

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

Deracheha: Women and Mitzvot

Physical Intimacy II: Boundaries and Touch

Click [here](#) to view an updated version of this shiur with additional features on the Deracheha website.

Did you know there's more to Deracheha than our shiurim? Sign up for our newsletter [here](#) and get all our content!

Have some feedback for us? Please click [here](#)!

HOW DOES HALACHA REGULATE TOUCH, IN AND OUT OF MARRIAGE? WHAT ARE THE HALACHIC UNDERPINNINGS OF SHEMIRAT NEGIA?

By Laurie Novick
Rav Ezra Bick, Ilana Elzufon, and Shayna Goldberg, eds.¹

Meanings of Touch

A light hand on the shoulder, a firm handshake, a warm embrace. Touch plays a unique role as a mode of expressing emotions and as an element of rituals of greeting and parting. It often conveys with ease what words and body language may not.

Halachot that regulate interpersonal touch are extremely sensitive topics to study and discuss for the same reason that they can be a challenge to keep. They 'touch' on fundamental aspects of who we are and how we relate to others. Writing about them is all the more difficult, because a page of type doesn't allow for personal conversation, clarification, or connection—or a reassuring pat on the back.

In general, Deracheha strives to present Halacha from the sources clearly and thoroughly, with authenticity and nuance. For topics like these, we also try to share ideas that can help frame and deepen our thinking about the issues under discussion, without dictating how to think about them or presuming to resolve every question that they raise.

Before we discuss *halachot* related to refraining from touch, let's consider the significance of engaging in it. People are born, even created, to touch. A midrash on *Shir Ha-shirim* metaphorically bridges the gap between human and Creator by describing the creation of human consciousness as a form of touch, a Divine kiss:²

¹ Thank you to Dr. Judith Fogel for her insightful comments on an earlier draft of this piece.

² Rambam, *Moreh Nevuchim* 1:18, Friedlander trans.

...The Supreme is incorporeal, and consequently He does not approach or draw near a thing, nor can aught approach or touch Him; for when a being is without corporeality, it cannot occupy space,

Midrash Shir Ha-shirim Zuta 1:2

... "Let him kiss me with the kisses of his mouth" (*Shir Ha-shirim* 1:2)...A kiss in this world, as it is stated, "And He blew into his nostrils the breath of life" (*Bereishit* 2:7).

Promising the Shunamit woman that she will bear a child, the prophet Elisha employs the word "embrace" to represent the essence of parenthood:

Melachim II 4:16

And he said, at this time of year, at the time of childbirth, you will embrace a son....

Like the Shunamit's child, we come into the world and first connect to our parents with supportive touch. Like the lovers of *Shir Ha-shirim*,³ or devoted friends David and Yonatan,⁴ we mark our significant life relationships with affectionate touch. And like David Ha-Melech, we come to depend on others to care for us in our old age with assistive touch.⁵

As though to underscore the multiple potential meanings of touch, a midrash offers a typology of biblical kisses:

Bereishit Rabba Vayetze 70

...Every kiss is sexual except for three: A kiss of [honoring] greatness, a kiss of [meeting] after periods [of separation], and a kiss of separation. A kiss of greatness: "And Shemuel took the flask of oil, and poured it on his [David's] head, and he kissed him" (*Shemuel I* 10:1). A kiss of [meeting] after periods [of separation]: "And [Aharon] went and met him [Moshe] at the mountain of God and he kissed him" (*Shemot* 4:27). A kiss of separation: "And Orpa kissed her mother-in-law [Naomi]" (*Rut* 1:14). Rav Tanchuma said, also a familial kiss: "And Ya'akov kissed Rachel" (*Bereishit* 29:11), for she was his relative.

This midrash recognizes that kisses are often sexual, but affirms that they need not be. A kiss can convey a range of positive emotions, including reverence, the joy of reunion, the sadness of separation, and familial love.

However, a touch that may be savored in one context may be unwelcome, or even threatening, in another. For example, Rut, a vulnerable foreigner gleaning in the field for the first time, receives special assurances from Boaz that he has told his fieldhands

and all idea of approach, contact, distance, conjunction, separation, touch, or proximity is inapplicable to such a being.

³ *Shir Ha-shirim* 2:6

His left hand is beneath my head, and his right embraces me.

⁴ *Shemuel I* 20:41

The boy went, and David rose from the south and fell on his face to the ground and prostrated himself three times, and they kissed each other and wept over each other until David [cried] exceedingly.

⁵ *Melachim I* 1:3-4

They sought a beautiful young woman throughout the borders of Yisrael, and they found Avishag the Shunamit and brought her to the king. The young woman was very beautiful, and she was a warmer for the king and served him, and the king did not have relations with her.

not to touch her:

Rut 2:9

Keep your eyes to the field that they reap, and follow them [the young women].
Have I not commanded the young men not to touch you...

Boaz implies that, had he not warned off the young men, Rut might have been at risk.

Our tradition recognizes multiple types of touch—sexual and platonic, positive and negative—within a range of relationships. For good or ill, touch affects formal interactions, friendships, and familial relationships—including marriage. So does refraining from touch, as Halacha often dictates.

Putting Touch in Context

The popular term for observance of halachic limits on touch, “*shemirat negia*,” does not appear in traditional texts, which is telling. Instead, halachic texts treat limitations on touch as an element of broader halachic discussions of *kirva*, coming close, to *arayot*, those with whom sexual relations are prohibited. The halachic terminology references the Torah’s sexual prohibitions and pushes us to consider what constitutes intimacy. In contrast, the phrase “*shemirat negia*” implicitly isolates restrictions on touch from the halachic and interpersonal context essential to understanding them.

We discussed key aspects of that context in the [first part of this series](#). There we saw traditional sources on the significance of sexuality to all aspects of the marital relationship. Physical intimacy, and not just sexual relations, is considered a mitzva, exclusive to the safety and commitment of marriage. At the same time, Halacha prohibits sexual relations and many forms of touch both outside of marriage and, during times of *nidda* (ritual impurity from uterine bleeding), within marriage.

This piece and the next one in the series explore what touch Halacha permits or prohibits between people for whom sexual relations are proscribed. Here, we first discuss relationship boundaries and the interplay of halachic boundaries and personal ones. We then begin our halachic study, introducing prohibitions on touch between men and women,⁶ in and out of marriage. We conclude by discussing the halachic implications of an extreme test case—situations when someone’s life is at stake. In our next piece, we discuss specific types of contexts and halachic factors that affect whether touch is permitted or prohibited.⁷

[Will this series of articles answer my questions about “shemirat negia?”](#)

Some of them, be’ezrat Hashem, but likely not all of them.

Ideally, learning Halacha provides answers to fundamental halachic questions. A

⁶ In our next piece we plan to address questions about touch between two men or two women.

