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**Deracheha: Women and Mitzvot**

**Physical Intimacy III: Touch in Practice**

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WHAT TOUCH (NEGIA) IS PERMISSIBLE BETWEEN WOMEN AND MEN, AND IN WHAT CONTEXTS?

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**The Contours of Debate**

In the [previous installments](#) of this series, we explored the significance of physical intimacy for our relationships, beginning with a discussion of marital intimacy. We next delved into halachic boundaries that apply when a couple are sexually prohibited to each other, in and out of marriage.

In this piece, we explore the permissibility of touch between people who are sexually prohibited to each other, in contexts that are not sexual or romantic.

To recap: We learned previously that, when a man and woman are prohibited from having sexual relations with each other, they must also refrain from *keriva la-arayot*, coming close to illicit sexual intercourse. Rambam rules that *keriva la-arayot*, which he seems to define narrowly as sexually affectionate touch, is a distinct, Torah-level prohibition:

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] receives Torah lashes, for it is said "not to do of the abominable ordinances, etc." (*Vayikra* 18:30), and it is said "*lo tikrevu le-galot erva*," (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 (*giluy erva*).

Rambam also rules that, during *nidda*, any touch between husband and wife that is not prohibited on a Torah level is prohibited rabbinically. There is debate regarding his views, including how he rules on non-sexually-affectionate touch for men and women who are not married to each other.

In practice, some halachic authorities take a maximalist view. (See our previous piece for the basis for this position.) For an extreme example, Chazon Ish rules that a man giving his hand to a woman is a matter of “*yehareg ve-al ya’avor*” (one should be killed rather than transgress), even if the woman in question is the man’s adoptive mother!<sup>1</sup>

Rav Moshe Shternbuch, *Mo’adim U-zemanim* 4:316

...The son asked me to go in to [see] the Chazon Ish, of blessed memory, to ask his opinion and hear his advice, I entered and recounted the matters as they were, and he immediately replied “giving one’s hand to a woman is *keriva le-arayot*, and among the accessories of *giluy arayot* that are *yehareg ve-al ya’avor*, and there is no permissibility whatsoever with this on the basis of [pursuing] ‘the ways of peace’ or if he is accustomed to her as his mother.”

On the other hand, many halachic authorities embrace a more straightforward reading of Rambam, according to which (1) non-sexually-affectionate touch is prohibited rabbinically between husband and wife, and (2) touch between a man and a woman who are not married to each other is, at most, prohibited rabbinically, and at times fully permitted. Rav Moshe Feinstein, for example, states that touch is permissible between a man and woman not married to each other so long as its non-sexual nature is **clearly recognizable**.

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, unless it is recognizable that [the touch] is not for sexual affection.

Later on,<sup>2</sup> we’ll see that Rav Moshe himself is not confident regarding how to characterize a handshake. The distinction between affectionate touch and sexually-affectionate touch is not well-defined in classical sources. Taking that into account, we can formulate as a guiding principle that recognizably non-affectionate touch is permitted outside of marriage.

For a married couple during *nidda*, however, even non-affectionate touch is prohibited. Moreover, married couples are presumed to have affection for each other, which makes distinctions between different modes of touch even more difficult to establish or maintain.

Halachic literature discusses a range of practical scenarios that entail physical interactions: sitting next to someone on a bus, assisting someone who has fallen,

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<sup>1</sup> A full discussion of the *halachot* of touch in the context of adoption is beyond the scope of this piece. This source is available here:

<https://hebrewbooks.org/pdfpager.aspx?sts=1&req=19961&st=%d7%a7%d7%a8%d7%99%d7%91%d7%94&rnd=0.5115481034849563>

<sup>2</sup> *Iggerot Moshe* EH 4:32, *infra*.

caring for an ill spouse, seeing a physician, shaking hands, or kissing relatives. We cannot cover every possible scenario here, so our study will focus on how these questions are usually decided and key halachic factors that come into play.

### Is “*negia*” all or nothing?

*Many of us struggle with the all-or-nothing spirit in which halachot constraining touch are often presented. Would it be so terrible to greet a male friend with a pat on the arm, or a hug? Or to place a hand on the shoulder of the client who just came in for physiotherapy? What is the issue if the relationship is totally platonic or professional? And what if we are worried about the other person’s feelings?*

*In our last piece, we discussed how Halacha has drawn a firm border around sexual touch, and how that extends to other forms of touch, and can prevent situations from developing in unanticipated directions. Some authorities consider almost any kind of touch to be a Torah violation, while others consider the possibility that non-sexual touch between an unmarried woman and a man would be permissible. In this piece, we look closely at the process of halachic decision-making regarding touch. We’ll see a generally stringent approach, tempered by a framework for creating grounds for leniency in pressing situations.*

*Understanding the intricacies of the halachic discussion can inform our decision making when complex situations arise. Knowledge of the halachic framework can also help those who find observing the halacha fully to be out of reach to make better, more intentional choices. Ruthie Charendoff interviewed young single women about these halachot. She suggests that educating more thoroughly about Jewish law is critical for the sexual health of those who struggle to comply with these halachot, and ultimately, for our communities as a whole.<sup>3</sup>*

Ruthie Charendoff, “In the Modern Orthodox Community, It’s Time to Have the Talk,” HeyAlma.com, February 21, 2021.

“I know that what me and my boyfriend are doing is wrong,” she told me, adding “I just feel super guilty and tortured all the time.” It is at precisely this moment when Eliana would benefit from the counsel of the Jewish community. She wants to know what options are available to her and what the consequences for various sexual actions are according to Jewish law so that she can find a path forward that best meets her sexual, emotional and religious needs. But rather than engaging in this conversation, we tell our young people that touching someone of the opposite sex is forbidden before marriage, end of discussion. We teach our children the intricate details of keeping kosher and Shabbat starting in preschool, but throughout 12-plus years of day school education, we barely skim the surface of the Jewish laws on sexual relations and identity.

*We hope this piece provides a helpful resource for educators seeking to further meaningful, source-based halachic conversation, and—while individual counsel is still best—for those seeking a path forward.*

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<sup>3</sup>Available here: <https://www.heyalma.com/in-the-modern-orthodox-community-its-time-to-have-the-talk/>

## A Framework

Halachic rulings on the permissibility of different types of touch hinge on two central questions:<sup>4</sup>

First, what is the halachic status of this touch? Is it included in the Torah prohibition of *keriva la-arayot* (or considered a rabbinic case of *yehareg ve-al ya'avor*)? Is it rabbinically prohibited? Is it permissible? We've seen that there is often fundamental disagreement on this point.

Second, are there countervailing halachic factors at play that are strong enough to permit touch in a given scenario?

In classic responsa, there are usually three conditions that must be met for a questionable touch to be permitted. (These conditions, in some ways, anticipate the guiding principle articulated by Rav Moshe Feinstein, above.)

(1) **Clear Rabbinic Status** There needs to be clarity that the touch in question is not prohibited by the Torah, that it is non-affectionate, or at least non-sexual.

(2) **Recognized Need** There must be a halachically recognized need for the touch.

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<sup>4</sup>A responsum by Rav Yechezkel Landau, known as Noda Bi-Yehuda, on whether a husband is permitted to physically assist his wife with mikveh immersion when no women are available to attend to her, illustrates how these two questions provide a framework for halachic rulings about touch.

