

The YU

LAMDAN

The Wilf Campus Torah Journal

Spring 2012 • Sivan 5772

Volume I Issue 3

From the Masechta

The Power of the Rabbis to Override Torah Law

BY RABBI DANIEL Z. FELDMAN

Several places throughout Talmudic literature, we are told of the principle that the Rabbis have the ability to “uproot” directives from the Torah (Yevamot 89b-90b), in situations that are “passive” (shev v'al ta'aseh). The fact that the shofar is not blown when Rosh HaShanah falls out on shabbat, despite the Torah requiring it (Rosh HaShanah 29b; Megilah 4b; Sukkah 42b), is believed to be one example of this, as is the rabbinic dictate not to attach tzitzit to a garment when the result will be shatnez, although, again, the Torah requires that (Menachot 40b).

The Turei Even (Megillah 5a) maintains that this step of overriding Torah law is only taken when there is a risk

of violating a biblical prohibition, and not simply for the “good of the world”. However, this may be difficult to reconcile with some of the examples found in rishonim, such as Tosafot (Berakhot 16a s.v. v'chotem) citing this principle to explain how workers can abridge the biblical requirement of birkat hamazon [unless it is understood that the concern there is one of theft]. However, the Resp. B'er Chaim Mordechai (#47) interprets the Turei Even's comments to mean that the instances where a sweeping, universal override of a mitvah was instituted were those where a prohibition was at risk. More localized instances are possible without meeting this standard.

To sponsor an issue in someone's memory or in honor of a special occasion please email TheLamdan@gmail.com

Ephraim Meth
Moshe Genack
Avi Levinson
Elchanan Poupko
Editorial Staff
Ezra Seligsohn
Layout

**SOY-JSC**
Student Organization of Yeshiva - Jewish Studies Council
www.thelamdan.com

To find out more information about *The Lamdan* or to submit articles, speak to one of the editors or e-mail us: TheLamdan@gmail.com

Visit us online:
www.thelamdan.com

R. Elchanan Wasserman (Kovetz Ha'arot 69, and Kuntres Divrei Soferim in Kovetz Shiurim), in examining this concept, poses three interrelated questions. His first inquiry concerns the nature of the “uprooting” that is taking place. Is it the case, as the phrase implies, that the relevant biblical law is actually uprooted, removed from its obligation? Or, is it actually that the biblical law remains in place, but the Rabbis mandate that it should be ignored?

This question would appear to correlate with the two perspectives in achronim as to the scope of rabbinic law. On the one hand, some authorities (such as the Netivot HaMishpat, 234) believe that rabbinic mitzvot are distinguished from biblical mitzvot, in that the latter represent an inherent status in the object (issur cheftza) while rabbinic precepts, reflecting an instruction to the individual, do not (issurei gavra). Others, such as R. Yosef Engel (Atvan D'Orayta, 10) believe that rabbinical prohibitions can attain inherent status, citing midrashim that G-d agrees to the enactments of the Rabbis. That debate would parallel the positions in this issue: On the one hand, rabbinic directives might be addressed only to the individual, leaving the Torah's commands unaffected; on the other, perhaps G-d agrees to the enactments, and the “uprooted” mitzvot no longer apply.

Some sources indicate that the mitzvah is totally uprooted. Among these is the controversial position of Rabeinu Yonah that when the Rabbis required nighttime K'riat shema to be recited before chatzot, they cancelled the possibility of reciting it afterward. Also, Tosafot (Sukkah 3a) suggest that when the Rabbis imposed additional regulations affecting a mitzvah, that mitzvah became valid only when the rabbinic regulations are observed. This is contrast with the view of the Ran (to Sukkah as well as to Pesachim, on the mishnah of “whoever does not recite these three things...” that appears in the Haggadah), that although the mitzvah is not fulfilled perfectly, the basic fulfillment of the biblical obligation is satisfied. {Some understood Tosafot's position as limited to Sukkah; see D'var Avraham, II, 26:10, and K'nesset Avraham, 4:2:2). This issue is particularly relevant to mitzvot such as Kidush and Birkat HaMazon, which are biblical obligations that have been expanded by rabbinic directive, and may thus be redefined by that action (see Pri Megadim's Peticha HaKollelet 3:8; Migd'not Eliyahu, 27; Resp. Arugat

HaBosem, O.C., 62). Another question affected by this is the issue of one who, in violation of rabbinic law, takes a lulav on the first day of Sukkot that falls on Shabbat; would he recite a “shehechyanu” the next day? (See Resp. Even Pinah, O.C. 63; Shavei Tziyon, 18; Resp. Rivv'vot Ephraim, III, 391).

