

THE YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT

The Noahide Laws - Lesson Forty-Three



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Introduction

Lifecycle VI: Growing Up

Lesson

43

No system of law can hold liable a person who is incapable of understanding or learning what the law expects of him. Naturally, a child too young to comprehend God's expectations of him cannot be bound by those expectations. However, there is a point in a child's development when he becomes aware of right, wrong, rules, and the nature of divine obligation. This would be the "age of obligation," the point at which he becomes bound by the Noahide laws. Determining this age is very important not only for understanding the application of the laws, but also for the education of the young.

As with abortion, this is a question that has generated a tremendous amount of literature, particularly among the [Acharonim](#). The discussion is complicated and far reaching, having ramifications for both Jews and Non-Jews.

Possibilities

Torah literature discusses at length how to determine the age of obligation for the *mitzvos*. Is the standard of maturity determined purely by intellectual development? Or, perhaps, maturity requires both intellectual and physical signs of maturity? We know that it cannot be based on physical development alone, because this would completely disregard the importance of comprehension. Or, could it be that physical development and mental development go hand in hand?

Definitions

The Torah literature notes it is the way of the world for boys to have begun biological maturity by age 13 and girls by age 12. These ages create a dividing line between two statuses:

- **Katan** – a “minor.” A *katan* is one who is under the age of 13 for a boy and 12 for a girl.
- **Gadol** – an “adult.” A *Gadol* is one over 13 if male or 12 if female.

Possible Torah Hints

Adam

When Adam received the Noahide laws, he was not even one day old. This proves that even those younger than the biological ages of maturity are obligated in the laws.

This possibility is proposed by the [*Shoel UMaishiv*](#).¹ He attempts to prove that the age of obligation is based upon understanding and not any chronological age. However, this is not a convincing proof. We can certainly learn from this fact that chronological age is not the *only* determining factor for obligation in the Noahide laws. After all, Adam was created biologically mature and with full understanding. This only shows that one who is biologically and intellectually mature is obligated in the *mitzvos*. Perhaps we only consider a person to have reached this point once they are over 12 or 13? Perhaps understanding alone is not enough to obligate one in the *mitzvos*? This verse doesn't really tell us anything about age at all.

Shechem

The residents of the city of Shechem were all put to the sword. Maimonides writes:

*The inhabitants of Shechem transgressed
[by not establishing rule of law] and were executed.*²

Maimonides is teaching us that all of the residents were executed, even the minors. We see that they were all held liable, and therefore, Noahides minors can be held liable for transgression of the Noahide laws.

This possibility is also cited by the *Shoel UMaishiv*. However, Gen. 35:29 states that Shimon and Levi captured the *tapos* - the “young ones” – of Shechem. We see that it *cannot* be assumed that minors were executed Shechem.³

Shimon & Levi

¹ *Tinyana* I:14.

² See *Melachim* 9:14.

³ This and other rebuttals to the *Shoel UMaishiv* are brought in the *Sdei Chemed* II:85:1.

*Shimon and Levi... each ish [man] took his sword...*⁴

This verse uses the term *ish*, meaning an “adult man,” to refer to Shimon and Levi. According to the chronology of the Torah, Levi would have been 13 at the time. This would make him the youngest person to be called an “adult man” in the Torah. In his commentary on the Talmud, Rashi⁵ writes that this verse establishes 13 as the age of maturity and, therefore, obligation in the *mitzvos*. Rashi repeats this opinion in several of his other commentaries.⁶ Rashi appears to understand 13 as a natural benchmark for both biological and intellectual maturity.

[Rabbi Bloomenstiel Notes: Rashi could have also cited Gen. 25:27, which states *vayigdlu haNaarim*, “and the youths became adults,” referring to Yaakov and Esav. According to Torah chronology, Yaakov and Esav would have been 13 years old at that time. This verse is a stronger proof than Gen. 34:25. We know from Rashi’s commentary to Gen. 25:27 that he was certainly aware of the verse’s implications. I am uncertain why he preferred Gen. 34:25 in his commentary to the Talmud.]

The Rishonim

There are two opinions in the [Rishonim](#) as to the age of obligation: [Rashi](#) (which we have already seen) and the [Rosh](#). The differences between their positions have far reaching consequences both for Jews and for Noahides and are the subject of a lot of [Acharonic](#) writings.

Rashi Rashi understands the Torah as stating a natural fact: 13 is a developmental benchmark age at which one enters the beginning of physical and mental maturity. Both are required for one to be fully obligated in the *mitzvos*.

However, Rashi’s view is not without weaknesses:

- It does not establish the minimum age of adulthood for females, only for males (this will be discussed more at the end of the lesson).
- It only says that a male of 13 is an adult, it doesn’t tell us that one under 13 is not an adult. it is possible that a 12 year old is an adult!

⁴ Genesis 34:25.

⁵ To *Nazir* 29b.

⁶ See Rashi to *Avos* 5:21 and to *Sanhedrin* 69b.

