to him.

According to the position of Rabbi Meir, we accept the claim of the husband. However, the Rashba himself seems to reject this position, saying that if we accept this type of argument, there would be no limit to the number of people who could make this type of claim. Here is how he puts it regarding a similar case.

#### SOURCE #33

#### שו"ת הרשב"א חלק ה רכח

גם מה שטען ראובן: שלא הבין על מה שנתחייב, ועל מה נשבע, אין שומעין לו, שאין העדים חותמים על מה שלא הבינוהו הם, ועדות העדים מכחישתו. שאם אתה אומר כן, אין לך מתחייב בשטר, וכל אחד יטעון כן. סוף דבר מצד זה אין בדבריו כלום, ואין ראיה להאריך בדבר זה.

#### Responsa, Rashba 5:228

Regarding what Reuven claimed, that he did not understand the terms that he obligated himself to or swore about, we do not listen to him. Because witnesses don't sign unless the matter was explained, and therefore the signature of the witnesses contradicts his claim [that he did not understand the terms]. For if you would accept this type of claim, there would not be anyone who would be obligated as the result of a contract, since everyone would make this claim. Ultimately, this type of claim is meaningless, and there is no need to say more about this.

Contrary to the position of Rabbi Meir is a simple argument—it is not tenable to have a legal system where any litigant can claim that they did not understand the terms of a contract, and then not be held responsible for what they committed to.

» Could there be a middle ground between these positions? If so, what could that position be?

#### **UNIT 5 | Are Privacy Policies Legally Binding?**

• Beit Yosef

Beit Yosef is a comprehensive commentary on the Arba'ah Turim and is a precursor to Rabbi Yosef Karo's most influential text, the Shulhan Arukh.

Rabbi Yosef Karo in the Beit Yosef<sup>o</sup> (Even Ha'Ezer 66:18) continues in this vein, and this comes up also in Rabbi Karo's Shul<u>h</u>an Arukh, where he rules very explicitly that claiming not to understand the terms of a contract is not a legitimate legal defense.

#### SOURCE #34 D

#### שולחן ערוך, חושן משפט מה:ג

הודאה בחתם ידו והשטר בגופן של עכו"ם והדבר ברור שאינו יודע לקרותה ויש עדים שחתם עד שלא קראו מ"מ מתחייב הוא בכל מה שכתוב בו:

#### Shul<u>h</u>an Arukh, <u>H</u>oshen Mishpat 45:3

If a person signed a contract, but the contract was in a foreign style, and it is clear that the person is unable to read it, and there are witnesses that the person did not read it, nonetheless the person still obligates themselves with whatever is written in it.

- » Why do you think a person is obligated to keep a commitment even if they don't understand what's written in the contract?
- » Do you think the Shulhan Arukh obligates the person to follow through the terms of his contract since we don't believe him that he didn't understand the terms? Or is it that we **do** believe him that he didn't understand the contract, but it doesn't make a legal difference since he signed it?

The Rema, commenting on a different passage in the Shulhan Arukh, also discusses whether it is an acceptable defense for a person to claim that they did not understand the terms of a contract. Similar to the first case we saw, he is commenting on a case where a husband and a wife are divorcing, and the husband claims that he did not understand the terms for the divorce that were listed in their prenuptial agreement.

#### SOURCF #35

שולחן ערוך, אבן העזר סו:יג

Rema on Shul<u>h</u>an Arukh, Even Ha'Ezer 66:13

עם הארץ שבא לגרש ואמר אח"כ שלא הבין מה שהיה כתוב בתנאים או בכתובה אינו נאמן דודאי העדים לא חתמו מה שלא העידו בפניו תחלה טל פה An uneducated person who comes to get a divorce, and says afterwards that he did not understand what was written in the prenuptial agreement or in the *ketubah*, is not believed, since we can be certain that witnesses would not have signed these documents unless they first testified about its content in front of him.

The Rema rules that it's not a legitimate defense to claim that you did not know the contents of a contract. However, his reasoning seems essential to his ruling—it's based on the assumption that we reject the husband's claim that he did not know what was in the marriage contract. After all, we can assume that the witnesses would have read it to him to ensure he was aware of its contents before they signed it.