⁷ Rav Yair Weitz of Yeshivat Har Bracha did a particularly comprehensive job of collecting sources on this topic. <https://yhb.org.il/shiurim/%d7%a0%d7%92%d7%99%d7%a2%d7%94-%d7%91%d7%a2%d7%a8%d7%99%d7%95%d7%aa-%d7%9e%d7%aa%d7%99-%d7%90%d7%a1%d7%95%d7%a8%d7%94-%d7%95%d7%9e%d7%aa%d7%99-%d7%9e%d7%95%d7%aa%d7%a8%d7%aa/> See “Further Reading” for others who paved the way for this article.

better understanding of Halacha can also help clear up common misconceptions, as well as alleviate some of the tension between what Halacha dictates and what we might think of as a better or more natural course of behavior for ourselves.

This tension, and the attendant questions, can be uniquely acute for those who observe halachot regulating touch and sexual activity to the best of their ability. These halachot affect our passions, our physical and emotional responses, and our closest relationships.

Observance of these halachot can be awkward, challenging, and even painful, especially for those who are unmarried and thus lack a halachically sanctioned channel for sexual expression. Sexuality is not a spigot that one simply turns on and off. It can be difficult to maintain a positive relationship to this part of ourselves during prolonged 'off' periods, or not to let regret or shame for engaging in contact contrary to halacha have a negative impact.

Societal pressures and a range of levels of observance even within frum communities add their own complexity.

We do not presume to resolve these challenges, to answer the full depth of any individual's questions, or to represent the only way to think about them. We do find it important, though, to talk about these halachot in a way that gives people strength to be committed to them without creating negativity around their desires, urges, or relationships.

One way to do this is to encourage anyone trying to observe Halacha to seek meaning in it in a way that is helpful to them.

For example, our last piece highlighted an ideal of physical intimacy as deeply intertwined with emotional intimacy in marriage. After taking time to appreciate the multiple meanings of touch, the introductory section of this piece provides a potentially constructive way to think about the nature of halachic boundaries. Observing them expresses fealty to Torah and builds awareness of how Halacha shapes our interactions, while drawing clear lines that prevent transgression (and, in some cases, help us to avoid ambiguous or uncomfortable interactions).

Some readers may find it motivating to read works that present potential concrete benefits to refraining from touch. For example, Gila Manolson's classic, [The Magic Touch](#), develops the idea that these halachot enable us to discover the significance of touch and strengthen our emotional bonds, while Rabbanit Oriya Mevorach's [Ma At Mevakeshet](#) also suggests that reserving touch for marriage helps set marriage apart from other relationships. These works have much to contribute to the conversation, as long as readers understand that observing these halachot does not guarantee these benefits.

Other readers might appreciate more concrete tips for how to navigate remaining committed in a range of real-life scenarios. We highly recommend this [podcast](#) with Deracheha's Contributing Editor Shayna Goldberg, who tackles many of the most common challenges head on with total candor and deep insight. In short, this series is meant to open up conversations conducted on the basis of

halachic knowledge, not to end them.

Boundaries

Healthy relationships depend on healthy boundaries, including physical and sexual boundaries. Boundaries help ensure that a relationship will respect a person's standards for what kind of interaction—including touch—is welcome, when, and to what extent.

Each party in a relationship needs to find a way to build connection while maintaining their own boundaries and communicating them with sensitivity. To set boundaries effectively, we must look both internally, to our needs, wants, and limitations, and externally, to the values and codes to which we subscribe.

For the religiously observant, Halacha is a binding code of behavior that sanctifies its adherents by setting boundaries. Within the halachic boundaries of marriage and the laws of *nidda*, sexual intimacy is celebrated as the height of sanctity:

Shelah, *Ha-otiyot, Kuf*, The Sanctity of Coupling

[The third of the *Sheva Berachot*] “Blessed are you, Lord our God, King of the world, Who formed *ha-adam* [Adam, and humanity as a collective] in His image, in the image of the likeness of his [Adam's] structure and made from him an everlasting construction.’ Know, my children, that there is no *kedusha* [sanctity] among all the sanctities like the sanctity of coupling, if it is done in sanctity, and one sanctifies himself in sexual relations...

Outside of halachic bounds, though, sexual activity is a transgression; it is sexual restraint that is considered sacred. Fences around sexual expression—whether set in place by the Torah or our sages, or of our own devising—create boundaries that foster that restraint:

Vayikra Rabba, *Kedoshim* 24:6

Why was the *parasha* of the *arayot* [prohibited sexual relationships] juxtaposed with *Parashat Kedoshim* [which opens with the injunction to “be holy”]? To teach you that wherever you find a fence around *erva* [prohibited sexual activity], you find *kedusha* [sanctity]. Like that [view] of Rabbi Yehuda bar Pazi, for Rabbi Yehuda bar Pazi said: Whoever fences himself off from *erva* [sexual transgression] is called holy.

This mix of support for conjugal sex and fencing off of sexual prohibition has set the Jewish people apart for millennia.⁸ However, these laws challenge us at the same time

⁸ See Part I of this series for more extensive discussion of positive approaches to relations within marriage.

A midrash describes adherence to sexual prohibitions as a hallmark of the Jewish people, by virtue of which we merit redemption.

Vayikra Rabba Emor 32:5

Rabbi Chiyya bar Abba said: Keeping the fence of *erva* [nakedness] was sufficient that Israel would be redeemed in its merit. Rabbi Chuna in the name of Bar Kappara: Because of four matters Yisrael were redeemed from *Mitzrayim*, due to not changing their names, and not

as they sanctify us, and not only because they conflict with prevailing non-Jewish norms. Halachic boundaries, especially when they entail broad constraints on touch, may sometimes diverge from the boundaries that we might otherwise have set for ourselves.

A Possible Rationale

In a discussion of the sexual inclination, Rabbi Yochanan provides one possible rationale for why halachic prohibitions in this area are firm and broad. In his view, the dynamics of desire are counterintuitive. He argues that it is easier for a man to refrain from sexual behavior altogether than to allow for a limited degree of sexual satisfaction:⁹

Sukka 52b

Rabbi Yochanan said: A man has a small limb, if he starves it, it is satisfied. If he sates it, it becomes hungry.

His statement could potentially apply to women as well. It seems to imply that flexibility around sexual boundaries might feed one's urges rather than calming them. Once someone has entered into a situation in which strong drives are at play, it can be especially challenging to set boundaries, much less maintain them.

Dr. Yocheved Debow's doctoral research led her to a similar conclusion:

Dr. Yocheved Debow, *Talking about Intimacy & Sexuality: A Guide for Orthodox Jewish Parents* (Jersey City: OU Press-KTAV, 2012), 170-171

....In my research most participants who were in a relationship agreed that whenever they set their own boundaries, they soon found that they were unable to keep to their own commitments and moved on to more intense physical intimacy....Having established guidelines from an external source, one that carries with it a certain sense of duty and commitment, such as halakhah, is most likely to succeed.

