

# HALOCHOSCOPE

This week's question:

May one write a letter to the editor of a newspaper that will embarrass someone else? If an editor receives this letter may he publish it? What if this is the best way to 'rebuke'?

The issues:

- A) Which violations are involved when embarrassing others?
- B) What constitutes embarrassment?
- C) What constitutes 'public' embarrassment or rebuke?

**A) The violations involved in embarrassing others**

There are two basic parts to this issue. First, there is a general class of *boshess*, shame. For some cases there is a monetary liability for shaming. Usually, this involves intentionally shaming the victim in the course of an argument or fight. It is a by-product of some type of harm done to the victim. Second, one must always be wary of shaming others, even inadvertently, especially in the course of rebuking him or her. This type of shaming is most commonly identified as *halbanas panim*, causing the face to pale.

*Boshess* is part of the general violation of injuring. The payment indicates that the perpetrator is considered liable for wrongdoing. Injuring comes under the general class of *nezek*, damage liability. [Various sources are cited for the violation of *mazik*, a damager. Some attribute it to robbing. By causing the damage, one robs the victim of his use of the item damaged. Some connect it to the positive *mitzvah* to love one's fellow. Some relate it to allusions about guarding one's property, implying that one should ensure that no damage results.] There is a specific *mitzvah* not to strike another. This is derived from the prohibition against the administrator of lashes adding to the amount of lashes.

Being part of the prohibition of injuring does not mean that one must have caused physical injury to be liable for the violation. If one did cause physical injury, there is usually a payment assessed to cover five different aspects, one of which is *boshess*. One can be in violation even when there is no payment. In rare cases there will then be a separate punishment of lashes. To be liable for payment, the harm or damage must be done to the body of the victim, and not to clothing and the like. If the shame came as a result of an act that affected the body without causing monetary loss or damage, the *boshess* alone can be assessed. Thus, spitting or pulling off clothing can be charged. Spitting on the clothing can not be charged. Likewise, verbally shaming can not be charged for Scripturally. Rabbinically, this is often penalized by the Rabbinical court. These penalties are sometimes charged for causing shame indirectly, such as by abandoning an agreement. Inadvertent shame, which is not payable for Scriptural *boshess*, can be charged Rabbinically, if it can be shown that the perpetrator could have foreseen and avoided it.

The second type, closely related to the first, includes both directly shaming verbally or in other non-physical ways, and causing shame in the course of other types of interac-

tion. For example, by slandering or in the course of trying to promote one's own goals, one might shame another. In the course of rebuking someone, one might cause him undue shame. One might feel the need to intentionally shame a person in order to get him to respond. Name-calling, showing the other up, benefiting at others' expense, such as from a comparison to another's lesser abilities, and the like are forbidden, except when they are part of the *mitzvah* to rebuke. In those situations they are permitted within limits.

The main sources cited for this prohibition are: The *mitzvah* of *tochacha*, rebuke, is qualified by the line 'but do not bear sin because of him'. This is instruction not to rebuke to the point of shaming him. Thus, shaming is forbidden. The *mitzvah* of *ona'as devarim*, forbidding insulting or verbal exploitation, includes the resulting shame. Shame causes one to pale. The blood drains from the face. The Talmud compares this to shedding blood. Accordingly, some consider the violation a minor category of *retzicha*, the *mitzvah* forbidding murder. All of these are Scriptural violations. In addition, slander, tale-bearing and gossip involve the violations of *lashon hara*, *rechilus* and *motzie shem ra*. All of these are forbidden outright and touch on, or involve heavily, many more *mitzvos*.

Scriptural *boshess* is not charged by modern day Rabbinical courts. Only *semuchin*, elders ordained and practicing in *Eretz Yisroel* during the times of the Sanhedrin, were qualified. However, the *poskim* still detail when one would be liable. This highlights the severity of the violation, and the liability to satisfy Heavenly judgment. Rabbinical penalties can be charged by any court that sees the need. The *boshess* that we need to discuss in our case applies everywhere, and is sometimes penalized monetarily.

In addition to possible monetary penalties, shaming carries serious Heavenly punishment. The Talmud says that one who shames another publicly loses his share in the World-to-Come. We have already seen that it is compared to murder. Though the majority do not consider it a variation of *retzicha*, all agree that the reason they are compared is due to the severity. In fact, some point out that the extent of the pain, time wise and mentally, could be more serious than *retzicha*.

### **B) What constitutes shame?**

*Ona'as devarim* is violated when the insult is made. This means that whether or not one is shamed by it, the pain of the insult is sufficient to be considered a violation. Pain can be felt with or without shame. For example, the victim might have always been aware that the perpetrator knew of this fault of his, or the deficiency in his family history. If, however, the victim then feels shame at the fact that another person knows about his faults, the additional violations listed above are involved. Thus, the knowledge that another person has found out about it causes shame. This can occur in private. If the insult is made in public, it is likely that the listeners did not know about it before. If one tries to shame directly, without the need to insult, there is also the pain of the insult. Therefore, one has also violated *ona'as devarim*.

During an argument or fight, the victim is immediately embarrassed by being shouted at or struck. The fact that another person takes advantage of his weakness or vulnerability makes him feel bad in front of others. If the injury then leaves a mark on his body, he feels this for a longer period. If a piece of damaging information was revealed, the secret will never again be hidden. It can be raised many times over in the far future. While the violator could not be held directly liable for what will happen much later, the imme-

diately shame is far greater because of this. He is indirectly liable for future repetitions of the information, particularly by those who were present or heard it from those present. Furthermore, others who knew the information before were probably wary of disclosing it. Now that it has been publicized, they too would no longer keep it secret.