- » What do you think the Rema would rule in a case where we could **not** assume that the contract would have been read to the person? Would that affect whether or not a person could make the claim that they did not know what was in the contract? Why or why not?
- » Returning to the circumstances of our case, would it be acceptable for an iSocial user to claim that they did not know what was in the iSocial privacy policy that they agreed to?

In the next text, the Arokh HaShul<u>h</u>an also adopts the position that claiming "I was unaware" is not a legitimate claim. However, he also claims that there is an exception to this rule which may have implications for our case.

#### SOURCE #36 D

ערוך השולחן, חושן משפט מה:ה

Arokh HaShul<u>h</u>an, <u>H</u>oshen Mishpat 45:5

בעל דבר שחותם על השטר להתחייב א"ע בשום דבר או לפטור

A litigant who signs a document to obligate themselves for something, or to release their

את חבירו משום דבר אפילו חתם א"ע כשלא קרא את השטר ואפילו ידענו שאינו יודע כלל מה שכתוב בשטר ואפילו נכתב השטר בלשון הגוים והדבר ברור שאינו יודע לקרות ואינו מבין הלשון כלל מ"מ מתחייב הוא בכל מה שכתוב בו כיון שלא חשש לקרותו וסמך עצמו על נאמנות של אחרים הוא גומר בדעתו להתחייב בכל מה שנכתב

ונ"ל דעכ"ז אם יש עדים שקראו לפניו השטר ורימו אותו כגון שקראו לפניו מנה ונמצא בשטר מאתיים וכיוצא בזה... דשטר פסול הוא דזיל בתר טעמא דהא לא נשתעבד עצמו על מה שכתוב בשטר. colleague from something, even if they signed the document without reading it, and even if we know that they had no idea what was written in the document, and even if it was written in a foreign language and it's clear they could not read it or understand the language at all, nonetheless the person obligated themselves to everything they have written since they were not concerned about reading it and instead relied on the trustworthiness of others, and made up their mind to obligate themselves to everything written there...

Nonetheless, it appears to me that if the witnesses tricked them, such as by reading before him that it was "100" and in the document it actually said "200," or similarly... then it is an invalid document, since we go after the reasoning that the person did not obligate themselves on what was written in the document.

On the one hand, the Arokh HaShulhan begins by ruling in the same manner as the previous sources—that a person **can** be held responsible for the contents of a contract that they did not understand. However, the Arokh HaShulhan makes a critical distinction between this type of case and a situation where the individual was purposely misled. In the latter case, the contract is invalid and the person is not held responsible for its contents.

- » What's the difference between the two cases—why is a person held responsible in the first type of case, but not where he was misled by the witnesses?
- » Which case is more similar to the circumstances of a social media user who agrees to a complex privacy policy without reading it? Can the user make a claim that they were misled about the content of the privacy policy? Why or why not?

In the final source, we will refer back to Rabbi Meir's position that we saw at the beginning of this unit—that we **do** accept the claim of a person who says that they didn't understand the terms of the *ketubah*.

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#### KenessetHaGedolah

Rabbi <u>H</u>ayyim Benveniste (1603–1673) was a prominent rabbinic authority in Turkey. He is most well known for his commentary on the Shul<u>h</u>an Arukh. However, according to the Kenesset HaGedolah, even according to this position there is a limit to when a person can claim they didn't understand the terms.

This explanation emerges from his attempt to clarify a seeming contradiction in the positions of the Rashba. On the one hand, the Rashba rejects Rabbi Meir's position (source 33) and holds that one cannot claim that they were unaware of what they committed to. But elsewhere, he **does** seem to accept this claim regarding a woman's claim about the details of her *ketubah*.

#### **SOURCE #37**

#### כנסת הגדולה הגהות בית יוסף חושן משפט סימן קמז

ויראה לי דשאני נדון דסימן תרכ"ט שהוא עיקר החיוב והתנאים, ומסתמא העדים לא חתמו על השטר אם לא ע"פ המתחייב.

אבל בתשובה זו אין ההפרש בעיקר החיוב והתנאים אלא במצרים, ובהא איכא למימר שלא הרגישה בכך בכיוצא לדברים אלו

#### Kenesset HaGedolah,° <u>H</u>oshen Mishpat #147

It seems to me there is a difference regarding where the person claims that they did not understand the primary matter in the contract, and presumably the witness would not have signed the document unless he had instructed them to do so.