There can be practical advantages to having firm, external boundaries in place regarding potentially sexual behavior. This is **not** to say that, when a person breaches a halachic boundary on touch, it is a lost cause, and every other act becomes permitted. In learning the *halachot*, we will see that different actions are regarded with different levels of severity. Nevertheless, clear red lines can help us keep our commitments, in and out of relationships.

Sexual Prohibition and Self-Regulation

By definition, halachic boundaries limit our autonomy; these are laws that we do not author for ourselves. At the same time, they rely to some degree on self-regulation. We are held personally responsible for compliance with them.

Our sages recognize sexual prohibitions as an area requiring a particularly delicate

changing their language, and due to not speaking *lashon ha-ra*, and due to there not being a breach of *erva* among them...

⁹ See Rashi's comment on this statement in *Sanhedrin* 107a, s.v. *ve-nitalma mimenu*.

balance of law and self-control. Parallel rabbinic accounts of a married couple refraining from sexual intimacy during *nidda*, even when secluded together, elucidate this point.

The first (also cited in our [previous piece](#)) begins with a heretic sharing his astonishment that Halacha permits a married couple to be secluded together during *nidda*, and incredulity that a couple in this situation could find the wherewithal to exercise restraint:

Sanhedrin 37a

For this heretic said to Rav Kahana: You say a woman in *nidda* is permitted to be secluded with her husband. Is it possible for fire to be in flax and it not be ignited? [Rav Kahana] said to him [the heretic]: The Torah testified regarding us as “*suga ba-shoshanim*” [“fenced in by lilies”] for even when [what keeps a couple apart is] like being fenced in by lilies, they will not make breaches in it.

Rav Kahana firmly rejects the heretic’s premise. Expounding on a phrase from *Shir Ha-Shirim*, he explains that the Jewish people are “*suga ba-shoshanim*” “fenced in by lilies.” His phrasing plays on the term “*siyyag la-Torah*,” which refers to a halachic ‘fence’ constructed around Torah law in order to keep us from transgression. This passage describes the fence as constructed of lilies (sometimes translated as a ‘hedge of roses’); the fence of lilies metaphorically surrounds each person, protecting the couple from violating prohibitions.

It’s an unexpected metaphor. Why isn’t Halacha likened to a stronger, more absolute barrier? The boundaries of law in this metaphor take on a surprisingly soft and surmountable form. Maharsha explains:

Maharsha, Chiddushei Aggadot, Sanhedrin 37a

It seems more correct to explain that [the Talmud] used the expression ‘a fence of lilies’ because a person desires the fence itself and to breach it to enjoy its scent of lilies.

Maharsha takes the fence’s sensual appeal in a paradoxical direction. The Talmudic passage establishes that, at least for a married couple, this specific type of fence suffices to prevent sin. Maharsha suggests, first of all, that the halachic boundaries, likened to flowers, are themselves beautiful. Second, that this halachic boundary, the very one that Rav Kahana considers so effective, is designed in such a way as to tempt us to uproot it. Philosopher Emmanuel Levinas develops this idea:

Emmanuel Levinas, “As Old as the World,” in *Nine Talmudic Readings*, trans. Annette Aronowicz (Bloomington: Indiana University Press, 2019)

A hedge, which is the thinnest of thin obstacles, which...in *separating* you from sin invites you to cross through it....The main point is to realize [give rise to] a human being that a simple hedge of roses protects against temptation. Let us note...the meaning conferred on it by the commentator Maharsha....The enclosure is itself seduction. Hence one can understand its way of protecting as the following: everything in the world that is charming, tempting, seductive, invites us to be vigilant. Let us be twice as careful....The entire Jewish tradition has wanted to put a time for reflection between natural spontaneity and nature.

Once compliance with Halacha is given over to our own responsibility, we may find the law's delicacy—its being surmountable—a temptation to break it. The delicacy of the fence challenges us to feel temptation—to appreciate the value of what we desire without walling ourselves off from it. At the same time, it drives us to develop an inner strength to respect the inherent value of the boundary and to refrain from breaking the fragrant fence. This process changes us.

The case of a married couple has unique aspects, and not every halachic boundary necessarily works this way. For starters, as we will see later on in this piece, different *halachot* have differing levels of severity. Still, the message that Levinas derives from the Talmud's discussion may apply more broadly. Even as Halacha sets firm external boundaries, the boundaries are more markers than walls, easily breached. It is we who must learn to recognize their beauty as strength, to make the choice to respect the red lines and not to breach them, often by finding our personal boundaries within halachic strictures. That these choices are private, individual, and sensitive makes them no less significant.

The parallel text, a midrash, spares no imagery in amplifying our sense of the power of desire and the strength of self-control that overcomes it, spurred on by Halacha:

Shir Ha-shirim Rabba 7

“*Suga ba-shoshanim*” [fenced in by lilies]: these are words of Torah, which are as soft as lilies. How many *mitzvot* and details are in *Torat Kohanim* [*Vayikra*], how many leniencies and stringencies... are in *Torat Kohanim*. Rabbi Levi said, in the way of the world, a man marries a woman...He comes to have relations with her, and she says to him, I saw something like a red lily, and he immediately separates from her. What caused him not to come near her? What iron wall is between them, or what iron pillar is between them, or what snake bit him, or what scorpion stung him, that he not come near her? Words of Torah, that are soft as a lily, as it is said regarding her, “to a woman in the *nidda* of her ritual impurity, do not come close” (*Vayikra* 18:19)

Though the midrash dwells on the husband's restraint, a woman's restraint can be no less heroic. In this case, she has to find the courage to communicate to her husband the boundary that will now separate them physically, despite their expectations and desire. She does so with an arresting simile, likening her *nidda* blood to a red lily. In her eyes, and the eyes of this midrash, a woman's blood is not inherently off-putting or at odds with desire for physical intimacy.

This midrash maintains that observing halachic constraints in the face of desire can be extremely difficult, but is possible. In the context of this midrash, desire can and should be recognized and controlled, not diminished or vanquished. Halacha guides us to find holiness in choosing to channel our desires to a halachically sanctioned context: the right person, place, and time. These points also hold true when desire for touch is not sexual.

Desire for touch, sexually affectionate touch included, is a natural and normal part of being human. At times, so is the motion of stepping back from it. To understand what types of physical contact Halacha charges us to step back from and when, we need

to turn to halachic sources.

Prohibitions

The Torah prohibits a long list of sexual relationships, including relations between close relatives, or between a married woman and a man other than her husband, and relations when a woman is in *nidda*. The term for violating a sexual prohibition is *giluy arayot* (lit., uncovering nakedness), and the prohibitions in general are referred to as *arayot*. Relations during *nidda* are generally considered *giluy arayot*,¹⁰ even when the woman is unmarried.

In practice, a girl typically becomes *nidda* with her first menses, and remains in *nidda* until mikveh immersion. A woman's first immersion typically takes place just prior to marriage.