Calling specific names is punished with specific penalties. Even when true, if there is no relevance to publicizing it, the shame is unnecessary. Penalties could still be applied. Some penalties are administered by the Rabbinical courts, such as physically lashing him, publicly shunning him or assessing a punitive payment. Others permit the victim to react in some way. Lashing is not done nowadays, but the *poskim* suggest a monetary donation to atone for it, along with fasting for some types of shame. This includes insulting the deceased [including the words of an author of a *sefer*.]

To be held liable, shaming must involve some intent to harm that brings shame, or to cause shame. In cases where one caused damage that led indirectly to public shame, such as spoiling one's preparations for a public feast, one is only liable in heaven. If one intended to shame one person, but shamed another, or if others were shamed in the process, there is debate on his liability to the other victims. This includes relatives who were not present but suffer some of the shame. When shame is payable, there is some question whether the reason is to compensate the victim, his family and associates, or to penalize the perpetrator. Thus, if one demeaned a person who never knew about it but his wife felt the shame, or if she was not affected but the shame was sufficient to affect the unknowing victim, there is a question whether the perpetrator would be held liable.

Shame is relative. To assess payable damages, the status of the perpetrator and the victim are taken into account. Non-payable shame is forbidden, but in certain situations, the shame could be considered less shameful. While doing anything to bother another unnecessarily, especially to gain at his expense, is wrong, it might not violate the *mitzvos* mentioned. A person is unclad in a bath-house is in a state of 'shame', yet does not mind being seen this way. One is not liable for shaming him further. The *poskim* debate whether this applies to all forms of shame or only those connected to exposing him.

One is only liable as an instigator of shame, or if both parties started at the same time. One who shames as a reaction to the other person shaming first is not liable. One who strikes in defense and shames in the process is not liable. Furthermore, if one is struck and responds with an insult, he can not be penalized.

*Halbanas panim* is easier to determine, since it merely depends on paling. One could embarrass by relating something in his presence, or by telling something to someone else, that will reach the victim later. It can be violated without words, but by doing something in the presence of the victim. A creditor could embarrass his debtor by passing by him. Asking someone for something that he is unable to provide, or can not afford, causes him shame. [There is some discussion about keeping this money. Since it was only given to avoid embarrassment, it was not given willingly. This arises when something is sent in the mail with a letter of solicitation.] Calling derogatory names or descriptions is included in *halbanas panim*. It applies even when the victim has been called this regularly, if the caller means to use it derogatorily.

### **C) Public shame**

The Talmud emphasizes public shaming, but this does not mean that when done pri-

vately there is no violation. It is not only the publicity that causes the hurt feelings and shame. As long as the victim pales, one is in violation. However, clearly public shame causes more pain. While shame caused during injury or a fight could be dismissed somewhat by onlookers as a private matter between the parties, public shaming is usually meant as (or results in) far-reaching and long term impressions.

By this measure, it would appear that public means that there is a third person present besides the perpetrator and the victim. However, the poskim assume that it means that there are three people to hear the insults, two others besides the victim [not including the insulter]. In other applications, the presence of a prominent person, such as a scholar, is also called public. Thus, perhaps even one scholar present makes the shame public. It is even possible that if the insulter is a scholar, private shame is the same as public.

When rebuking, one must take care not to shame. This would seem to exclude the possibility of public rebuke. However, rebuke has more details. If the sinner will not listen anyhow, the obligation is reduced. If a group of people sin, one rebukes them as a group one time. He has fulfilled his obligation. An individual must be rebuked until the sinner starts hitting the rebuker. If he sinned publicly, one rebukes him publicly, due to *chilul hashem*, desecration. Otherwise, one rebukes privately. Nonetheless, when people brazenly violate the Torah, and make it public, there is a need to register public outrage.

Slandering in writing is also forbidden. The same could be said of shaming. Though the victim is not present at the time of writing, the shame will come when he hears of it. Perhaps the most obvious form of public shaming is in a letter to the editor. The Talmud describes situations where people present when a false accusation is made will not hear the retraction. Maybe this would constitute a continuous shame, and even rebuke would not be done this way. If this is the best way to avert *chilul hashem* or to register protest against heresy, one should certainly do so. Otherwise, this is not the venue for rebuke. If one wishes to engage in constructive dialog, it may be done publicly but respectfully.

While some poskim maintain that there is no difference between public and private shaming, when asking forgiveness, some maintain that there is a difference. For public shaming one must beg forgiveness in public. [See Sotah 10b Baba Kama 86a-b 90b etc., Baba Metzia 68b-69a, Sanhedrin 99a, Avos 3:11, Erchin 16b, Etc., Poskim. Tur Sh. Ar. OC [1:1 biur halacha] 506, 508, [YD 243] CM 228:1-5 420 421, commentaries. Chofetz Chaim Psicha 14. Shaarei Teshuva III:139. Chinuch 49, 240. Binyam Tziyon 172.]

*On the Parsha ... I shall bless those who bless you, and he who curses you I will curse, and in you shall be blessed all families of the land ... [12:3]* Why is the cursing mentioned in the singular? The commentaries mention that it refers to Bil'am. However, he was not the only one who tried to curse Yisroel! Perhaps it is also a reference to the private way in which Bil'am attempted cursing, but since Avraham is a scholar, cursing him even privately is counted with publicly blessing. We mentioned that people are ashamed in the presence of a scholar. Maybe, even when he is not present, shaming a scholar privately is as bad as publicly shaming him.

🕯 Sponsored by Dr. Dennis Wayne in memory of his father, Aharon ben Meir a"h,

whose yahrzeit was on Erev Yom Kippur. 🕯

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