**Rabbeinu Asher
ben Yechiel –
The Rosh**

Perhaps because of these difficulties, the Rosh took a different approach. The Rosh⁷ writes that the ages of obligation for girls and boys are *halachos lemoshe misinai*- they are part of the rules of interpretation of the Torah communicated at Sinai and are not necessarily mentioned in the text of the Torah.

The Rosh adds a further point that directly affects Noahides. All measures and amounts for liability and obligations in the *mitzvos* are part of a family of *halachos, laws*, called *shiurim*, literally “amounts.” These laws define, for example, how much non-Kosher meat a Jew must eat to be liable for punishment. Noahides, we know for a fact, were never commanded in *shiurim*.⁸ Since the Rosh holds that the ages of 12 and 13 for Jewish liability are *shiurim*, they do not apply to Noahides at all, only to Jews.

If 12 and 13 are not benchmarks for Noahides, then how would the Rosh determine the age of obligation for Noahides? In his Tosafos to Sanhedrin 69b, the Rosh writes that prior to Sinai an 8 year-old who manifested signs of puberty would be considered an *ish*, man. This implies that the Rosh bases pre-Sinaitic obligation upon physical signs of maturity alone.⁹

However, the *Chavatzeles HaSharon*¹⁰ writes that the Rosh may mean to say that the early onset of puberty only defines one as an *ish*, “man,” from a biological standpoint. The Rosh holds that actual obligation in the *mitzvos* requires further mental development.

This point from the *Chavatzeles HaSharon* illuminates what may be the central issue dividing the positions of Rashi and the Rosh: a fundamental disagreement as to how to understand the word *ish*, “man,” in the Torah.

Does *ish* imply the beginning of overall maturity (meaning one is a *gadol*), or only physical maturity (meaning one is only an *ish*, not a *gadol*)? Rashi understands *ish* as the former, yet the Rosh appears to understand *ish* as the latter.

⁷ *Teshuvos* 16:1.

⁸ This is the consensus of the *poskim* based on Maimonides, *Hilchos Melachim* 9:9.

⁹ The Rosh implies this also in *Tos. HaRosh* to *Yevamos* 12b.

¹⁰ to Gen. 34:25. *Chavatzeles HaSharon*, by Rav Mordechai Carlebach, is an acclaimed commentary on the Torah that discusses many *halachic* issues via the weekly *parsha*.

The Ramifications for Noahides

- **RASHI** - If the *halacha*, practical law, is like the Rashi then the age of 13 should be the age of obligation for Noahide as well as Jewish men (will discuss women soon).
- **ROSH** - If the *halacha* is like the Rosh, then the ages of 12 and 13 are not relevant to Noahides. Obligation is determined by comprehension alone and is not connected to physical or chronological benchmarks.

The Acharonim

The most important *posek* to discuss the question was the [Chasam Sofer, Rav Moshe Schreiber \(Sofer\)](#).

Chasam Sofer, Shu"t YD 317

Rav Moshe was asked to rule on the sale of a Jew's cow to a non-Jew. At the time, the Jew thought that the Non-Jew was at least a teenager. It turned out that the boy was a very big 9 year-old! Was the sale valid? The *Chasam Sofer* follows the Rosh, concluding that the boy was of mature enough mind and understanding that the sale was valid.¹¹

The [Shoel UMeishiv](#),¹² [Minchas Chinuch](#),¹³ also uphold the Rosh in their writings.¹⁴

The *Chasam Sofer's* precedent aside, many other [Acharonim](#) identified fundamental difficulties with the Rosh:

- The Rosh's assumption that age of majority is included in *shiurim*, "measures" is questionable.¹⁵ **[Rabbi Bloomenstiel: For those Rabbis**

¹¹ *Shu"t Chasam Sofer YD 317*.

¹² *Ibid*.

¹³ 190:8; 26:17; 34:8.

¹⁴ The *Chasam Sofer's* reliance on the Rosh, however, is difficult to resolve against the *Talmud Nazir 62b*. See *Minchas Chinuch 26* and [Ohr Somayach Issurei Biah 3:2](#) and in his novellae to *Nazir* for possible resolutions.

¹⁵ *Toras Ben Noach 9:49*; *Minchas Asher Bamidber 6* concedes that when Maimonides wrote that Noahides were not commanded in *shiurim*, he may only have intended food related prohibitions. (this is a very difficult conclusion to uphold, though). However, Rav Weiss adduces further proof that

taking this Noahide course, consider this question: By all other *shiurim* we have a concept of *chatzi shiur assur min ha-Torah*, but by the *shiur gadlus* there is no *chiyuv* of *chatzi shiur*, only a *d'rabbao*n of *chinuch* on the parents! If *chatzi shiur* has no *chalos* by *shiur gadlus*, then *shiur gadlus* is obviously not comparable to other *siurim she-nasan bi-Sinai*. Although I would love to have thought of such a sharp *chidush*, this remarkable insight is from [HaRav HaGaon Dayan Asher Weiss, Shlit"a](#).]