As early as the fourteenth century, halachic authorities were called upon to address the question of whether single women should be encouraged to immerse in the mikveh in order to lift *nidda* prohibitions. Rivash rejects this possibility in a landmark responsum. The responsum effectively prohibited immersion to unmarried women,¹¹ to ensure that couples do not engage in sexual relations outside of marriage, out of the mistaken impression that *nidda* is the only halachic bar to them.

Responsa Rivash 425

For since the unmarried woman is prohibited, as I have written. On the contrary!

¹⁰ In his discussion of *kol isha*, Mishna Berura categorizes a single woman in *nidda* as one of the *arayot*. Mishna Berura 75:17

...An unmarried woman who is *nidda* is in the category of *arayot*, and our maidens are all presumed to be *niddot* from menarche.

On the other hand, Mishna Berura may have meant this specifically in the context of *kol isha*.

Responsa Tzitz Eliezer 17:32

Perhaps Mishna Berura wrote his words only regarding the prohibition of listening to a singing voice, and did not intend [to discuss] the fundamental halacha of this in general.

Elsewhere in this responsum, Tzitz Eliezer raises a few different possible arguments for relations with a single woman in *nidda* **not** being considered *giluy arayot*. Among them, that *kiddushin* of a single woman in *nidda* take effect, whereas Sefer Ha-chinuch states that *arayot* only apply in cases where *kiddushin* cannot take effect.

Sefer Ha-chinuch, Parashat Emor, Mitzva 296

For any woman with whom *kiddushin* would take effect...is not in the category of *arayot* that one should be killed [*yehareg*] on their account [rather than violate the prohibition]. Nevertheless, we do not rule for any man that he may have relations with a woman [other than his wife], even if she is single...

There is also a broader discussion, well beyond the scope of this piece, of how to understand the *nidda* prohibition and its relationship to *arayot*. Shevet Ha-Levi makes a strong appeal to the simple meaning of the Torah as settling the question:

Responsa Shevet Ha-Levi 6:119

I do not know what the uncertainty is. The Torah called it *giluy erva*, as it is written: "And to a woman in the *nidda* of her ritual impurity, do not come close, to uncover her nakedness." Can it be more explicit than that? And furthermore, [*nidda*] is included in the general *parasha* of *arayot* of "each man...do not come close, to uncover nakedness."

¹¹ See our discussion of women immersing for the purpose of *teshuva* prior to Yom Kippur, here <https://www.deracheha.org/erev-yom-kippur/>. In this case, a woman typically does not complete the procedures required to exit the *nidda* status. Recently, Religious Zionist rabbis have debated whether single women are permitted to immerse in order to go up to the Temple Mount (itself a contentious issue).

If she were to immerse, there would be a stumbling block with her: For they would be lenient with a woman who is prohibited, since she is only prohibited rabbinically.

Unusual Phrasing

What does sexual prohibition on a Torah level entail? A verse introducing a list of sexual prohibitions incorporates two instances of unusual phrasing with halachic implications:

Vayikra 18:6

Each man, to any of his flesh relatives, do not come close [*lo tikrevu*, plural] to uncover nakedness.

First, the verse moves from the singular “each man” to the plural “do not come close.” The midrash halacha derives from this shift that when a woman and a man willingly engage in prohibited sexual relations, both are equally culpable:

Sifra Acharei Mot 8:13:1

Since it is said “Each man,” I might think that specifically a man is cautioned against [relations with] a woman. Whence that a woman is cautioned against [relations with] a man? The verse teaches “Do not come close” [in plural]. Behold here there are two [culpable parties].

Second, the verse departs from the formula that usually appears in verses concerning *arayot*: “*ervat _____ lo tegaleh*,” “the nakedness of _____ you shall not uncover.” Instead, this verse employs the locution of not ‘**coming close**’ to uncover nakedness. The Torah repeats this unusual phrase a little later, in its statement of prohibition of sexual relations during *nidda*:

Vayikra 18:19

And to a woman in the *nidda* of her ritual impurity, do not come close [*lo tikrav*] to uncover her nakedness.

Early sources seem to present conflicting pictures as to the significance of such phrasing. Does ‘coming close’ refer to preliminary acts to sexual relations, or is it simply conveying the intimacy of sexual relations themselves?

If “coming close” refers only to actual sexual relations, then there is no clear source in the Torah prohibiting other levels of physical contact. In that case, any prohibition on touch between men and women would presumably be a **rabbinic edict**.

On the other hand, if we understand “coming close” to refer to some category of affectionate touch other than actual relations, that type of contact would be prohibited on a **Torah level**.

In the next few sections, we’ll look at the sources for each of these positions.

Rabbinic Edict

First, let's discuss the position that any prohibition on affectionate touch other than relations is of rabbinic origin. The Talmud Yerushalmi flatly asserts that the mention of not coming close adds nothing to the Torah-level prohibition:

Yerushalmi Sanhedrin 7

Rabbi Yosei son of Rav Bun said: 'Don't come close' is the same as 'don't uncover.'

Rabbi Pedat, in the Babylonian Talmud, seems to understand the verse in a similar way, reading 'coming close' simply as a synonym for *giluy arayot*¹² (prohibited sexual acts):¹³

Shabbat 13a

For Rabbi Pedat said: The Torah only prohibited closeness of *giluy arayot* alone, for it is said, "Each man, to any of his flesh relatives, do not come close, to uncover nakedness."...Ulla said: Even any closeness is prohibited, on account of, " 'Go, go,' we say to the nazirite. 'Around, around! Do not come close to the vineyard.'"

According to Rabbi Pedat, only 'uncovering nakedness'—and nothing else—is prohibited on a Torah level. It is also possible to read Rabbi Pedat as including additional forms of sexual touch under his definition of 'the closeness of *giluy arayot*.'¹⁴ However, it is more straightforward to read him as first suggested.

After citing Rabbi Pedat's definition of the Torah prohibition, the gemara cites Ulla's statement that other closeness, aside from *giluy arayot*, is also prohibited, as protection from sin. Ulla explains this prohibition with language borrowed from discussions of the nazirite. Since the Torah prohibits the nazirite from consuming wine or grapes, we caution him to avoid even approaching a vineyard. This admonition can be understood either as a strong rabbinic prohibition or as a weaker halachic warning.¹⁵

Ramban rules that intimate touch other than actual relations, such as hugging and kissing, is a full-fledged rabbinic prohibition. On his view, sources that seem to indicate that there is a Torah prohibition (such as a midrash halacha that we will see shortly) are merely *asmachta*, a pedagogical device for connecting a rabbinic prohibition to a

¹² See, for example, Chizkuni on this verse:

Chizkuni Vayikra 18:6

Do not come close - an expression for sleeping [together]

¹³ Sexual acts prohibited on a Torah level include full intercourse, as well as partial or anal penetration: Shulchan Aruch EH 20:1

Rema: One who has relations with her, whether in the normal way [vaginal penetration] or not in the normal way [anal penetration], once he penetrated partially, i.e., inserted the glans, he is liable on her account for death or excision.