But in this case, the claim is not about the primary matter, but about the margins of the contract, and regarding this she can claim that she did not understand the terms.

In other words, the Kenesset HaGedolah explains that there is an important distinction between claiming that you were unaware of certain details within a contract, as opposed to claiming that you did not understand the most essential elements of it. While you are unable to claim the latter, there is more leeway in being able to make a claim about not being aware of a contract's minor points.

» Is this distinction relevant to the circumstances of our case? Are iSocial's users more similar to the case where the person fails to understand the primary matter in their contract, or to the person who was unaware of some of the contract's details?

#### **UNIT 5 | Are Privacy Policies Legally Binding?**

#### Take a step back

Every iSocial user has agreed to the privacy policy before using the app. Based on the sources we have seen in this section, can a user claim that they did not understand the terms that they agreed to? Does the fact that all users have consented to the privacy policy give iSocial the right to collect and share user data, even if they are well aware that most users don't read through the full privacy policy?



#### **Appendix: Contemporary Perspectives**

The resources below are intended to broaden your understanding of the case. The first section consists of public opinion polling data, while the second section is a compilation of relevant news articles, opinion pieces, and academic research. These resources are provided for your enrichment, though you are not required to integrate them into your arguments.

#### 1. Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information

Pew Research | Nov. 15, 2019

Below are some of the key findings from a Pew Research Center report on digital privacy.

- 85% of American adults are concerned with the amount of information that social media sites know about them.
- 72% think that all or most of what they do online is tracked by companies.
- 81% say that they have little or no control over the data that companies collect about them.
- 72% of adults say they personally benefit very little or none from company data collection about them. (5% say they benefit a great deal.)
- 97% say they have ever been asked to approve privacy policies, yet only about one-in-five adults overall say they always (9%) or often (13%) read a company's privacy policy before agreeing to it.
- Among adults who say they ever read privacy policies before agreeing to their terms and conditions, only a minority (22%) say they read them all the way through before agreeing to their terms and conditions.

#### 2. Americans Have Little Trust In Online Security

Associated Press-NORC Center for Public Affairs Research | Sept. 16, 2021

This AP-NORC/MeriTalk poll found that about two-thirds of Americans say personal information stored online, such as social media activity or physical location, isn't secure. One in two Americans say the same about text messages.

	Not Secure	Somewhat Secure	Very Secure
Social media activity	64%	22%	8%
Physical location	63%	26%	8%
Private text conversations	50%	37%	9%

3. Israeli Public's Feelings and Attitudes Toward Invasion of Privacy

Israel Internet Association | 2022

Digital privacy is a growing concern around the world .Here are key findings of a study conducted by the Israel Internet Association.(איגוד האינטרנע הישראלי)

- 85% of the public wants to be informed about how commercial companies use their personal information.
- 82% want to know what information companies collect about them beyond the data they upload themselves.
- 66% say that the collection and use of personal information by social networks concerns them.
- 58% say that targeted or customized advertising concerns them.
- Respondents aged 18-22 expressed the least concern with a lack of control over how their personal information is collected online (50%), compared to 62% among other age groups and 71-73% among people aged 50+.

#### **Recommended Supplemental Reading**

- 4. **Google's Sundar Pichai: Privacy Should Not Be a Luxury Good** The New York Times | May 7, 2019
- 5. Facebook Parent Meta to Settle Cambridge Analytica Scandal Case for \$725 Million Reuters | December 23, 2022
- 6. **To Be Let Alone: Brandeis Foresaw Privacy Problems**Brandeis University | July 24, 2013
- 7. **TikTok User Data: What Does the App Collect and Why Are U.S. Authorities Concerned?** The Wall Street Journal | July 7, 2020
- 8. **We Need to Take Back Our Privacy**The New York Times | May 19, 2022
- 9. FTC Says Ring Employees Illegally Surveilled Customers, Failed to Stop Hackers from Taking Control of Users' Cameras
  Federal Trade Commission | May 31, 2023
- 10. Selling Your Cellphone Location Data Might Soon Be Banned in U.S. for First Time The Wall Street Journal | July 10, 2023
- 11. A Cyberattack Illuminates the Shaky State of Student Privacy
  The New York Times | July 31, 2022