R. Elchanan's second question concerns the nature of the requirement of “passivity” (shev v'al ta'aseh) in this principle. It remains to be defined what this term refers to; is it a reference to passivity of behavior, or is it to categorization as positive or negative commandment? [This question is posed in at least two other contexts, as well: K'vod ha-briyot (human dignity), which the Talmud identifies as capable of overriding Torah law when it is shev v'al ta'aseh, and the limitation of 20% spending on mitzvot, which the Rama (O.C. 556) restricts to positive mitzvot as contrasted with negative ones]. Rishonim debate this position as well, with the Rashba, in at least three places, taking the position that the issue is categorization, not behavior.

The third question R. Elchanan poses is concerning the reason that this principle was limited to situations of shev v'al ta'aseh. He offers two possible theories as to this distinction. One theory is that the ability of the rabbi to contradict the Torah, a drastic step, only goes so far, and active transgressions are beyond their reach. The second possibility is that since there is an intractable conflict between two principles, the Torah's obligation and the Rabbi's contradictory instruction (with the Torah's endorsement), the safest approach is to act passively, and not blatantly offend either value.

As R. Elchanan observes, these three questions are interconnected. If the biblical commandment is actually uprooted, it makes sense to say that such a significant development is limited in scope, and the defining delineation would correspond to categorization, rather than behavior, as commandments categorized as “negative” are assumed to be more severe (and thus would require even more power to be given to the Rabbis) than positive ones. Alternatively, if the biblical commandment is still in place, then presumably the reason for shev v'al ta'aseh is the concern of negotiating the conflict in the least offensive way possible, and thus the defining element is behavior, not categorization.

Halachic Perspectives on *Chinuch*

BY NATHAN HYMAN

The Gemara (*Yevamot* 114a) presents a dispute as to whether one is obligated to stop a minor from transgressing a prohibition. The accepted opinion is that one is not obligated. Many *Rishonim* ask how this position can be reconciled with the obligation of *chinuch*. If one has to educate children in *mitzvot*, how can he stand idly by while a child transgresses a prohibition?

There are two basic approaches to this issue. The first is to modify our understanding of who is obligated in *chinuch*. Tosfot Yeshanim (*Yoma* 82a) and Rambam (*Hilchot Maachalot Asurot* 17:27-28) explain that *chinuch* is incumbent only upon the father. Other members of society have no obligation of *chinuch*, and the Gemara's discussion pertains only to these people. The father, who is obligated in *chinuch*, must in fact stop his own child from transgressing a prohibition.

The second approach is to modify our understanding of what areas fall under the rubric of *chinuch*. This is the approach adopted by the *Sefer Yerei'im* (cited by Tosfot Yeshanim *Yoma* 82a), who posits that *chinuch* does not apply at all to negative commandments. Thus, there is no contradiction between the obligation of *chinuch* and standing idly by while a minor transgresses a prohibition. According to this approach, even the father may allow his child to violate a prohibition.

On the surface, Tosafot Yeshanim's distinction is easier to understand than the *Sefer Yerei'im*'s. Why should *chinuch* not apply to negative commandments? Some have explained based on a suggestion of the Maharal (*Gur Aryeh, Beresihit* 46:7). He attempts to resolve Chazal's statement that the *avos* observed the entire the Torah with *pesukim* that indicate otherwise. The Maharal suggests that the *avos* kept only positive commandments, not negative ones. He explains that there is no value in observing a negative commandment that one is not obligated in. Apparently, the Maharal understands that positive commandments have inherent value while negative commandments are valuable only inasmuch as they express subservience and obedience to the Divine will. If it makes no sense to volunteer to observe a negative commandment, there might be no obligation to educate children to keep them.