¹⁴ It is possible to read Rabbi Pedat differently. For example, Ritva suggests that Rabbi Pedat views lying together in the nude as a Torah prohibition.

Chiddushei HaRitva Shabbat 13a

It seems to me that Heaven forbid that Rabbi Pedat would say that skin-to-skin contact [*kiruv basar*, lit., closeness of the flesh] is permissible with *arayot* or during *nidda*, and all the more so with a married woman...but if he is in his clothing, and she is in her clothing, it is a rabbinic prohibition, and this is the halacha.

¹⁵ See footnote 22.

verse, and not bona fide derivations of Torah law.

Glosses of Ramban to Sefer Ha-mitzvot, Prohibition 353

Based on careful reading of the Talmud, the matter is not so, that closeness that does not entail sexual relations, like hugging or kissing, would violate a Torah prohibition and be punishable by lashes ...and it is further known from [the sages'] practice in the Talmud that if they considered this baraita [the Sifra] to be true, and the words of Rabbi Pedat disagreed with it, the masters of the gemara would have cited [the baraita] as a refutation against him...and since they did not do thus, we understand from them that they consider this prohibition rabbinic...rather, the verse is a mere *asmachta* [mnemonic].

Ramban acknowledges that there is a prohibition against engaging in behaviors approaching relations. However, he views this prohibition as rabbinic.¹⁶ He also does not state whether other types of touch are included in the prohibition.

Torah Prohibition

The key source whose authority Ramban calls into question appears in *Sifra*, midrash halacha to *Vayikra*.¹⁷ The midrash states that the Torah's expression 'to come close' refers to intimate acts that might precede relations:

Sifra Acharei Mot 9

"And to a woman in the *nidda* of her ritual impurity, do not come close to uncover her nakedness" (*Vayikra* 18:19). I have only [established] not uncovering [nakedness, sexual relations]. Whence that one may not come close? The verse teaches "do not come close." I have only [established] that regarding a *nidda* one may not come close and may not uncover [nakedness], whence that with respect to all *arayot*, one may not come close and one may not uncover

¹⁶ Glosses of Ramban to Sefer Ha-mitzvot, Prohibition 353

... Or it [sexual pleasure that does not meet the threshold of *giluy arayot*] could be on a Torah level [as *lo tikrevu*], for it is prohibited for anyone to benefit [at all] from something prohibited [at a certain threshold by Torah law], as in the matter of [the prohibition of] a half-measure [*chatzi shi'ur*], but this is not the primary derivation with regards to this prohibition [*lo tikrevu*]; rather, the verse is a mere *asmachta*.

Ramban raises the possibility that *lo tikrevu* is a Torah-level prohibition akin to the prohibition of "*chatzi shiur*," violating a prohibition with an amount **below** the minimum threshold for culpability (e.g., eating less than the minimum amount of a prohibited food). But it is not clear how one would begin to define a behavior as "an amount" of relations below the Torah's threshold, and Ramban does not pursue this possibility further.

¹⁷ Another relevant source appears in the Talmud. The gemara cites a baraita as contradicting Rabbi Pedat's view, opening the door to wider disagreement with his position. The baraita suggests that a man and woman who are prohibited to each other are also prohibited from lying in the same bed together, even when clothed. The suggestion is that this is a rabbinic decree, based on a verse in *Yechezkel*. For sleeping in the same bed clothed to be a rabbinic decree implies that sleeping in the same bed in the nude would be prohibited on a Torah level, which would contradict Rabbi Pedat.

Shabbat 13a

Come and hear...: "And the wife of his fellow he did not defile, and to a woman in *nidda* he did not come close" (*Yechezkel* 18:6). He [Yechezkel] juxtaposes a woman in *nidda* to the wife of one's fellow. Just as with the wife of his fellow, he in his clothing and she in her clothing is prohibited—so too with his wife in *nidda*, he in his clothing and she in her clothing is prohibited. Deduce from it.

[nakedness]? The verse (*Vayikra* 18:6) teaches, “do not come close to uncover”...

A simple reading of this passage suggests that acts approaching relations, and not just relations themselves, are prohibited on a Torah level. Unfortunately, this midrash does not identify the types of acts that would be included in such a prohibition.

Another, less halachically authoritative, midrash known as *Avot de-Rabbi Natan* specifies some examples of acts that might fall under the category of approaching relations for husband and wife during *nidda*, including hugging, kissing, and even flirtatious speech:

Avot De-Rabbi Natan version 1, chap. 2

What is a fence that the Torah made for its words? Behold it says: “and to a woman in the *nidda* of her ritual impurity do not come close” (*Vayikra* 18:19). Could it be that he may embrace her and kiss her and speak frivolously with her? The verse teaches: Do not come close. Could it be she would sleep beside him in her clothing on the bed? The verse teaches: Do not come close.

This reading is expansive, extending beyond physical contact, in a way that is not widely agreed upon.¹⁸

Defining the Torah Prohibition

Many early authorities follow a simple reading of the *Sifra* and maintain that “do not come close” introduces a Torah-level prohibition of touch. The touch that would be prohibited can be defined in different ways.

I. Any Touch? Most broadly, Rashba suggests that even a husband checking his wife’s pulse during *nidda* might be prohibited on a Torah level:

Responsa of Rashba (formerly attributed to Ramban), 127

Question: A husband who is knowledgeable in medicine and his wife is in *nidda* and ill, but there are reputable doctors in the city who are as knowledgeable as he is or more [in medicine], can the husband take her pulse?...Response: It stands to reason that it is prohibited. For one, for it is possible that any closeness is prohibited on a Torah level...

Rashba leaves open the possibility that **any** touch might be prohibited on a Torah level, at least between husband and wife. (We’ll look again at touch in medical contexts

¹⁸For example, in his commentary to the Mishna, Rambam categorizes flirtatious speech between *arayot* as a Torah-level prohibition, but in the Mishneh Torah, he categorizes it as a Rabbinic prohibition: Rambam, Commentary to the Mishna, *Sanhedrin* 7:4

Similarly, one who flirts with one of the *arayot*, and joking with her and winking for pleasure, all this is forbidden, and one who does these things is liable to receive lashes for them, and they are all included within the two prohibitions stated in the Torah.

Rambam, Laws of Prohibited Relations 21:2

One who does any of these practices, he is suspect regarding *arayot*, and it is forbidden for a man to signal with his hands or feet or to hint with his eyes to one of the *arayot* or to joke with her or to act frivolously or even to smell the perfume she is wearing or to gaze at her beauty is forbidden, and one who does this deliberately receives rabbinic lashes.

at the end of this piece, and in our next piece.)

II. Touch for Pleasure Rabbeinu Yona (Rashba's primary Rav) defines the Torah prohibition more narrowly, as any touch with pleasurable purpose, even when those prohibited sexually to each other simply touch hand to hand.

