

SHE'AILOS U'TESHUVOS

by Rabbi Doniel Neustadt

QUESTION: Are there any restrictions on physical contact [hugging, kissing, touching affectionately] between relatives?

DISCUSSION: Although it is well-known and fully accepted that marriage between certain relatives is strictly forbidden, it is not so well-known that physical contact between them is also forbidden. For the purpose of our discussion, we have divided "relatives" into three separate groups. Physical contact with members of group A is permitted; with members of group B, strictly forbidden; and with members of group C, neither strictly forbidden nor expressly permitted. Rather, in the words of the Rambam⁽¹⁾ and the Shulchan Aruch⁽²⁾ it is "most deplorable, a prohibited (type of) action, and an act of foolishness."⁽³⁾

Let us now list (in no particular order) the various relatives⁽⁴⁾ in their respective groups:

Group A: Permitted

For Men:

1. A sister under the age of 11.⁽⁵⁾
2. A daughter.⁽⁶⁾
3. A granddaughter.⁽⁷⁾
4. A mother.
5. A grandmother.

For Women:

1. A brother under the age of 12.⁽⁸⁾
2. A son.
3. A grandson.
4. A father.
5. A grandfather.

Group B: Strictly Forbidden

For Men:

1. An uncle's wife.
2. A niece(9) over the age of 3.(10)
3. A cousin over the age of 3.(11)
4. His wife's sister over the age of 3.
5. His daughter-in-law and mother-in-law.(12)
6. His brother's wife.

For Women:

1. Her uncle over the age of 9.
2. A cousin over the age of 9.
3. Her husband's brother over the age of 9.
4. Her son-in-law and father-in law.
5. Her sister's husband.

Group C: Neither Forbidden nor Expressly Permitted

For Men:

1. A sister over the age of 11.(13)
2. An aunt [his father's or mother's sister] over the age of 3.(14)

For Women:

1. Her brother over the age of 12.
2. A nephew over the age of 9.

QUESTION: Must a baby-sitter be paid immediately upon completion of the job or can the payment be delayed?

DISCUSSION: In the verse quoted above, the Torah commands that a laborer who completes his work must be paid "on that day." This means that a worker who finishes his job during the daytime must be paid by sunset of that day. If the worker has not been paid in full by sunset, his employer has transgressed a Biblical prohibition.(15) Similarly, a worker who completes his job during the night must be paid in full before daybreak. If the worker is hired for a full day [or night] or for a full week or month, he must be paid by the morning [or evening] after his term of employment is over.

These laws apply also to rental fees. When the rental period is over, payment must be made by the

end of that day [or night].(16) There is a dispute among the Rishonim over whether these laws apply to property rentals as well.(17) The Chafetz Chayim(18) rules that one who is late with his house rent has transgressed this prohibition.

Payment for work contracted by the job is also included in this commandment. Thus, when an item is taken in for repair or cleaning, etc., or if a plumber or an electrician comes into one's home for a specific job, payment must be made "on the day" that the item is picked up(19) or the job completed.(20) However, when contracting for a job in which the raw materials belong to the worker [as in the case of a builder], these laws do not apply. In this case, we view the relationship between them as one of a buyer and a seller, not as one of an employee and his employer. (21)

An employer cannot force his worker to accept compensation other than cash.(22) Payment, therefore, must be in cash, or with a check that can be easily and quickly cashed.(23)

Payment must be made on time to a minor as well.(24) Thus, when a baby-sitter is hired, she must be paid before the day [or night] is over.

There are, however, several exceptions to the above rules. Thus:

* This prohibition applies only if the worker asks, either himself or through a messenger,(25) to be paid. If the worker does not mind being paid at a later date, it is permissible to defer payment.(26) If, however, the worker would like to get paid but is too shy to ask outright, payment must be made on time.(27)

* If the common practice in a given locality is to pay a laborer's wages at the end of the month or at a time when accounts are calculated, then the payment does not have to be made until then.(28)

It follows, therefore, that if a baby-sitter is hired on a one-time basis, she must be paid "on that day." This is because she expects to be paid immediately upon completion of her job. If, however, the baby-sitter is hired on a steady basis, then there is no deadline for the time of payment since many people do not pay their regular baby-sitter after each session.(29)

* One is allowed to make a pre-condition with his worker that he will not be paid on time(30). This condition must be made before the worker agrees to do the job. Thus, even a one-time baby-sitter may be paid at a later time if she was told of this condition before she agreed to take the job.