But even if the Maharal's analysis of positive and nega-

tive commandments is correct, it seems insufficient to explain the *Sefer Yerei'im*'s distinction. If we assume that the structure of *chinuch* is based on pragmatic concerns of what accrues the most reward, then this analysis holds. But if, as is most intuitive, the goal of *chinuch* is to familiarize the child with the halachic observance, why should negative commandments be excluded? Both are equally important parts of an integrated life as an *eved Hashem*.

Perhaps we can cast the Maharal in a slightly different light. Indeed, both positive and negative commandments are fundamental to halachic observance. One has no right to be diligent and exacting with one while striving for mediocrity with the other. However, as the Maharal indicates, negative commandments are intended to facilitate subservience and obedience to the Divine will. Perhaps this responsibility is appropriate only for an adult, who has the cognitive ability and the maturity to understand it. A minor would not appreciate this responsibility and might even come to view it as a harsh burden. It thus would be counterproductive to train a child to keep negative commandments.

There is precedent for the notion that *chinuch* applies uniquely to each child according to his cognitive level. Even the *Mishnah Berurah* (343:3), who does not follow the view of the *Sefer Yerei'im*, writes that a father shouldn't separate a child from transgression if the child is too young to realize that what he is doing is prohibited. Perhaps the *Sefer Yerei'im* simply is adopting an expansive application of this principle, positing that fundamentally, all children are too young to adequately understand the responsibility of negative commandments.

Practically speaking, the *Shulchan Aruch* (O.C. 343) codifies the first resolution offered by the *Rishonim*, namely, that *chinuch* is incumbent only upon the father and that it applies to negative commandments as well. The position that it applies to all members of society is quoted as a minority position. The *Chayei Adam*, cited by the *Mishnah Berurah* (343:7), writes that if a child is violating a Torah prohibition, we should be strict to assume that all members of society have the obligation of *chinuch*, and any person should stop the child. If, however, the child is violating only a rabbinic prohibition, the obligation of *chinuch* is assumed to devolve solely upon father.

Yibbum, Yerushah, and Yom HaBikkurim

BY EPHRAIM METH

Megilat Rut's account of *yibbum* sends an important message about *yibbum*, inheritance, and individuality. The Gemara (*Yevamot* 17b) states that maternal brothers (who cannot inherit one another) may not perform *yibbum*, indicating a strong link between *yibbum* and inheritance. Elsewhere, the Gemara (*Yevamot* 40a) rules that *yibbum* is performed even if the deceased bequeaths nothing to the *yavam* on account of penury or for other reasons, thereby uncoupling *yibbum* from inheritance. Moreover, the Rashba (*Yevamot* 108a) notes that the Gemara teaches these seemingly opposite ideas with a single phrase: *yibbum b'nachalah talah rachmana*. This is one of the uncommon homonym antonyms (words that sound alike, but have different or opposite meanings) that the Gemara employs to emphasize important concepts. What, exactly, is the Gemara trying to teach us about *yibbum* and inheritance?

The relationship between *yibbum* and inheritance is further complicated by the contrast of *yibbum* narratives in *Megilat Rut* and *Sefer Devarim*. R. Feivel Meltzer (*Da'at Mikra*, introduction to *Megilat Rut*) notes that both narratives involve removing a shoe, “upholding the deceased’s name,” and not allowing the deceased’s name to be erased or cut off. However, *Megilat Rut* emphasizes “upholding the deceased’s name *on his inheritance*,” and preventing the deceased’s name from being cut off “*from the gate of his place*,” while *Sefer Devarim* eschews these emphases. Moreover, *Megilat Rut* implies that *yibbum* occurs primarily in the wake of inheritance, as Boaz suggests first that Ploni Almoni redeem Rut’s field and only afterwards that he perform *yibbum*, while *Sefer Devarim* views inheritance as a side-effect or consequence of *yibbum*.