Iggeret Ha-teshuva of Rabbeinu Yona, Second Day

It is prohibited on a Torah level to touch a married woman's hands, or her face, or any of her limbs, for it is said, "Each man, to any of his flesh relatives, do not come close" (*Vayikra* 18:6), and so is the clear halacha, that this coming close is touching her hands or her face or any of her limbs in order to take pleasure from the touch. And this is among the serious transgressions of the Torah...

III. Sexual Touch Rambam agrees that there is a Torah-level prohibition, but narrows its definition further to "promiscuous acts" such as hugging and kissing, that could "lead to [illicit] sexual relations."

Sefer Ha-mitzvot of Rambam, Prohibition 353

The 353rd mitzva is that [God] prohibited us from coming close to any of these *arayot*, even without sexual relations. Such as hugging and kissing, and similar promiscuous acts. And He, may He be elevated, said in prohibiting this: "Each man to any of his flesh relatives, do not come close [plural] to uncover nakedness" (*Vayikra* 18:6). As if to say "do not to come close" to them with a closeness that will lead to sexual relations. And the language of the Sifra is...

In the Mishneh Torah, Rambam repeats his mention of "hugging and kissing," this time clarifying that they are of concern when they represent desire and pleasure that can lead to sexual relations:

Rambam, Laws of Prohibited Relations, 21:1

Anyone...that hugs and kisses by way of desire and takes pleasure in the closeness of the flesh, this [person] is receives Torah lashes, for it is said "not to do of the abominable ordinances, etc." (*Vayikra* 18:30), and it is said "do not come close to uncover nakedness" (*Vayikra* 18:6), which is to say do not come close to matters that lead to prohibited sexual relations.

The emphasis on enjoyment of proximity of the flesh may indicate that Rambam maintains that only direct, skin-to-skin contact violates the Torah prohibition, while touching indirectly, as through a garment, does not. Shach makes another logical inference—that Rambam rules that other forms of touch, including some types of hugging or kissing, are **not** subject to a Torah prohibition:¹⁹

Shach YD 157:10

It sounds as though even Rambam only said [there was a Torah prohibition]

¹⁹ Though less straightforward, it is possible to read Rambam as permitting other forms of touch (that are not actual *giluy arayot*) specifically in interactions with close relatives, but not in interactions with others, which are presumed to have more inherent sexual potential:

Kiryat Sefer, Laws of Prohibited Relations 21

Hugging and kissing that is not in the manner of desire and that does not lead to *giluy erva*, as a father with his daughter or a mother with her son, is permissible.

when one engages in hugging and kissing in the manner of sexual affection.

Additional Rabbinic Prohibition

Rambam does leave room for rabbinic prohibition on less sexual forms of touch.²⁰ Indeed, based on a Talmudic passage,²¹ he rules that there is a rabbinic prohibition of **any** touch between husband and wife (presumably, of the sort that would not fall under the Torah prohibition) during *nidda*, to prevent the couple from forming marital habits that might lead to sin.

Rambam, Laws of Prohibited Relations, 11:19

All labors that a woman performs for her husband, she performs for her husband when in *nidda* aside from washing his face, hands, and feet, and mixing his drink, and making his bed in his presence, as a decree lest he come to a matter of sin, and for this reason she may not eat with him from the same dish, and he may not touch her flesh because of becoming accustomed to sin.

Rambam does not mention a similar rabbinic prohibition on touch between those prohibited to each other when not married to each other. However, he does rule against hugs and kisses between family members prohibited to each other (we'll discuss touch with relatives later):

Rambam, Laws of Prohibited Relations 21:6

One who hugs one of the *arayot* over whom his heart does not get excited, or who kisses one of them, like his adult sister and maternal aunt and the like, even though there is no desire or pleasure at all, this is exceedingly distasteful and a matter of prohibition and the act of fools, for we do not come close to *arayot* at all, whether an adult or minor, aside from a mother to her son and a father to his daughter.

Rambam's language here is difficult. If there is a standard rabbinic prohibition, why does he call it "an act of fools" and a "exceedingly distasteful" and a "matter of prohibition"? For this reason, some have suggested that this is not a full-fledged rabbinic prohibition, but more of a stringent caution.²² (We'll discuss touch within the

²⁰ Shach YD 195:20

For certainly even for Rambam there is only a Torah prohibition when he does so by way of desire and sexual affection.

²¹ Rambam's source for this seems to be a Talmudic citation of Eliyahu Ha-navi as describing a married couple who were careful not to touch each other at all during the initial days of *nidda*:

Shabbat 13a-b

It is taught from the House of Eliyahu: The story of a scholar who learned much Mishna and much Scripture, and served Torah scholars a lot, and died at half his days...I [Eliyahu] said to her [the widow of the Torah scholar]: My daughter, during the days that you were in *nidda*, how was he with you? She said to me: Heaven forbid, he did not touch me even with a little finger. In your white [clean] days, how was he with you? He ate with me, and drank with me, and slept with me skin to skin, and he never thought of that other thing [a euphemism for sexual relations]. I said to her: Blessed is God who killed him, for he did not respect the Torah, for the Torah said, "to a woman in the *nidda* of her impurity do not come close."

²² Batei Kehuna 3:12

In order to include a noteworthy case, [Rambam] took up [the case] of *arayot* [in the family] over whom a person's heart doesn't get excited, for their ordinary hugs etc. are not in the manner of desire and sexual pleasure, and how much more so other *arayot*, where an ordinary hug is

family in our next piece.) In any case, it is safe to assume that Rambam would be no less stringent with people who are unrelated and prohibited to each other than with siblings.

A straightforward reading of Rambam indicates that, where the Torah prohibits sexual relations, it also prohibits touch of a sexually affectionate nature. In addition, there is a Rabbinic prohibition on any touch for a married couple during *nidda* and on even non-sexual, but affectionate, hugs and kisses for other couples not married to each other.

Non-Sexual Touch

What of non-sexual forms of touch for couples not married to each other, aside from affectionate hugs and kisses—what we usually call *negia*?

A passage from the Yerushalmi may provide some insight. It describes the ritual waving of the *minchat sota*, a meal offering, during which a *kohen* holds the *sota's* arm:

Yerushalmi Sota 3:1

The *kohen* places his hand under hers and waves [the offering]. And isn't the matter unseemly? He brings a cloth [to place between his hand and the *sota's*]. And doesn't that create a prohibited barrier [between hand and offering]? An elderly *kohen* brings it [the offering]. You can even say a young *kohen*, for the evil inclination is not found for a momentary [matter].

The Yerushalmi suggests three different potential ways to permit touch between the male *kohen* and the female *sota*, who is married to another man and thus prohibited to the *kohen*: placing a cloth between them, ensuring that the *kohen* performing the ritual is elderly, or relying on the fact that the contact is momentary. We can add the mitigating factors that this act was a public ritual in a holy context.