Noda Bi-Yehuda, Mahadura Tinyana, YD 122

...Regarding a man and woman who live in a village among non-Jews and there is no male or female Jew there aside from the couple...When the woman immerses...may the husband can help her to support with his hands dunking her under the water?...Beit Yosef reasoned that, in the opinion of Rambam, touching in and of itself is a Torah prohibition. If so, there is no distinction between whether it [touch] is for the purpose of immersion or not, since the reason for [prohibiting] the touch is not on account of the concern that he might have relations with her, but rather the touch is intrinsically called *keriva*, and it is included in *lo tikrevu*...Indeed Shach YD 195:20 threw a wrench in the words of Beit Yosef, that also according to Rambam the Torah prohibition applies only when one acts in the manner of sexual affection and desire (see there). And widespread practice is already in accordance with his words, and if so, touching his wife during *nidda* when it is not in the manner of affection is only rabbinic[ally prohibited]....We are not concerned about his inclination overcoming him at this moment when she is in the water, for why would he desert what is permitted, when immediately at this moment she becomes permitted when she comes out of the water. Therefore, if is impossible for her to immerse in a different way, but only with her husband helping her to bend her head into the water, it seems in my humble opinion correct to agree with his [the Rabbi who wrote the question] ruling to permit it.

As Noda Bi-Yehuda notes, the stringent view that **any** touch is prohibited on a Torah level separates the prohibition from the intent or experience of the touch. (We could say it detaches "*lo tikrevu*" (don't approach) from "*le-galot erva*" (uncovering nakedness).) Such a view would render other halachic considerations—in this case, facilitating mikveh immersion—irrelevant.

However, Noda Bi-Yehuda disagrees with this position, maintaining that that halachic authorities customarily read Rambam more narrowly. In his view, non-sexually-affectionate touch between a husband and wife during *nidda* is prohibited only rabbinically. Therefore, other halachic considerations may be relevant in making a practical ruling.

In this case, there is a need to fulfill the mitzva of mikveh immersion, and the lack of other Jewish females in the vicinity leaves the couple with no viable alternative. Additionally, the fact that the woman will exit her *nidda* status immediately following immersion makes it very unlikely that sexual urges would overcome the husband in the moments when he helps her immerse. The combination of the pressing situation, the urgency of the mitzva, and confidence that the touch is not prohibited by the Torah suffice for Noda Bi-Yehuda to permit the husband to physically assist his wife with immersion.

(3) **Lack of Alternatives** There must be no readily available alternative to the touch.

Even with all these criteria in place, rulings on whether to permit touch that is prohibited rabbinically will generally seek additional arguments or precedents for permission. A few key factors arise as potential grounds for permission in analyzing touch: intentionality, touch through clothing, professional preoccupation, and physical and psychological health needs. We'll discuss each of these considerations, and then explore the specific cases of cultural etiquette and touch within a family.

What about more casual everyday touch among friends or acquaintances? This type of touch is less likely to meet the criteria outlined above, because it often has less clearly delineated intentions, is one of a few alternatives, and does not address a halachically recognized need. Therefore, this piece only briefly addresses some of the most common questions about touch between men and women, those concerning affectionate touch between friends. Learning about what touch may be permissible can nevertheless provide insight into how to assess and navigate a range of interactions, including these.

### **Intentionality**

How someone intends a touch may be distinct from how they actually experience it. Halachic authorities differ in how they weigh intention for touch versus the experience of touch.

Rivash, for example, seems to view touch as prohibited on a Torah level when it is pleasurable, regardless of intent:

#### Rivash 425

*Keriva* of pleasure, such as hugging and kissing, is prohibited on a Torah level...and so wrote Rambam that one receives lashes for this as a Torah [prohibition].

Meiri,<sup>5</sup> however, applies the Torah prohibition only to touch with sexual intent. In other cases, he applies the Talmud's warning against engaging in touch even without such intent.<sup>6</sup>

#### Meiri Avoda Zara 17a

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<sup>5</sup>Meiri establishes elsewhere that he follows Rambam's ruling, echoing his language:

Meiri, Sanhedrin 66b

One receives lashes even for hugging and kissing anyone who is sexually prohibited in a manner of desire and closeness of the flesh, as it is said: "do not come close to uncover nakedness," do not come close to something that leads to this.

<sup>6</sup>Even when there is no sexual intent, a pleasurable experience may fall under the prohibition of *hirhur* (improper sexual thoughts). For men, there is an added element of concern that fantasizing could lead to spilling of seed.

Sifri Bemidbar, Shelach 115

"And don't stray...after your eyes" (*Bemidbar* 15:39), this is sexual licentiousness...What does "and don't stray after your hearts" come to teach us? It tells us that the eyes follow the heart. *Ketubot* 46a

'Be careful of every bad thing' (*Devarim* 23:10) - From here Rav Pinchas ben Yair said: A person should not fantasize during the day, and come to impurity at night.

Even though regarding the prohibition of *keriva* the Torah specified *lo tikrevu le-galot erva*, which demonstrates that *keriva* without intent for *giluy erva* is permissible, in any case, a person must be cautious with any *keriva* at all: “Go, go,” we say to the nazirite. “Around, around! Do not come close to the vineyard.”

Intention can be difficult to assess. In the twentieth century, Rav Ya’akov Breisch argues that intentionality can serve as a factor for leniency when it is demonstrable. The case is a husband who needs to provide physical care to his wife at home during *nidda*.

Rav Breisch views the prohibition as rabbinic because there is no sexual intent. He adds an additional factor for leniency, for the husband to place a piece of cloth (like a sleeve or glove) over his hands. His deliberately doing so before assisting his wife demonstrates that he does not have in mind to take pleasure in the touch. Not only do the gloves physically disrupt skin-to-skin contact, but they serve as a clear signifier of non-sexual intentionality.

#### “Responsa Chelkat Yaakov YD 99

...The question regarding touch when he [a husband] needs to assist [his wife] in various matters...In our discussion there is also a suggestion that whenever he needs to assist and to touch her, to wear gloves on his hands so that he not actually touch her with his hands, and even though during *nidda* it is prohibited [for a couple to lie in bed together] with him in his clothes and her in her clothes...The fundamental point is that since this is not in the manner of affection, and it is prohibited only on account of becoming accustomed [as a couple] to the matter [of touch during *nidda*], if so, when he deliberately puts on gloves so as not to actually touch her with his hands, the above reasoning [to permit at that time] applies as well.

This argument reminds us of Rav Moshe Feinstein’s rule of thumb that touch that is recognizably non-affectionate in nature can be permitted between a man and woman who are not married to each other. It opens up the possibility that, even with a married couple for whom non-affectionate touch is prohibited, it would be possible to devise recognizably non-affectionate forms of touch in a very pressing situation.

Rav Menashe Klein employs a similar logic to permit helping up someone who has fallen:

#### Responsa Mishneh Halachot 5:141

...It seems that in our case the touch is not primarily for the sake of touch at all but rather to help her get up. In this case everyone would concede that there is no prohibition...Even if he actually holds her hand in order to help her up, and not at all for the sake of holding, it seems that in this case they would concede that it is permissible.

### **Unintentional Touch**

An extreme example of touch without pleasurable or sexual intent is totally unintentional—sometimes unavoidable—touch, as when men and women jostle against each other in a crowded bus or train car.