Seemingly in consonance with *Megilat Rut*, Rashi (*Yevamot* 17b) writes that since the *yavam* inherits his deceased brother’s property, only close heirs may perform *yibbum*. The Rashba (*ibid.*) asks: the *yavam's* inheritance of his deceased brother indicates that inheritance is a *consequence* of *yibbum*, while the restriction of *yibbum* to close heirs indicates that inheritance is a *prerequisite*

of *yibbum*; how can Rashi interchange these two distinct concepts?

The solution to these quandaries may be alluded to in the Talmudic formulation (117a) that the *yavam* inherits his deceased brother’s assets because “He has stood [for his brother’s name].” *Yibbum* does not directly cause inheritance; rather, *yibbum* causes the two brothers’ family identities to mingle, and this mingling causes inheritance. Rashi ignores the distinction between consequence and prerequisite because both ideas underscore this essential fact: the *yavam* inherits because his family identity embraces the family identity of his deceased brother, and therefore only someone whose family identity has this flexibility may perform *yibbum*.

For this reason, too, inheritance plays a more central role in *Megilat Rut* than in *Sefer Devarim*. *Megilat Rut* describes a non-mitzvah *yibbum* – between an uncle and his nephew’s wife. This *yibbum* does not naturally mingle the family identities, nor does it naturally result in inheritance. Boaz redeemed his nephew’s fields to imbue his marriage to Rut with this family-mingling character, enabling his descendants from Rut to perpetuate not only his own, but also his nephew’s name. In contrast, *Sefer Devarim* describes a *yibbum shel mitzvah*, between a brother and his brother’s wife, where the mingling of family identities occurs naturally and results automatically in inheritance.

Based on this, the homonym antonym of *yibbum b'nachalah talah rachmana* makes perfect sense. On one hand, *yibbum* is indeed bound to inheritance, since only close heirs can naturally embrace the deceased’s family identity within their own. Yet the absence of a legacy does not hinder performance of *yibbum*, since it is not inheritance per se, but rather family identity’s flexibility symbolized by potential to inherit, that is bound to *yibbum shel mitzvah*.

On *Shavuot*, we received the Torah and became “a nation of nobles.” Chazal’s statements that “Every Jew is a child of kings,” and “The crown of Torah is accessible to all” underscore this point. *Yibbum*, too, emphasizes that

every individual is the potential founder of a dynasty, that every family identity is infinitely and uniquely valuable. Boaz' selfless acquiescence to embrace his nephew's family identity directly contrasts and perhaps atones for Onan's selfish refusal to embrace his brother's family identity, for

refusal to realize that perpetuation of a brother's dynasty is far more important than preservation of individuality. May *Shavuot* and *Megilat Rut* inspire us to live the lessons they teach.

Gentiles, Genetics, and Geneolgy

BY YAAKOV WERBLOWSKY

The Gemara in Yevamos (22a, 97b) informs us that one who converts is no longer considered to be related to his prior relatives because of the principle of "*Ger Shenisgayer K'katan Shenolad Dami*" (one who converts is akin to a newborn child). Based on this, a *ger* may (at least *mdoraisa*) give testimony in a court for or against a "relative" such as a brother, and there are also no Biblical prohibitions of incest with any of the former family members. However, in Yevamos 98a, the Gemara invokes another principle: "*Ein Av L'Mitzri*" (A "Mitzri" [generic title for gentile in this context] is not considered to have a father), based on the verse "*Zirmas Susim Zirmasam*". In the context in which the Gemara brings it, "*Ein Av L'Mitzri*" seems to be utilized specifically to explain why a convert has no Halachic paternal relatives. This, however, begs the question: why is such a principle necessary if the more general axiom of "*Ger Shenisgayer K'katan Shenolad Dami*" already teaches us that a convert has no relatives from his past?

Tosfos in Bechoros (46a s.v. *Nisgayirah*) are bothered by this question, and they conclude that "*Ein Av L'Mitzri*" is only necessary to explain why Chazal don't treat paternal family members as relatives on a Rabbinic level, the way they did with some maternal relatives. (See also the Ramban [Yevamos 98a], who maintains that we derive from "*Ein Av L'Mitzri*" that gentiles who have **not converted** are generally permitted to marry their paternal relatives.)