The Yerushalmi expresses concern that the matter would be “unseemly,” which does not necessarily mean prohibited. The stricture referenced here is weak enough to be pushed aside by one of these mitigating factors. Nevertheless, it is possible that this type of touch might violate a full-fledged rabbinic prohibition.

Some halachic authorities maintain that there is a rabbinic prohibition on non-sexual

considered to be in the manner of pleasure and is close to violating a prohibition, and what he wrote there: “and it is a matter of prohibition etc.,” for they do not come close to *erva* at all, etc. It is not a fixed and stringent rabbinic prohibition like other prohibitions...Rather, it is a general caution, as we say to the nazirite, ‘Around, around! Do not come close to the vineyard, and as Magid Mishneh cited there. And know that if it were a stringent prohibition, it would not be applicable to say “this is distasteful,” for someone who transgresses a Torah law is called wicked. But it is clearer as we said, and the stringency of the language is to be stringent in the matter in accordance with the man's deficiency and absence of purity, and derives from the language of Ulla in the Talmud who said even any closeness is prohibited because we say to the nazirite etc. And if it were a full prohibition, Ulla would not have been lenient and permitted to himself [kissing relatives]...and how much more so that it sounds like the view of the Rav [Rambam] is that wherever our sages prohibited something on account of go say to the nazir etc., it is only *le-chatchila* and a light prohibition...

touch, while others maintain that there is not.

I. Prohibition Some halachic authorities maintain that there is a rabbinic prohibition in place. Meiri, for example, seems to read the Talmud's rabbinic injunction on touch as referring to touch **without** sexual intent:

Meiri, *Beit Ha-bechira Avoda Zara* 17a

Even though regarding the prohibition of “coming close” the Torah explained “don’t come close to uncovering nakedness,” which proves that coming close without intent for uncovering nakedness is permitted, in any case, a person must take care regarding any sort of closeness: “‘Go, go,’ we say to the nazirite. ‘Around, around! Do not come close to the vineyard.’”

Much more recently, in the nineteenth century, Rav Avraham of Buchach suggests that there is a rabbinic prohibition on other touch:

Ezer Mi-kodesh EH 20:1

For it might be that the “coming close” to a married woman or to [one of] the *arayot* is prohibited, even not in a desirous manner, at any rate rabbinically...For since according to Rambam anything that is in the manner of desirous affection is prohibited on a Torah level, even [for] someone who does not act out of desirous affection, in any case there is a real concern of stumbling...It is fitting to prohibit closeness since, when his thinking is inclined toward desire, it would be a Torah prohibition, God forbid.

Rav Avraham suggests a rabbinic level prohibition to protect against a situation in which what seems like neutral touch might become something sexual, even for just one of the parties involved, resulting in a Torah-level transgression.

II. No prohibition Alternatively, it's possible that Rambam rules that non-sexual touch between *arayot* who are not married to each other is permissible. There is some other early halachic precedent for this position,²³ and Penei Yehoshua reads Rambam this way:

Responsa Penei Yehoshua 2:44

For Rambam only wrote hugging and kissing, and even this sounds as though it is specifically in a desirous manner...Which clearly means that mere touching is not prohibited by the Torah...And also later regarding rabbinic prohibitions... [Rambam] did not mention mere touch and we only found that touching would be prohibited with [one's wife] in *nidda*...and the reason is that with [one's wife] in *nidda* there is more concern for becoming accustomed to sin than with other *arayot*, since she is his wife...For his inclination overcomes him and we are

²³ Or Zarua ruled that there is no prohibition on the groom inadvertently touching the bride's hand when she is in *nidda*, specifically **because** they are not yet married:

Or Zarua I 341

Nevertheless, where they have already prepared what is needed for the [wedding] feast, and [the bride] became *nidda*. He brings her in [to the *chuppa*] *le-chat'chila* and is *mekadesh* her and she receives the ring from his hand, for since she is not yet *mekudeshet* and they are not permitted to have relations, there is no concern if he touches her hand. And it seems to me that so ruled my teacher Rabbeinu Simcha and acted accordingly himself.

concerned that he will seduce her, and this there is not such concern about this with other *arayot*...And even if we say that with other *arayot* there is also a prohibition of any touch, in any case, it is no worse than *nidda*, which is only rabbinic...and in my humble opinion, this is clear in the words of Rambam...

Penei Yehoshua does not completely reject the possibility of a rabbinic prohibition on any touch for other prohibited couples. Nevertheless, the weight of his remarks indicates that this is not his understanding of Rambam's position. Rav Moshe Feinstein adopts this position with a caveat, permitting only touch that is **recognizably not** sexually affectionate:

Responsa Iggerot Moshe YD II 137

Even though they do not act out of sexual affection, for which reason there is no Torah prohibition, in any case, it sounds as though they are prohibited on a rabbinic level even without sexual affection, if it is not recognizable that [the touch] is not for sexual affection.

For Rav Moshe, non-sexually-affectionate touch can be permitted if its nature is clearly evident. Otherwise, one should err on the side of caution.

To summarize the restrictions on touch for couples prohibited to each other: Touch of a clearly sexual nature is prohibited, either rabbinically or on a Torah level. Depending on how it is categorized, touch of a non-sexual nature may be prohibited, either rabbinically or on a Torah level (as we saw earlier in the name of Rashba and Rabbeinu Yona), or may be permissible. Rambam considers any touch between a married couple during *nidda* a rabbinic prohibition and even cautions against clearly non-sexual affectionate touch between relatives (a topic to which we'll return in our next piece).

Given Rambam's halachic prominence, determinations of what types of touch are permissible or prohibited and on what level would seem to depend largely on how one categorizes them with respect to their sexual potential, or their recognizably asexual nature.

However, halachic discussions of touch between *arayot* when someone's life is at stake add a complicating factor to our discussion.

Life at Stake

Generally speaking, action that is life-saving (*pikuach nefesh*), or potentially life-saving, takes precedence over even Torah-level prohibitions, a principle known as *ya'avur ve-al yehareg* (transgress and do not be killed). For example, it is permissible to perform a *melacha* (prohibited labor) on Shabbat if one's life would otherwise be at risk.

Giluy arayot, prohibited sexual relations (lit., uncovering nakedness), is one of three prohibitions so severe that they remain in place even when saving one's life depends on transgressing them. These are known as cases of *yehareg ve-al ya'avur* (be killed and do not transgress).

Sanhedrin 74a

If they say to a person transgress and you will not be killed, he should transgress and not be killed, except for idolatry, *giluy arayot*, and bloodshed [murder].

A simple reading of this passage indicates that preserving life takes precedence over any restrictions on interactions between men and women aside from sexual relations themselves. A Talmudic narrative, however, calls this reading into question.