Some halachic authorities maintain that men and women who are prohibited to each other are prohibited from sitting next to each other on a bus if there is any other option.<sup>7</sup> Rav Moshe Feinstein's ruling regarding this situation is different, consistent with his overall approach permitting touch that is recognizably non-affectionate in nature. Though he, too, prefers that a man take a seat next to another man when one is free, he rules that there is no prohibition involved, even when a man and woman sit beside each other and will inevitably jostle against each other, because this type of unintentional touch is not prohibited:

Responsa Iggerot Moshe EH 2:14

...The halacha is, regarding women other [than one's wife], even regarding married women or women in *nidda* or non-Jewish women, according to all opinions there is no prohibition when [touch] is not in a manner of desire. Therefore, it is not applicable to be concerned about going on the subway and buses at the time of commuting to work, when men and women are pressed and pushed together, even though one cannot avoid touching and pushing against women. For unintentional touch, when it isn't possible for one to avoid it, is not in the manner of desire or affection....It stands to reason that regarding unintentional touching, even with one's wife it is not applicable to be concerned that he will come to take pleasure in this touch...And so, for this reason, there is also no prohibition to sit next to a woman when there is no other place, for this also is not the manner of desire and affection. But if he knows that he will come to improper sexual fantasy, he should avoid going then [during rush hour] if he does not need to ...

Rav Moshe adds that there is room for stringency if someone knows they are liable to have a pleasurable experience, but the key Halacha is based on intention. Concern for unintentional touch should not interfere with day-to-day activities.

## **Clothing**

Rav Breisch suggested that a man wear gloves when caring for his wife during *nidda* because it might demonstrate the non-sexual intent of the touch. He also mentions that a garment disrupts skin-to-skin contact, which reduces pleasure. Indeed, part of a passage from the Talmud Yerushalmi (cited more fully [here](#)), suggests that an interpolating garment may have been one factor in permitting a *kohen* to hold a married woman's arm when she brought the meal offering of the *sota*:

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].

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<sup>7</sup> Responsa Shevet Ha-Levi 4:136

...In the matter of God-fearing men who need to travel by bus....For it is certainly prohibited to sit next to her [a woman] when it is possible to stand, for their clothing will certainly touch and touching the body through clothing can develop from this...Of course, sometimes [a man] finds himself in a situation where he must sit next to her [a woman] with no choice in the matter, and then he must make every effort not to touch her through her clothing, and one should not go on at length about what is clear cut...

So, too, if we look again at Rambam's phrasing of the Torah prohibition, he seems to single out direct skin-to-skin contact, "closeness of the flesh".<sup>8</sup>

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] receives Torah lashes...

Many halachic authorities, including Maharsham, infer that touch through a garment is a rabbinic prohibition:

Maharsham 4:149

...Since it is uncertain whether the initial hug was of her body [directly] or if it was only through her clothing, even Rambam would concede, since specifically with skin-to-skin contact he maintained that it is [prohibited] by Torah law; if so, this is an uncertainty in a matter of rabbinic law and warrants leniency...

Others, however, argue that if the touch is sexually pleasurable, then intervening clothing might not affect a Torah prohibition:

Responsa Beit She'arim OC 294

For the fact that is clear to him [the questioner, in respectful third person] that if he does not touch her actual skin it is only a rabbinic prohibition, I do not know whence he gets this...When he does this by way of desire and affection even if he does not touch her flesh, but only [when] her clothing separates, one can well say that there is a Torah prohibition.

Even according to this view, cloth interfering with direct contact can serve as a contributing factor for halachic leniency regarding touch.

## **Professional Preoccupation**

The Talmud suggests that in some cases, preoccupation with doing one's job can allow for behavior that would otherwise be prohibited. For example, animal husbandry can take place without halachic concern about watching animals mate.

Bava Metzia 91a

Rav Yehuda said: It is permitted to cause [a male animal] to penetrate [a female] of the same species like a wand in a tube, and there is not even any breach [of *tzeniut*]. What is the reason? He is preoccupied with his work.

In the fourteenth century, Rav Ashturi Ha-parchi, a *talmid chacham* and a practicing physician, argued that this principle provides a basis for a male Jewish physician in a case of need to treat a woman with a *choli she-ein bo sakana* (a non-life-threatening

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<sup>8</sup> It's possible that Rambam is inspired by this baraita, which can be read as rabbinically prohibiting a couple lying down together while clothed, and thus implying that only doing so unclothed would be prohibited on a Torah level:

Shabbat 13a

Come and learn: ... "And he doesn't defile the wife of his fellow and does not approach a woman in *nidda*" (Yechezkel 18:6). It juxtaposes a woman in *nidda* to the wife of his fellow. Just as with the wife of his fellow [lying beside each other] he in his clothing and her in her clothing is prohibited, so, too, with his wife in *nidda*, he in his clothing and her in her clothing is prohibited.



illness serious enough to impede her functioning),<sup>9</sup> and that this ruling would also apply to a man treating his wife during *nidda*:

#### Kaftor Va-ferach, No'ach

...For a professional is preoccupied with his work. For this reason, they permitted a Jewish physician to check the pulse of a woman, even if she is married...Or his wife in *nidda* if she is ill with a *choli she-ein bo sakana* and there is no doctor there in person except for him, or that there is someone else but he [the husband] is more expert, it is permissible. For touch from his hand to her hand is not [prohibited] from the Torah, for the Torah only prohibited *keriva* that leads to *giluy erva*...And they [the sages] already permitted rabbinic prohibitions for a *choleh she-ein bo sakana*...

As we'll see shortly, medical health is itself a major halachic consideration,<sup>10</sup> so this argument can be readily extended to other health professionals, like nurses, physiotherapists, and occupational therapists, who are engaged in medically significant touch.

#### Responsa Tzitz Eliezer 12:45

Any matter that a person lacks in order to be complete like other people is called being ill, and it does not matter if this is expressed by way of pain in the head, arms, or legs, and the like, or in a form of defect in one of his 248 limbs that prevents it from fulfilling its intended function, and thus it is upon us [Rabbis] to approach the problem as [we would] for a *choleh she-ein bo sakana*.

Without other halachic factors for leniency, it is more difficult to extend professional preoccupation as a halachic factor to other professionals who might have cause to touch clients, like sports coaches or photographers, where the need for touch is less evident and health is not a primary consideration.<sup>11</sup>

### **Healthcare Needs**

In Talmudic times, a bloodletter was akin to a physician. The Talmud describes a man called Abba the bloodletter, who was praised in Heaven for his good deeds, which included being careful to uncover no more of a woman's body than necessary to provide treatment:

#### Ta'anit 21b

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<sup>9</sup> See our discussion of levels of sickness [here](#) and [here](#).

<sup>10</sup> Rambam, Laws of Murder and Preserving Life 11:4

So any stumbling block that entails danger to life, it is a positive mitzva to remove it and to keep oneself from it very well, for it is said "take care and watch yourself" (*Devarim* 4:9)...

<sup>11</sup> Medieval Ashkenazi authorities permitted female servants to physically attend to a man's needs when the tone was clearly servile. Servility might be an analogue to professional preoccupation that could extend to other realms.

Mordechai Ketubot 182

...Rav Shemuel son of Rav Baruch says even though we don't get physical service from a woman, servile assistance is permissible, as Avigayil said "[for your handmaid is like a maidservant] to wash the feet of my lord's servants" (*Shemuel I* 25:41), and the fact that it sounds from the Yerushalmi that it is prohibited concerns matters of seclusion in a secluded place, but in a bath house, since many people are found there, it is permissible...