Rashi, however, deals with the need for "*Ein Av L'mitzri*" in an entirely different way. He comments (Yevamos 98a s.v. *Ha*) that this rule explains why there is no relationship between a convert and his prior paternal family **even where the principle of "*Ger Shenisgayer K'katan Shenolad Dami*" wouldn't apply, which happens in a case of *horaso shelo bikdusha v'laidaso bikdusha* – a child who converted in utero.** This is consistent with Rashi in Bechoros (46a s.v. *Nisgayirah*), where he invokes only

"*Zirmas Susim Zirmasam*" as the source that one whose mother converts while pregnant does not inherit his father.¹ Rashi presumably understands that 1)one who converts in utero is not considered to have undergone an independent conversion process, and that 2)one becomes "*k'katan shenolad*" specifically by going through that process.

This understanding of Rashi leads to a number of interesting conclusions, both practical and conceptual.

1) Perhaps most strikingly, Rashi should maintain that if a Jewish man impregnates a non-Jewish woman and the mother then converts while still pregnant, the child would be considered fully related to his father, even though he was not Jewish at the time of conception! After all, he is not "*K'katan Shenolad*" (having converted in utero), nor is the rule "*Ein Av L'Mitzri*" applicable (since his father is Jewish).

2) Rashi's assumption, that the conversion process of an embryo is not an independent one, seems to be dependent on the debate as to whether or not we maintain *ubar yerech imo*- that an embryo is considered to be part of its mother's body (see Yevamos 78a). This leads us to one of two conclusions. Either Rashi understands that the entire *sugya* in Yevamos 97b-98a accepts the position of *ubar yerech imo*, notwithstanding that it is an unresolved debate in various places. (See Tosfos in Sanhedrin 80b s.v. *Ubar* for a dispute about what is the primary opinion. Admittedly, Rava is the *amora* in Yevamos who introduces *Ein Av L'Mitzri*, and in Temura (30b) Rava apparently believes that *ubar yerech imo*.) Alternatively, Rashi might believe that even according to the opinion that *ubar lav yerech imo*, we don't consider the conversion to be a process performed entirely independently by the embryo. There is some evidence for such an approach from Tosfos in Kesuvos 11a (s.v. *Matbilin*), where they suggest that even if a child cannot convert Biblically since he can

neither make his own decision nor appoint a proxy, an embryo can be converted, and they make no mention of the issue of *ubar yerech imo* (see R' Akiva Eiger's comment on that Tosfos as well as the essay of R' Naftoli Trop.) The Gemara in Yevamos 78a would then have to be reevaluated in this light.

3) Finally, the Gemara makes it clear that a converted embryo, upon birth, is considered a full-fledged relative of his mother and all siblings of his from his mother who are either in utero with him or born subsequently. Some contemporary poskim deduce from this that giv-

ing birth creates motherhood even without conception, since the mother and embryo converted after conception and therefore they are not related based their original status. This obviously has repercussions for the questions of surrogate motherhood and egg implantation. However, according to Rashi, there seems to be no evidence whatsoever. Since "*Ger Shenisgayer K'katan Shenolad Dami*" does not apply in this case, and the only reason he is not related to his father is *Ein Av L'mitzri*, it should follow that to his mother he is in fact related, potentially even based on conception.

From the Parasha

Mikdash in the Middle

BY NOAH POLLACK

The *Mishkan* enabled unity amongst the Jewish tribes during their journey in the desert. Rav Yaakov Kaminsky observes that the commandment given for each tribe to have its own banner was given only at the beginning of the *second* year after the Jews left Egypt. This means that for the entire first year after the Exodus from Egypt, the Jews traveled without each tribe having its own banner. Why couldn't the individual tribes have their banners during that first year in the desert? What change occurred that enabled the tribes to have their respective banners in that second year after the Exodus?