Sanhedrin 75a

Rav Yehuda said Rav said: A story of a certain man who cast his eyes upon a certain woman, and his heart filled with lust. And they came and asked the healers, and they said: He has no remedy until she has sexual relations [with him]. The sages said: Let him die, and she should not have relations with him. Could she stand before him nude? Let him die, and she should not stand before him nude. Should she speak with him from behind a fence? Let him die, and she should not speak with him from behind a fence...For one who says she was an unmarried woman, what is all this [resistance to the suggested remedies]?...Rav Acha son of Rav Ika said: That the daughters of Israel not be licentious with *arayot*.

This man, sick with lust, is prohibited from touching, or even speaking with, the female object of his desire who is sexually prohibited to him—even if medical experts agree that these actions could save his life, and even if she is unmarried.

This narrative establishes that a woman is **never** to be treated merely as a sexual object. Early authorities disagree as to whether it also has broader halachic implications for other interactions.

Ran, who follows the view that *lo tikrevu* is a Torah-level prohibition, suggests that it does:

Ran, Avoda Zara 9a (Rif pagination)

For Ravin, who said ‘aside from idolatry and illicit sexual relations and bloodshed,’ in all Torah prohibitions of *giluy arayot* we say *yehareg ve-al ya’avor*, and thus is proved in *Sanhedrin* (75a)...And certainly these matters [prohibited to the lustful man in the story] are not sexual relations themselves, but one transgresses through them ‘do not come close to uncover nakedness,’ which is a prohibition of *giluy arayot*.

According to Ran, we learn from the story of the lustful man that Torah prohibitions of a sexual nature that are not actual *giluy arayot*, including the prohibition of *lo tikrevu*, might nevertheless be considered *yehareg ve-al ya’avor*. That is to say, one must not violate *lo tikrevu* even at the expense of someone’s life.²⁴ These are often called *avizrayhu*, accessories, of *giluy arayot*.

²⁴ Nimukei Yosef *Sanhedrin* 17b

...These three transgressions that we say *yehareg ve-al ya’avor* are not specifically with the transgression itself, but they and all their accessory acts are meant ...Know that accessory acts are also subject to *yehareg [ve-al ya’avor]* as we say regarding ‘let him die and she should not stand before him nude’ (*Sanhedrin* 75b).

Others, notably Radbaz, argue that we should not generalize from the story of the lustful man at all, because he sinfully brought the sickness upon himself.

Responsa of Radbaz 4:2

In our case, where they [a married couple during *nidda*] are in hiding, and there is no one to care for her and if he allows her to die, this is not “ways of pleasantness.” And if you say, *erva* and all its accessories, we say die and do not transgress, from this case of that man whose heart filled with lust, that is not difficult at all. For there [with the lustful man], the sickness came on account of the sin and therefore he should die rather than speak with her from behind a fence. But here [in the case of the couple in hiding] the sickness did not come on account of [sexual] sin...

For those who follow Ran or Radbaz and straightforward readings of Rambam, *yehareg ve'al ya'avur* at most relates to sexual touch. Practical Halacha in life-saving situations follows this position, as stated by Rema (discussing a case of non-sexual touch between a couple during *nidda*):

Rema YD 195:17

...it is permissible [for her husband] to check her pulse if there is no other physician and she needs him and her illness is dangerous...

Non-Sexual Touch and Yehareg Ve-al Ya'avur

Even so, some discussions of *shemirat negi'a* from non-sexual touch raise the issue of *yehareg ve'al ya'avur*. This is typically based either on a more expansive understanding of a Torah prohibition of *lo tikrevu* (like that suggested by Rashba and Rabbeinu Yona) or on a suggestion that Rav Yosef Karo makes in his Beit Yosef. Namely, that, out of concern for *yehareg ve'al ya'avur*, Rambam would prohibit a husband taking his wife's pulse, even in a life-saving situation.

Beit Yosef, YD 195

...According to Rambam, for whom touching an *erva* is prohibited on a Torah level, here, even though it is a case of saving a life, it is possible that it would be prohibited [for the husband to take his wife's pulse], since it is an accessory to *giluy arayot*. And this requires further study.

Shach raises a difficulty with this suggestion. A husband taking his wife's pulse is non-sexual, and thus does not seem to meet Rambam's criteria for transgression of *lo tikrevu*.

Shach YD 195:20

It does not seem correct, for certainly even for Rambam there is only a Torah-level prohibition when he does this in the manner of desire and sexual affection.

One could understand Beit Yosef as suggesting that Rambam would consider even rabbinic-level transgressions *yehareg ve'al ya'avur*, a position held by some other

authorities as well.²⁵

Summary

To summarize, illicit sexual acts are prohibited even if one's life is at stake, based on the principle *yehareg ve-al ya'avur*. A Talmudic narrative raises the possibility that additional behavior with sexual overtones may also be considered *yehareg ve-al ya'avur*. Some halachic authorities reject this possibility, others apply it to *lo tikrevu*, and still others may even apply *yehareg ve-al ya'avur* to related rabbinic prohibitions.

Now that we have our basic definitions straight, we are ready to begin our next piece. There, we analyze some common categories of touch from a halachic perspective, with an emphasis on whether they are potentially of a sexual or pleasurable nature, to see what types of touch might be permissible, and in what contexts.

Further Reading

Debow, Dr Yocheved. *Talking about Intimacy & Sexuality: A Guide for Orthodox Jewish Parents*. Jersey City: OU Press-KTAV, 2012.

Ellinson, Rabbi Elyakim Getsel. *Woman and the Mitzvot: Guide to the Rabbinic Sources Vol. 2, The Modest Way*, trans. Raphael Blumberg. Jerusalem: World Zionist Organization Department for Torah Education and Culture in the Diaspora, 1992.

Haber, Rav Shemuel. *Et Tzenu'im Chochma*, Vol. 2. Karnei Shomron, 2007.

Henkin, Rav Yehuda H. "Is Handshaking a Torah Violation?" *Hakirah* 4, 2007, pp. 115-120. Available here: <https://hakirah.org/Vol%204%20Henkin.pdf>

Weitz, Rav Yair. "Negia ba-Arayot, Matai Asura u-Matai Muteret." Yeshivat Har Bracha, 22 Nissan 5780. Available here: <https://yhb.org.il/shiurim/%d7%a0%d7%92%d7%99%d7%a2%d7%94-%d7%91%d7%a2%d7%a8%d7%99%d7%95%d7%aa-%d7%9e%d7%aa%d7%99-%d7%90%d7%a1%d7%95%d7%a8%d7%94-%d7%95%d7%9e%d7%aa%d7%99-%d7%9e%d7%95%d7%aa%d7%a8%d7%aa/>

²⁵ For example, Rivash:
Responsa of Rivash 255

"Let him die and she should not speak with him behind the fence." Even though there is no Torah level prohibition in this, and how much more so according to the tradition that says she was unmarried. For we do not pursue healing through [violating] these three transgressions or any of their accessories, even in a situation of danger [to life].