Greetings from the Heavenly Yeshiva would come to Abba the bloodletter every day...What were the deeds of Abba the bloodletter? When he would do something [Rashi: when he would let people's blood] he would place men and women separately, and he had a garment with a [bloodletting] horn that had a slit at the shoulder [through which he would perform the procedure]. When a woman would come to him, he would have her wear it, in order that he not look at her [exposed body]...

We can infer from this passage that medical care entailing touch between a man and woman who are not married to each other was taken for granted. In fact, male physicians attending to women was so commonplace that Shach cites it in support of his argument that Rambam cannot possibly have meant to prohibit all forms of touch on a Torah level:"

#### Shach YD 195:20

For certainly, even for Rambam, there is only a Torah prohibition when he acts thus in a way of desire and sexual affection, as is clarified above (157:10), which is not the case here. And so it is the widespread custom for Jewish physicians to take the pulse of a woman, even a married woman or a non-Jew, even though there are other, non-Jewish, physicians, and similarly to do other types of palpations according to medical protocol; rather the matter is simple as I wrote.

At the end of his comments about professional preoccupation, Rav Ha-parchi introduces an additional argument for leniency with touch in a medical context. There is halachic precedent for the health needs of a *choleh she-ein bo sakana*—someone with an illness that impedes functioning but is not life-threatening—pushing aside rabbinic prohibitions in the laws of Shabbat. (In practice, life-threatening situation also pushes aside Torah-level Shabbat prohibitions.) Rashba and Radbaz disagree on whether physical contact is analogous to Shabbat, at least with respect to a husband and wife during *nidda*. Rashba maintains that not all rabbinic laws are the same, and we cannot assume that health needs can push aside rabbinic prohibitions of touch:

#### Rashba 127 (formerly ascribed to Ramban)

But according to one who prohibits any *keriva* on account of "go go we say to the nazirite," a rabbinic prohibition is still a prohibition. For since it is a *choli she-ein bo sakana*, we do not permit [pushing aside] a rabbinic prohibition. For not all rabbinic prohibitions are the same...

Radbaz, however, maintains that health needs can push away rabbinic prohibitions on touch, though he still prefers that spouses, who are assumed to have affection for each other, not care for each other during *nidda* if someone else is available:

#### Responsa of Radbaz 4:2

Question: Reuven and his wife who were in hiding, and there was no one there to assist them, and she became sick while she was in *nidda*, if her husband can touch her, as to help her to lie down and get up, and to perform her needs, and if he is a physician if he can take her pulse...[Response:] And even with a *choli she-ein bo sakana*, I say that it is permissible since it is only possible through him...it is a far-fetched concern that he will have relations with her...And further that this is not "*darchei no'am*" [ways of pleasantness] for even if the illness is

not life-threatening now, there is a real possibility that through not having someone to assist her with lying down and getting up, her illness will become life-threatening...And there is no rationale to distinguish between [rabbinic] Shabbat prohibitions and other rabbinic prohibitions....But if she does not have a life-threatening illness, if there are other doctors there who are expert like her husband, it is fitting to rely on Rashba to be stringent. But if there are not experts there like her husband, it is permissible.

According to this ruling, spouses can care for each other when necessary during *nidda*. The advantages of more expert medical care can also override concerns about touch, even when the life of the person who is ill is not at risk.

Shulchan Aruch rules accordingly regarding a woman taking care of her husband, though he is more cautious in the case of a husband caring for his wife, out of concern for his sexual drive being unaffected by illness. Rema, however, rules that this concern is pushed aside in cases of great need.<sup>12</sup>

Rav Moshe Feinstein points out that medical care clearly falls within the parameters of his guideline, since the purpose of the touch is recognizably for healing:

Responsa Iggerot Moshe YD 2:137

...Doctor's palpations—it is recognizable that it is not sexually affectionate but for healing.

In practice, many halachic authorities express a preference for a woman to see a female doctor and man to see a male doctor, when this will have no negative affect on medical care (including financial and logistical considerations).<sup>13</sup>

Women are often more comfortable with female healthcare providers, especially when there are concerns of modesty. This was the impetus behind the founding of Ezras

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<sup>12</sup> The source of this distinction is Terumat Ha-deshen:

Terumat Ha-deshen 252

Question: A woman who is sick and her husband wants to touch her to assist her [during *nidda*], as to help her get up and to lie down and to support her, is it permissible or prohibited? Response: It seems that he is prohibited to touch even her little finger....For one can say specifically when he is sick and she is well it is permissible, since he is sick, there is no concern of becoming accustomed to transgression for his inclination does not overcome him since his strength is weakened...but when she is sick and he is healthy, one should be concerned for becoming accustomed to transgression, lest his inclination overcome him and he persuade her...

Shulchan Aruch YD 195:15-16

If [a man] is sick and there is no one to assist him except [his wife], she is permitted to assist him [during *nidda*]...A woman who is sick and is in *nidda*, it is prohibited for her husband to touch her in order to assist her, as to help her get up and lie down and to support her. Rema: And there are those who say that if she doesn't have someone [else] to assist her, he is permitted in everything, and so we practice if she needs it a great deal.

<sup>13</sup> Taharat Ha-bayit II 12:46 Mishmeret Ha-tahara, p. 222

But it's clear that this is specifically in when there is pain and illness, and in a place where there is no female physician expert in the matter...but when it is not so very necessary...one should not be lenient with this at all...

Nashim, an all-female volunteer emergency medical service in Brooklyn, NY. In the words of founder Rachel “Ruchie” Freier:<sup>14</sup>

Mike Rubin, “Ezras Nashim: EMS by women, for women,” EMS1, July 24, 2018.

“Lots of us feel vulnerable around male responders...We may be glad our lives were saved or our babies delivered, but the trauma and humiliation of physical exams by men can be profound...If modesty is preserved while receiving equally effective care from women, why not?”

Still, it is widely accepted for men and women to see male or female doctors as needed.

## **Psychological Health & Emotional Needs**

In some cases, halachic authorities compare mental health struggles to physical illness. So, for example, Rav Ya’akov Breisch confidently applies the halachic category of a person with a medical condition that impairs functioning (*choleh she-ein bo sakana*) to someone whose functioning is impaired by “nervous illness,” and suggests that some cases of mental illness would be considered life threatening:

Responsa Chelkat Ya’akov OC 64

...With melancholia and depression, which is true sickness...When it is on a high level, it is possible that he is also considered a person with a life-threatening illness [*choleh she-yesh bo sakana*]...Certainly a person with nervous illness is [at least] in the category of a *choleh she-ein bo sakana* [impaired functioning], and scripture speaks of it in a full verse, “He who heals the broken of heart and bandages up their sadness.” Therefore, it requires healing...

It is unusual for physical contact to be necessary as part of psychological treatment, so the main questions that arise relate to touch to support mental health in specific contexts, such as childbirth and for a husband and wife during *nidda*.

## **During Childbirth**

A key talmudic precedent establishing the halachic significance of emotional and mental health is the case of childbirth.

A woman becomes *nidda* at some point during labor, and touch between husband and wife is prohibited from that point. (Learn more here. [LINK](#)) At the same time, Halacha clearly considers a woman during labor and childbirth to be a *chola she-yesh bah sakana*, someone in life-threatening danger. If a birthing woman needs direct physical assistance from her husband, as with an emergency home birth, physical contact is permitted.