In order to answer this question, we need to understand what the banners represented. The banner for each tribe had its own unique design that represented the particular tribe's uniqueness and individuality. Therefore, if each tribe had arranged a banner immediately after leaving Egypt, it might have led each tribe to put itself above the Jewish people as a whole, causing the nation to splinter into twelve separate tribes. By the second year, the *Mishkan* had been built. The *Mishkan*, situated at the center of the camp, served as a spiritual center around which all of Klal Yisrael was united. Once this point of unity was established, there was no longer any concern that having separate banners would cause the tribes to become

divided. Rather, each tribe would realize that while it was special, they were also unified, since the *Mishkan* reminded Klal Yisrael that they all shared the goal of becoming closer to Hashem.

This idea of the *Mishkan* serving as a spiritually unifying point for Klal Yisrael manifests itself in Halacha. The *Beit HaMikdash* took the place of the *Mishkan*. In the times of the *Beit HaMikdash*, life was noticeably different for Jews than it is today. One difference relates to the laws of taking the *arba minim* on the first day of *Sukkot* that falls out on Shabbat. The Rambam (*Hilchos Lulav* 7:16) states: "During the time when the Temple stood, the *lulav* would be taken on the first day (of *Sukkot*) that fell out on Shabbat; and so too in the other places that knew for sure that this day was the first day of the festival in Israel. But the places that were far away and did not know when *Rosh Chodesh* was would not take the *lulav*." We see from this Rambam that during the time the *Beit Hamikdash* stood there was a division amongst the Jewish people. Those Jews in and around Jerusalem would take the *lulav* on the first day of *Sukkot* even when it fell out on Shabbat. But the Jews who lived far away did not take the *lulav* on the first day that fell out on Shabbat.

This makes the very next Rambam puzzling. He states:

“From the time the *Beit HaMikdash* was destroyed, the sages forbade taking the *lulav* on the first day that fell out on Shabbat ... *because of those that lived far away ... in order that all of the people be equal in this regard ...* Since the obligation (to take *lulav*) on the first day is the same everywhere and there is no *Beit HaMikdash* to make it dependent on.” Why was there no problem in distinguishing between the different groups of Jews while the *Beit HaMikdash* stood? Why did Chazal suddenly become very concerned about division amongst the Jews? The Lechem Mishneh explains that when the *Beit HaMikdash* stood, all of Jewish life revolved around it, just as it had centuries earlier revolved around the *Mishkan*. Therefore, everyone understood that although there was only one Torah, there was a difference between the Jews who lived close to the *Beit HaMikdash* and those who lived far away

from it. Those Jews who lived nearby were supposed to take the *lulav* on the first day of *Sukkot* that fell out on Shabbat, while those that lived far away were not. This did not appear like two Torahs because as long as the *Beit HaMikdash* stood in Jerusalem, every Jew understood that there was one Torah but two sets of rules depending upon one’s proximity to the *Beit Hamikdash*. The *Beit HaMikdash* stood as a point of unification for Klal Yisrael whose religious observance revolved around and depended upon each individual’s proximity to it. Once the *Beit Hamikdash* was destroyed and this point of unification was eradicated, Jews in far-off places would be unable to understand why they could not take the *lulav* on the first day that fell out on Shabbat while their brethren in Jerusalem could. Thus, it was necessary for Chazal to make a sweeping decree that no one take the *lulav* on Shabbat.

The YU Ethicist

Prayer and the Power of Possession

BY IKE SULTAN

A practical halacha that arises three times a day is to make sure not to walk within four amot of someone davening *shemona esrei*. What if that person is davening in the aisle or near the door? Rav Shlomo Zalman Auerbach (*Halichot Shlomo* 8:36) rules that one may walk in front of that person. He explains that *ein adam oser davar she'eino shelo*, a person cannot forbid something that does not belong to him. Because the one davening does not own the aisle space, he cannot make it forbidden for others to walk there.

At first glance, this seems to be a questionable application of the rule of *ein adam oser davar she'eino shelo*. The Gemara seems to use this principle only in limited contexts. Rabbi Yochanan (*Chullin* 40a), for example, asserts that if a person bows down to his friend’s animal, it does not become forbidden as a idol because *ein adam oser davar she'eino shelo*. Although the words *ein adam oser davar she'eino shelo* imply that the rule encompasses all cases, how do we know that it should apply outside of

the context of *avoda zara*? Additionally, there might be a difference between when the person has intent to make something *asur*, as in the case in the Gemara, and when he is trying to do a *mitzvah* and automatically, as an aside, causes something to be *asur*.