An employer who has no money(31) to pay his employee does not transgress this prohibition.(32) If he has no money but is able to borrow, he must do so. Not having the exact change on hand is no excuse to delay payment.(33)

The prohibition of delaying payment does not apply to a yeshiva or other public institutions.(34)

FOOTNOTES:

1 Hilchos Isurei Biah 21:6 (loose translation).

2 E.H. 21:7.

3 According to the explanation of Igros Moshe Y.D. 2:137, the Rabbis have deemed it "deplorable" and "foolish" because it may lead to physical contact with other relatives with whom physical contact is strictly forbidden, like the ones listed in group B. See also Otzar ha-Poskim 21:51 who quotes Batei Kehunah as saying that it is not a strong Rabbinic prohibition like other Rabbinic prohibitions; it is merely a derech zehirus be'alma.

4 We have limited this discussion to blood relatives. See The Weekly Halachah Discussion, pg. 94, concerning adopted children and step-parents.

5 E.H. 21:7 and Beis Shmuel 9. The age of 11 is based on O.C. 73:4.

6 Igros Moshe E.H. 1:60 and E.H. 4:63 maintains that it is proper to be stringent and not kiss a married daughter or granddaughter. Other poskim, however, do not mention this stringency and this seems to be the prevailing custom.

7 Chelkas Mechokek E.H. 21:10; Beis Shmuel 14 concerning a daughter's daughter. Igros Moshe E.H. 1:60 rules that a ba'al nefesh should not hug or kiss a son's daughter but there is no need to object to those who are lenient. Aruch ha-Shulchan 21:10, Tzitz Eliezer 6:40-20 and Shearim Metzuyanin b'Halachah 152:16, rule that there is no difference and both are equally permissible. This is the prevailing custom.

8 E.H. 21:7 and Beis Shmuel 9. The age of 12 is based on O.C. 73:4.

9 Igros Moshe Y.D. 2:137.

10 Harav S.Z. Auerbach (quoted in Avnei Yashfei 2:89). See also Nishmas Avraham 5, pg. 135, and Hebrew Notes, pg. 238-239.

11 See footnote 25.

12 Igros Moshe E.H. 4:63 rules that this is Biblically prohibited.

13 Rambam and Shulchan Aruch quoted in footnotes 16 and 17. The age of 11 is based on O.C. 73:4.

14 Rambam and Shulchan Aruch, ibid. classify an older sister together with an aunt. Apparently, even a young aunt over 3 is included in this category.

15 Depending on the circumstances, there could be up to 6 different commandments that are transgressed when payment is not made on time; see C.M. 339:2 and Sma 4.

16 C.M. 339:1.

17 Pischei Teshuvah 339:1.

18 Ahavas Chesed 9:5. This is also the ruling of the Ketzos ha-Choshen 339:1. See Avnei Yashfei 2:118

who quotes Harav S.Y. Elyashiv as ruling that the prohibition applies only to rent which is due for past rental, not for rent which is paid ahead of time (pre-payment).

19 If the item is not being picked up, even though the repairman notified the owner that it is ready, the owner does not have to pick up the item and the payment rules do not apply; Beiur Halachah O.C. 242.

20 C.M. 339:6.

21 Ketzos ha-Choshen C.M. 339:3; Aruch ha-Shulchan C.M. 339:7; Nesiv ha- Chesed 10:4.

22 Shach C.M. 336:4. See also Pischei Teshuvah C.M. 336:1.

23 Harav M. Feinstein (written responsum published in Mili de-Nizakin, pg. 122) in a locale where it is customary to pay by check. See Pischei Choshen (Hilchos Sechirus 9 note 36) who questions a payment by check if it is made after the bank's closing hours.

24 Ahavas Chesed 9:5. See Nesiv ha-Chesed 16 who takes to task those who promise compensation to a minor and then do not pay him on time.

25 R' Akiva Eiger C.M. 339; Aruch ha-Shulchan 339:12.

26 C.M. 339:10. According to some poskim, it is not proper to delay payment even if the worker does not explicitly ask for the money.

27 Nesiv ha-Chesed 9:29, in a situation where the worker enters the employer's house but is too intimidated to ask for money.

28 C.M. 339:9; Ahavas Chesed 9:13.

29 Harav M. Feinstein (written responsum published in Mili de-Nizakin, pg. 121).

30 Shach C.M. 339:2.

31 Even if the only money he has is needed for Shabbos expenses, he still must pay the worker first; Beiur Halachah O.C. 242.

32 If he had money at the time the worker was hired and he spent it on other expenses, he has transgressed the prohibition; Ahavas Chesed 9:9.

33 Ahavas Chesed 9:7 and Nesiv ha-Chesed 21. He adds that if one has items which are available for sale, he should sell them in order to pay.

34 Harav S.Y. Elyashiv (oral ruling, quoted in Avnei Yashfei 2:118), based on Rama C.M. 339:7.

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