The Talmud adds that a woman’s mental state, *yishuv ha-da’at*, is sufficiently important to a safe delivery that it, too, provides grounds for pushing aside prohibitions,

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<sup>14</sup> Available here: <https://www.ems1.com/volunteer-rural-ems/articles/ezras-nashim-ems-by-women-for-women-hyQsjbD4d827jWw/>

as a matter of *piku'ach nefesh*. So, for example, it is permissible to light a candle for a blind woman in childbirth on Shabbat, because it will put her mind at ease to know that others can see her in order to more easily attend to her:

#### Shabbat 128b

Master said: If she [a woman in childbirth on Shabbat] is in need of a candle, her friend can kindle the candle for her. It is simple. No, [this statement] is needed, in [the case of a woman in childbirth who is] blind. What would you have said? Since she doesn't see, it is prohibited. It teaches us that it sets her mind at ease. She thinks, if there is anything [of concern], her friend will see it and do it for me.

The unresolved fears of a woman in labor can place her life at risk.<sup>15</sup>

Once a woman in labor becomes *nidda*, the question arises whether her husband can provide her with supportive touch to assist her emotionally. On the one hand, this touch between husband and wife would be affectionate. On the other, sexual relations are clearly out of the question, and the wife's lack of peace of mind might endanger her. Rav Yitzchak Weiss cites Shulchan Aruch's stringent position on touch in general when the wife is sick, to permit touch only when a woman in childbirth is so distressed that the lack of touch clearly creates a risk for her, and only through gloves.

#### Responsa Minchat Yitzchak 5:27

In the matter of the prohibition of touching his wife during childbirth even with the interpolation of clothing...[Touching any woman with whom relations would be prohibited] on account of affection, even if it is not on account of sexual affection, would be prohibited according to all opinions, even through the interpolation of a cloth, and how much more so with his wife during *nidda*, for they [our sages] made a number of distancing rules because he is uninhibited with her, as was explained. And it seems that it is prohibited even with one who is sick, if there is no danger...for otherwise, it would contradict the position of Bet Yosef [who was stringent even with a husband taking his wife's pulse during *nidda*]...For even in our case there is no permission with gloves, just in a situation of danger it is better with gloves. And I already wrote at length in my book about whether due to concern that a sick person might experience an acute psychiatric crisis, it is considered life-threatening, see there, but all of this [leniency on basis of risk] is if only if there is real cause for concern for an acute psychiatric crisis.

According to this view, the prohibition of touch between husband and wife is too grave to allow for leniency, and others can provide the needed emotionally supportive touch. Others, however, notably Rav Shlomo Daichovsky, are more lenient when a woman's *yishuv hada'at* is highly compromised and she is convinced that only her husband's touch can calm her:

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<sup>15</sup> Tosafot explain more clearly what is at stake:

Tosafot Shabbat 128b, s.v. *Ka mashma lan*

...The woman in childbirth can be endangered through fear, that she would fear that those [around her] are not doing well what she needs.

Rav Shlomo Daichovsky, "Responsa on Calming the Woman in Childbirth," Assia no. 75-76 (Shevat 5765): 118, 120, 121.

For if the woman who is about to give birth strongly insists that her husband hold her hand at the time of childbirth—an issue for the laws of *nidda*—and it is apparent that she needs it for the sake of her emotional calming down, then there is room to permit it to him and to her...when there is true anxiety and a concern for her well-being. A wise suggestion in this matter...is for the husband to wear a thin medical glove on his hand, in this way, the halachic issue is much less grave...for these words apply only when there exists a true problem that cannot be resolved in another way...There is no reason for us not to see calming the woman in childbirth as a medical need in every respect, and as they permitted to kindle a light for the blind woman in childbirth in order that her mind be put at ease...He [another rabbi] further commented that there is a concern that this permission would spread, and women will insist on this from the husbands even when there is no true medical need. I think that the proper way [to address this] is education and pre-marital education...In a case in which, in accordance with the doctor's view, the woman in childbirth is in a state of hysteria, or there is a concern for her state of mind during the process of childbirth, and her husband is the only one who can help her, then it is his obligation not to be stringent with himself...

Note that Rav Daichovsky does something we have not previously seen: He addresses the woman as a halachic subject who requires permission to receive the touch as much as her husband requires permission to give it. He shows confidence in the power of education to prevent publicizing halachic permission in a specific case from leading to unwarranted leniencies. In recent years, there has indeed been discussion about whether this ruling could be broadened to less acute situations.<sup>16</sup>

Rav Daichovsky also emphasizes that personal stringencies in the area of touch **cannot** trump another person's medical need

The case of childbirth deals with a person who is characterized medically as being at risk, and whose emotional distress could bring about very direct medical consequences. This lays the groundwork for taking mental health needs into account in halachic decision-making, in situations where there is no clear danger to physical health.

## **In Nidda**

Many couples experience the [physical distancing of nidda](#) as a challenge. Those struggling with mental illness may have a more extreme experience. For example, can a person with severe depression receive a hug from a spouse during *nidda*?

When a spouse is suicidal, then this question perhaps becomes simpler, because suicidality, like childbirth, is clearly in the category of life-threatening danger. What of less extreme manifestations of mental illness?

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<sup>16</sup> See [here](#) and [here](#).

In his recent work on mental health and Halacha, Rav Yonatan Rosensweig canvassed a range of contemporary halachic authorities on this issue:

Rav Yonatan Rosensweig, and Dr. Shmuel Harris, *Nafshi Be-she'elati*, Laws of Family and *Tzeniut*, Touching During *Nidda*, 7

A married man or woman, where one of them suffers from major depressive disorder, and as a result experiences significant difficulties in functioning in some of the centrally important areas of their life (and how much more so if in all of them), to the point where their status is like a *choleh she-ein bo sakana*, and they need support from their spouse for the sake of their healing, including supportive touch—there are those who prohibited the matter during *nidda*, but many halachic authorities permitted the spouse to provide this support, and if it possible to suffice with holding hands or placing a hand on the shoulder—it is preferable to act thus, but in a case of need it is possible even to permit a hug. Most of the halachic authorities who permitted the above permitted it specifically through clothing without direct skin-to-skin contact. [Note 20...From Rav Asher Weiss we heard to permit only touch through clothing...And so Rav Tzvi (Hershel) Shachter agreed to permit because through clothing...there is no *yehareg ve-al ya'avor*, (and he added that in such cases there may be a possibility of danger)...From Rav Nahum Eliezer Rabinovitch we heard that we should define this touch as supportive and healing touch...and the touch through the clothes is merely to make that recognizable...And Rav Baruch Gigi wrote 'One can permit the most lenient act first: warm words, [then, if necessary] touch through clothing, [then] without intervening clothing as long as it not be intimate body parts, a light touch with the hand and at most a light hug, with maximum caution...'] This is also correct regarding other [mental health] situations that significantly affect functioning as described above.

Though there is some variation, the consensus is that touch can be permissible, preferably through clothing, when the mental illness is severe. Rav Rabinovitch took care to say that he views the clothing as establishing intentionality, not as inherently needed to provide permission.

## Emotional Distress

What of situations of emotional distress when there is no background of mental illness? This can be ongoing, as when an older foster child seeks physical nurturing from caregivers, or more acute, as when a specific incident raises distress levels to an extreme. When key caregivers are not married to those needing care, the questions raise special sensitivities.