Rav Shlomo Zalman’s logic probably was based on Tosfot (*Yevamot* 83a). The Mishna (*Kilayim* 7:4) discusses a case in which person’s grapevine hang over his neighbor’s wheat, potentially involving the prohibition of *kila'ei hakerem* and making the wheat *asur*. Rabbi Meir holds that the wheat becomes *asur* and obligates the owner of the grapevine to pay his neighbor for the damages. Rabbi Yose and Rabbi Shimon, however, argue that one person’s grapevine cannot forbid his neighbor’s crop because *ein adam oser davar she'eino shelo*. The Yerushalmi explains that even Rabbi Meir agrees to the basic principle of *ein adam oser davar she'eino shelo* but disagrees concerning its application to *kilayim*.

Tosfot cite the Ri, who asks why the rule of *ein adam*

oser davar she'eino shelo does not extend to all cases. If, for example, a person throws pork into his friend's kosher dish, why don't we say that the dish remains kosher? The Ri takes it as a given that it would be preposterous to apply *ein adam oser davar she'eino shelo* to this scenario. Rather, says the Ri, the principle of *ein adam oser davar she'eino shelo* applies only to prohibitions that depend on having *daat*, but mixing kosher and non-kosher will make everything *asur* regardless of the mixer's intention. Based on this Tosfot, we could explain the nature of *ein adam oser davar she'eino shelo*. If an action requires *daat* to make something *asur*, then it's not really the action that has any effect; rather, the *daat* is the primary cause of the *issur*. It also is logical to assume that a person cannot express his *daat* about someone else's items. Based on Tosfot's extension of *ein adam oser davar she'eino shelo* to all areas of halacha where *daat* is a factor, if the prohibition to walk in front of someone davening depends on *daat*, it is logical that *ein adam oser davar she'eino shelo* should apply.

On the other hand, Rabbeinu Shimshon MeShantz argues that even things that depend on *daat* need not be subject to *ein adam oser davar she'eino shelo*. His proof is from a case where the Gemara (*Bava Kama* 56a) states that if a person does work while preparing his friend's *mei chatat*, the water is *pasul*. Rabbeinu Shimshon claims that this depends on *daat*, because if the owner wasn't pleased with the work that was done, the water would not become *pasul*. He therefore says that in most areas of Halacha, a person is able to forbid something that belongs to his friend. There are specific *pesukim* regarding *avoda zara*

and *kilayim* that tell us that in these contexts *ein adam oser davar she'eino shelo*. If this is the case, then *ein adam oser davar she'eino shelo* in fact should apply regarding walking in front of someone davening.

Furthermore, even according to the Ri, perhaps the rule of walking in front of someone davening isn't dependent on *daat*. There are two reasons given for why a person should not walk in front of someone davening: 1) it is not respectful to the *shechina*, which is resting in the four *amot* of the person davening *shemona esrei*, and 2) it interrupts the person's *kavana* (see *Bei'ur Halacha* 102 s.v. *Asur*). According to the first reason, it seems that the area becomes forbidden for people to walk through as an automatic consequence of davening *shemona esrei*; the person's *daat* to daven does not cause the prohibition, but rather his *maaseh* of davening causes the *issur*. According to the second reason, it is even more difficult to understand Rav Shlomo Zalman's application, because essentially the area isn't forbidden; it's the action of walking in front of the person and ruining his *kavana* that is forbidden. If so, what difference does it make where the person was davening?

Perhaps Rav Shlomo Zalman did not intend to literally apply this principle, but rather meant to say that Chazal did not impose a prohibition in circumstances where the person should not have davened in a manner inconvenient to passersby. Additionally, Rav Shlomo Zalman advised not to rely on his leniency so as not to make people degrade this Halacha of walking in front of someone else.