In recent years, Rav Ya'akov Ariel has ruled leniently regarding foster children.<sup>17</sup> Though the touch is clearly affectionate in intent, it is also both non-sexual and desperately needed for the child's mental health:

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<sup>17</sup> Available here: <https://www.toraland.org.il/%D7%A7%D7%98%D7%9C%D7%95%D7%92-%D7%A1%D7%A4%D7%A8%D7%99-%D7%94%D7%A8%D7%91/%D7%91%D7%90%D7%94%D7%9C%D7%94-%D7%A9%D7%9C-%D7%AA%D7%95%D7%A8%D7%94-%D7%94/%D7%9E%D7%90%D7%9E%D7%A8%D7%99%D7%9D/%D7%A1%D7%99%D7%9E%D7%9F-%D7%97-%D7%98%D7%99%D7%A4%D7%95%D7%9C->



### Rav Yaakov Ariel, *Be-Ohalah Shel Torah* 5:8, Care for Uprooted Children

...The mothers and young women sometimes see a need to hug the uprooted children and to shower them with affection and love...in the case of boys ages nine to fifteen. Is the matter permissible from the perspective of the boundaries of *tzeniut*? Response: The direct purpose of touching a child or young person is to create closeness with them, and it is entirely for the sake of support and demonstrating affection. But we come to permit the touch since it involves no desire at all, but there also [a principle that] “there is no guardian in matters of sexual transgression.” Therefore, it seems that one should resort to touch only in a great need. In our case, the need for showing affection through caressing touch and the like is very great, and we have already written that the situation of this youth is no better than that of a *choleh she-ein bo sakana*....One should restrict the caregiving by young single women to young ages only...It is only supportive and encouraging touch through clothing. In any case, they should avoid hugs and kisses...

This responsum, too, prefers touch other than hugs and kisses and touch through clothing, and suggests that single women should be more restricted than married women in applying this ruling, since there may be a greater likelihood of impropriety.

### **Spousal Support**

Even more recently, in the wake of October 7<sup>th</sup>, questions reemerged about farewell hugs between a husband and wife in *nidda* during wartime, when there is real concern that the husband might not return. Such hugs are not typically sexual, but the couple's bond is. Not long thereafter, Nishmat's Yoatzot Halacha published a response on this issue that reflected a difference of opinion among its rabbis:<sup>18</sup>

### Supportive touch During Wartime, Q&A. yoatzot.org, Fall, 2023

**Question:** Hello, There's a possibility my husband will have a reprieve (24 hours) from *miluim* [reserve duty] either during my “period”...or more likely the 7 clean days. Is there any room for leniency regarding the *harchakot* because of the war? For my mental health and feeling of security, I cannot imagine finally having him home and not being able to hug and hold him. I have faith that he and I will be able to make sure that we do not have sexual relations. **Answer:** ....As you point out, a hug can contribute to a sense of security and stability. On the other hand, for some couples, maintaining mutual commitment to standard halachic practice can provide its own sense of security and purpose, and finding the strength to refrain from contact can feel empowering. It is hard for a couple reuniting in this intense situation to know exactly how they will feel and manage in the moment, to be certain that there would be no element of sexual affection in any contact, or to be sure of the consequences of a given course of action. In cases of serious mental health issues, there is sometimes room for spouses to have non-sexually affectionate physical contact through clothing (i.e., no skin-to-skin contact). There is currently controversy over whether this type of contact could similarly be permitted in wartime, even when there are no acute

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<sup>18</sup> <https://www.yoatzot.org/mikveh/wartime/>



mental health concerns, and Nishmat's rabbis have a range of perspectives on the issue. Rav Yaakov Warhaftig, a main Nishmat Posek in Israel, would permit such contact through clothing for soldiers on short leave who will be returning to dangerous positions on the front. He restricts this contact to outside the bedroom and to situations where the couple are not alone together. Other Nishmat Rabbis in Israel and the US...would not generally permit contact through clothing, even with these conditions... Even the more lenient position of Rav Warhaftig, a veteran Rosh Kollel and synagogue rabbi, stipulates that the touch be through clothing and in public, to help prevent a sexual tone from developing.

These responses relate to extreme situations and, even so, present major constraints on how touch might be permissible. Rav Ariel's responsum calls for extra stringency with touch involving unmarried women, while this last case relates to a married couple during *nidda*. The strong implication of these responsa, is that, in less extreme scenarios, emotionally supportive touch would be prohibited between a man and a woman in most types of friendly or romantic relationships.

Returning to the framework we presented at the beginning of this piece, touch in such scenarios usually does not meet Rav Moshe's rule of thumb—it is not easily recognizable as not being sexually affectionate. Intentions themselves may be somewhat opaque. The rabbinic nature of emotionally supportive touch might be harder to establish because the borders between emotional affection and sexual affection are slippery. A halachically recognized need and lack of alternatives would also be more challenging to establish.

## **Cultural Etiquette**

Can observing cultural etiquette present grounds to permit touch? The Talmud teaches that a man may not count out money into a woman's hand in order to create an opportunity to gaze at her. This strongly implies that handing her money would otherwise be fully permissible:

### Berachot 61a

Our rabbis taught in a baraita: One who counts coins for a woman from his hand to her hand in order to gaze at her, even if he has in hand Torah and good deeds like Moshe Rabbeinu, shall not be acquitted of the verdict of hell, for it is said "Hand to hand, the bad shall not be acquitted" (*Mishlei* 11:21)

This passage is often cited in discussions of cultural rituals—for sealing a business deal, greeting, or showing respect—that entail hand-to-hand contact. Are such rituals akin to handing money, and dependent on intention, or are they treated more stringently?

At the beginning of this piece, we saw that Chazon Ish rejected the idea of any context making a difference to the permissibility of a man and woman touching hands, but in much stronger terms, as *yehareg ve-al ya'avor*, so he would prohibit cultural rituals involving touch. A more measured disapproval comes from Sefer Chasidim, addressing Jews and non-Jews grasping hands in a business context, presumably because it was a norm in gentile society.

### Sefer Chasidim 1090

A Jewish man should not grasp the hand of a non-Jewish woman, nor a non-Jewish woman the hand of a Jewish man, nor a Jewish woman the hand of a non-Jewish man, nor a non-Jewish man the hand of a Jewish woman, even if the hand is wrapped with a cloth, as a fence against uncovering nakedness.

Sefer Chasidim seems to suggest that this is a precaution, and not necessarily a formal prohibition. Sedei Chemed cites Sefer Chasidim to explain why he neither allows for handshaking nor for a woman to kiss his hand, a common Mizrachi gesture of respect for a Chacham. Along the way, in the excerpt below, he suggests that handshaking is the more problematic of the two actions, because it is more intimate than a kiss. And that both surely would entail something stronger than the desire to ogle that is rejected by the Talmud:

### Sedei Chemed, Chatan ve-kalla ve-chuppa

A bad and bitter custom continues to spread, and they learn from their [non-Jews'] deeds, that when a person meets his fellow, he offers his hand in greeting, they grasp hands, by way of affection and friendliness and do so with the wives of their friends... We are particular regarding kissing the hand, as the matters have been stated, how much more so with grasping hands by way of affection and friendliness, and a flame burns within them, may God save us... And the teaching of our sages is already known, "hand to hand will not be acquitted" of the verdict of hell (*Mishlei* 11:21, 16:5)

Contrast his view with that of Rav Chayyim Berlin, who argues that a handshake is merely a matter of courtesy, so that the Talmudic precedent supports its permissibility, especially when that contributes to making Torah and its adherents seem respectable:

### Rav Chayyim Berlin, Responsa *Nishmat Chayyim*, 135:6

...To give a hand to a woman, this is the language of the Talmud is in *Berachot*. "One who counts out coins for a woman from his hand to her hand in order to gaze at her." It is explained that if he does not intend anything by it, and how much more so that he does not do it in order to gaze at her, in accordance with his good character, that all of his deeds are for the sake of heaven, then there is no prohibition to count coins from his hand to hers. Certainly, if he can be careful [not to do] this, how good that is. But if it is impossible for him to extricate himself from this, as when a non-Jewish woman first extended her hand to him, and he has no intention of any improper sexual thought, God forbid, one should not be stringent with this. And "Its ways are ways of pleasantness" and "Love the Lord your God,"—the sages said: let the name of Heaven be beloved through you (*Yoma* 86a), and it should not be said about those who fear God that they are crazy and lack manners.

For his part, Rav Moshe Feinstein is uncertain as to whether a handshake is perforce an affectionate and pleasurable act, or whether it can be treated as something more pro forma. Using his regular rule of thumb, cultural etiquette might affect whether a handshake is clearly recognizable as non-affectionate. In practice, some handshakes are warmer greetings, while others are more formal.

Out of doubt, he stakes out a stringent-leaning middle position. He prohibits extending a hand in greeting out of concern for affection and pleasure. At the same time, he recognizes the possibility that someone might be able to return a handshake in a manner that is neither affectionate nor pleasurable, so that it could be permissible.

#### Responsa Iggerot Moshe EH 4:32

In the matter of extending a hand to a woman as in the ways of those who greet upon meeting, it is certainly clear that it is prohibited as I wrote in OC 1:113, for he should be concerned [lest he do so in a manner] of affection and pleasure. But I wrote in EH 1 at the end of 56 to one who also saw God-fearing people who are lenient that one can judge favorably, that in giving [a hand] when she extends one to them, they rely on themselves that they will not act in the manner of affection and desire, and I also wrote there that in practice it is difficult to rely on this.

As usual, the fundamental questions, if we recognize a standard handshake as a matter of rabbinic law, are whether it is necessary, whether there is an alternative, and whether there is a mitigating halachic factor. In this case, the central point of disagreement with returning a handshake is whether a friendly social gesture can be treated as a matter of etiquette and interpersonal civility,<sup>19</sup> or should be suspected as a potentially erotically charged interaction, which might be a matter of Torah law.

The discussion of handshakes seems to leave more room for social conventions of touch when handshakes are clearly formal, like shaking on a deal. Some other forms of touch, like a fist bump or a pat on the shoulder, might be treated comparably, where they are the norm. However, touch that typically reflects more affection, such as social hugs of greeting or parting, would be more difficult to justify halachically. First, because they entail more touch. Second, because they are a less formal type of interaction. Where Rav Moshe might have applied his rule of thumb to returning a collegial handshake, a hug in greeting would be less recognizably a formal social convention, and in fact generally expresses a different level of connection.

#### **Within the Family**

The Torah's list of prohibited sexual relationships includes many close familial relationships. The Talmud, however, teaches us that God acceded to prayer by the Men of the Great Assembly to abolish desire for incestuous contact:

#### Yoma 69b

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<sup>19</sup> Rav Yehuda Henkin, for example, considers a "social handshake" to be a recognizable category of touch that is not prohibited on a Torah level, and is not prohibited at all when a hand is extended and embarrassment is at stake.

Rav Yehuda Henkin, "Is Handshaking a Torah Violation," *Hakira* 20:4 (Winter 2007): 117-19.

Rambam famously applied a Torah prohibition not only to sexual relations but also to pre- and proto-sexual behavior such as kissing and hugging... This proviso precludes social handshakes from being subsumed under the *lo ta'aseh*, since a handshake is not a preliminary to relations. This is so even if the handshake includes an element of affection or pleasure; affection alone without the feature of desire is not a Torah violation.... In the community, nevertheless, handshaking between men and women remains controversial. Some rabbis will shake a woman's hand when extended to them, while others demur even at the cost of embarrassing the woman.... In my opinion, those who wish to be stringent... may do so—but not claim that such is basic Halacha.

They said: Since it is a time of favor, let's pray for [the destruction] of the inclination for [sexual] sin....And that achieved the benefit that a person does not desire [sexually] his close relatives.

Unfortunately, this does not mean that nothing of this sort ever happens within a family, only that this prayer made it a clearly marginal phenomenon. Even though close family members are sexually prohibited to each other, their presumed lack of desire for each other creates a basis for a more permissive approach to touch within the family, and this is reflected in a few Talmudic passages.

For example, Rav Acha bar Abba would set his granddaughter on his knee, explaining that this was permissible because his intentions were only for the sake of heaven, i.e. innocent, not sexual:

Kiddushin 81b-82a

Rav Acha bar Abba traveled to the home of Rav Chisda his son-in-law. He took his daughter's daughter and sat her on his knees...For Shemuel said: everything is for the sake of heaven.

So, too, a mishna states that a male is permitted to sleep unclothed with his young daughter and, when he is young, with his mother. (This scenario reflects the cultural norms of the time and would generally not be appropriate in our day past infancy. The general principle, however, remains relevant.)

Mishna Kiddushin 4:12

...A person can be secluded with his mother and with his daughter and sleep with them unclothed, and if they have grown, this one sleeps in her clothing and this one sleeps in his clothing.

This Talmudic passage is the basis for broader permission for contact between parents, and children throughout their lives:

Shulchan Aruch EH 21:7

...It is permissible for a father to hug his daughter and to kiss her and to sleep with her unclothed, and so the mother with her son, as long as they are little. When they have grown, and the son is big and the daughter is big to the point that her "breasts have formed and her hair has grown" (cf. *Yechezkel* 16:7), he sleeps in his clothing and she sleeps in her clothing...And even though they are little, once they reach embarrassment from them [unclothed], they only sleep with them clothed.

Perisha deduces out that it is only sleeping unclothed that becomes prohibited when the children grow, and not other physical contact:

Perisha EH 21

...The father is permitted to hug and kiss his daughter. It seems that even when she is grown it is permissible..." as they are little" only applies to sleeping with them unclothed...

In practice, this halacha is also extended to all direct descendants:

### Bach EH 21

For at the end of *Kiddushin* it says clearly in the case of Rav Acha bar Abba that he took his daughter's daughter and sat her on his knees and it seems certainly...even his daughter's daughter and all of his descendants are permissible [to touch] as it [the Talmud] concludes, for Shemuel said all is for the sake of heaven.

What of siblings or aunts and uncles? Here, a Talmudic discussion of the behavior of the sage Ulla comes into play:

### Shabbat 13a

Ulla when he would come from the *beit midrash* would kiss his sisters on their chests, and some say on their hands. And his [action] conflicts with his [statement elsewhere], for Ulla said: Any closeness at all is prohibited on account of "Go, Go, they say to the nazirite, go around go around, do not approach the vineyard." This passage does not have a clear halachic conclusion. Does Ulla maintain that kissing one's siblings is permissible, or that any type of affectionate touch should be avoided? Tosafot maintain that Ulla allowed only those with scrupulous conduct to act leniently.<sup>20</sup> Rambam (in a passage we'll cite below) suggests that Ulla's view evolved over time in the direction of stringency.<sup>21</sup>

Ramban rules that limited affectionate contact between relatives is fundamentally permissible to anyone who is not suspected of sexual impropriety:

### Ramban Shabbat 13a

...Ulla who kissed his sisters on their hands, it was with a *shinui* [change] and not in the way of those who kiss, and without seclusion...And at the end of *Kiddushin* (81b) in the story of Rav Chanan bar Rava [in the printed Talmud: Rav Acha bar Abba] who sat his minor granddaughter in his lap...If *keriva* were a full Torah prohibition, then it would not be permitted for the pious or for sages to do what they did [even] for the sake of heaven. But all of this is a fence and a guardrail and [contact] is permitted with female relatives to [a male] who is established as not being suspect to act in an ugly manner and refrains with other women.

Rambam takes a more stringent approach, suggesting that Ulla changed his mind:

### Rambam Commentary to the Mishna Sanhedrin 7:4

Kissing relatives that it is not human nature for people of Torah to be aroused over them and he does not take pleasure in it, as with a sister or maternal aunt or paternal aunt...is very repulsive and prohibited, but it doesn't entail Torah

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<sup>20</sup> Tosafot explain that Ulla was very righteous and knew he was not liable to improper sexual thoughts, so there was more leeway for him to kiss his sisters:

Tosafot Shabbat 13a s.v. And he disagrees with himself

For he knew of himself that he would not come to improper sexual thoughts for he was totally righteous...

<sup>21</sup> For a detailed analysis of these schools of thought, see Rav Yehuda H. Henkin's responsum in *Benei Banim* 4: 13.

lashes if he did not intend to take pleasure, and even so it is prohibited. And one of the sages, peace be upon them, would kiss the sleeves of his older sister, or her hands, when he would return from the beit midrash and [later] avoided this and was careful about it and saw there was no way to permit it and said “Go we say to the nazirite...”

In Mishneh Torah, however, Rambam uses more measured language:

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 or 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.

Some authorities understand his ruling in Mishneh Torah as more of a caution than a full-fledged prohibition:

Responsa Batei Kehuna 3:12

...What he wrote there: “and it is a matter of prohibition 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’...to be stringent in the matter in accordance with the man’s deficiency and absence of purity. And it 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]... The view of the Rav [Rambam] is that wherever our sages prohibited something on account of ‘go, we say to the nazirite, etc.’ it is only *le-chatchila* and a light prohibition...

Rav Moshe Feinstein understands Rambam’s ruling as a measure meant to prevent affectionate contact with close family members leading to affectionate contact with others. Given this understanding of the prohibition, he argues that one need not protest when a sibling or aunt or uncle (and, by extension, nephew or niece) insists on such contact:

Responsa Iggerot Moshe YD 2:137

...For the prohibition [from the Torah] is only over sexual affection, which is not present with daughters and sisters, and the prohibition is because it is very distasteful on account of not coming to be lenient with other women prohibited to him...But this decree is only for average people who sometimes have transgressive sexual thoughts and not for sages like Ulla and his fellows...And therefore since it is only rabbinic even according to Rambam, and there is also no prohibition from their end [i.e., they are similarly not desirous] to consider this an inherently prohibited act, one should not protest when it seems that it will be of no avail, and it is better that they transgress unwittingly than deliberately. But this is just for his sister and maternal aunt, and it is also the halacha for his paternal aunt, for with all of them there is no desire or pleasure thanks to the prayer of the men of the Great Assembly.

More recently, Rav Yehuda Henkin has taken a more lenient approach, arguing that such contact is permissible, even with other relatives, as needed, as long as it occurs only on an occasional basis:

Responsa *Benei Banim* 4 13:8

In a pressing situation, and especially with *baalei teshuva* visiting their families, one should permit to hug and to kiss brothers and sisters, and other relatives as needed. And this is in accordance with the view of Tosafot and common custom...And in accordance with the seeming view of Ramban...And one should kiss with a *shinui* [in an unusual manner] as much as possible. And further because the hugging and kissing is only occasional and does not continue over time, and one can add as a basis for leniency also the view of Batei Kehuna...And all of this is with infrequent visits, but if they meet with their relatives frequently, one must explain to them that this is not our way.

As Rav Henkin notes, hugs and kisses are common custom in many circles when relatives have not seen each other for a long time. In practice, some circles also exercise extra leniency with siblings—at least with more casual touch—while in others, this stops by bar and bat mitzva.

### **Other Halachic Presumptions**

Presumptions about whether sexually affectionate touch is fully off the table are also relevant to discussions of the age at which prohibitions set in and of whether they are affected by sexual orientation.

**I. Age** These laws clearly apply in full following bar and bat mitzva. What about beforehand? From the perspective of [\*chinuch\*](#), children begin to be educated for a mitzva earlier, depending on their development and their ability to understand the prohibition. This could be as early as six or seven.

However, the *halachot* prohibiting *yichud* (seclusion) apply from age three for a girl and age nine for a boy:

Shulchan Aruch EH 22:11

A girl younger than three, and a boy younger than nine, it is permissible to be secluded with them...

A woman typically exercises more caution touching boys outside her immediate family starting when a boy is nine, with puberty presenting an upper limit in pressing situations.

Age three is quite young. We can ask if *lo tikrevu* is relevant when a child is below the age of sexual awareness or of others being sexually aware of them. Rav Shlomo Zalman Auerbach uses this logic, though he employs it to allow for touching a girl in pressing cases only up to age six!<sup>22</sup> Even so, for a girl before bat mitzva, the laws of

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<sup>22</sup> *Nishmat Avraham* 4, ChM 42

When I spoke again with Rav Shlomo Zalman Auerbach, he said to me that, since everything depends on improper thoughts that will lead to sin, where there is no room for improper thoughts as with a young child like this, then also there is no prohibition of seclusion. And even though

erva with those outside her immediate family do not apply until she becomes a *nidda*, upon menstruation.

**II. Sexual Orientation** We've seen that Rav Moshe's leniency in pressing circumstances among close family is based on a presumption that neither party feels sexually attracted to the other. It follows that Physical contact where one party might be attracted—as between a heterosexual woman and a gay man, or a lesbian and a heterosexual man—would be treated more stringently than the case of family members having physical contact with each other.

In contrast, non-sexual affectionate contact between two men or two women is widely permitted. Both parties are halachically presumed to have no sexual interest. Thus, even though a prohibition on relations between men appears in the Torah among the *arayot*,<sup>23</sup> the Talmud explicitly permits seclusion for two men, because their relationship is presumed not to be sexual in nature.<sup>24</sup> A similar principle could be applied to women, especially since sexual prohibition for women is not formally categorized as one of the *arayot*. Individuals attracted to members of the same sex should seek personal halachic counsel about whether additional boundaries on touch would apply.

### Concluding Thought

Halacha invites a dialogue between broader principles and specific situations. Not every touch will be prohibited and not every touch will be permissible. Though there are some general guidelines, Halacha recognizes the range of human experience and places much responsibility upon the shoulders of the individual.

### Further Reading

- 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 (Winter 2007): 115-120. Available [here](#).
- Weitz, Rav Yair. "*Negia ba-Arayot, Matai Asura u-Matai Muteret*." Yeshivat Har Bracha, 22 Nissan 5780. Available [here](#).

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hugging and kissing would ordinarily be prohibited for a girl from the age of three, with an adopted girl it is permissible [for her father] until age five or six. Up to here are his words.

<sup>23</sup> Vayikra 18:22.

<sup>24</sup> *Kiddushin* 82a

It was taught in a baraita: They said to Rabbi Yehuda: Israelite men are not suspected of having intercourse with men...