- That the ages of 12 and 13 are divinely ordained and completely independent of biological benchmarks is not correct. Biological and developmental factors do impact, to a degree, the determination of the age of obligations for Jews.¹⁶
- Why would the Jewish obligation be tied to the ages of 12 and 13 and not to developmental factors, while the opposite would apply to Noahides? Is this a situation of Noahide law being more stringent than Jewish law?
- There is significant evidence that Maimonides understands the age of obligation like Rashi and not the Rosh.

**Tzafnas
Paneach, the
Gaon of
Rogatchov**

The famed [Gaon of Rogatchov, Rav Yosef Rosen](#), had serious questions on the Rosh's opinion. In his responsa,¹⁷ the Rogatchover held against the Rosh in favor of Rashi. He held that 13 and 12 are the ages of obligation for Noahides as well as for Jews.

Maimonides?

Is it possible to know what any other Rishonim held besides the Rosh and Rashi? What about [Maimonides](#)? Maimonides has been argued both ways - as supporting the Rosh or Rashi. However, the arguments that he supports the Rosh are, at best,

these aged are not *shiurim* in his *Kovetz Darkhei Horaah* 11. Similar conclusions can be reached from [Chemdas Yisrael](#) 38. See also *Shut Minchas Chaim* I:10; *Shu"t Bris Yaakov* OC 21.

¹⁶ The relationship of developmental factors to the age of obligation is much easier to understand according to Rashi. Nevertheless, it is a much discussed topic. See *Shitta Mekubetztes* to *Bava Metzria* 56b; *Kovetz Shiruim Pesachim* 2; *Tzafnas Paneach* *Ishus* 2:9; *Maharit* I:1. See also *Shut Minchas Chaim* I:10; *Shu"t Bris Yaakov* OC 21 for discussion of this question according to the Rosh, specifically.

¹⁷ *Shu"t Tzafnas Paneach* 101.

only inferred (see examples from the *Shoel UMaishiv* quoted at the beginning of this lesson).

Many later Acharonim have made a strong argument that Maimonides holds like Rashi. Maimonides writes:

*A child, from the time of his birth until the age of 13 is called a **katan, a minor.***¹⁸

At the end of the same section where he makes this statement, he concludes:

*We have defined herein twenty terms [pertaining to the stages and ages of obligation]... Keep these terms in mind at all times; do not forget their meaning, so that their intent will not have to be explained whenever they are mentioned elsewhere.*¹⁹

And then later, in reference to the liabilities for transgressing the Noahide laws, Maimonides writes:

*In any case, a **katan, a minor,** is never punished for their transgression.*²⁰

This chain of statements indicates that Maimonides understood the age of obligation for Noahides to be 13, just as for Jews.²¹

The [*Sdei Chemed*](#), [*Rav Ovadia Yosef*](#),²² and many other *poskim* have noted this.

Age of Obligation for Women

If the *Halacha* follows Rashi, and we assume that the age of obligation of 13 for men is the result of developmental reality, then from where do we know the age of obligation for girls? Knowing that obligation is based on the age at which physical and intellectual maturity are assumed to have begun, we can assume this age is slightly earlier for girls as is such way of the world.

¹⁸ Ishus 2:10.

¹⁹ Ibid. 2:27.

²⁰ Melachim 10:2.

²¹ The Sdei Chemed *ibid.*

²² Yabia Omer II YD 17.

The Talmud says explicitly that women reach maturity earlier than men, using this fact to establish the age of 12 as the age of obligation for women.²³

Conversion of a Minor

It is beyond the scope of this course, but the position of the Rosh runs counter to *halachic* practice for the conversion of minors to Judaism. The *Halacha* is that a minor is not considered mature enough to accept the mitzvos as required in the conversion process.²⁴ Therefore, their conversion is only conditional, not taking full effect until the boy or girl turns 12 or 13. If a Noahide is considered a *halachic* adult even at an earlier age, then why should their acceptance not be considered valid? Doubt as to the validity of a minor's acceptance of the mitzvos could create serious problems should the child decide to reject their "conditional" conversion as an adult. On account of these issues, the [Ritva](#), commenting on the laws of conversion,²⁵ adopts Rashi's approach. We will discuss this issue more in the live lesson.

Noahide *Bar Chiyuv*

Whether we hold like the Rosh or Rashi, all would agree that age 12 or 13 is an important milestone because all agree that a boy or girl is fully obligated in the Noahide laws at this point in his or her life. As such, it makes sense to celebrate it as a milestone that involves formal acceptance of the Noahide laws.

Summary of the Lesson

1. Rashi holds that the age of obligation is based upon the age at which we assume that one has begun his transition to adulthood both biologically and intellectually.

²³ See Niddah 45b and commentaries there. It is possible that this presents a further difficulty to the Rosh.

²⁴ See the

²⁵ *Chiddushim* to Kesubos 11.

2. This is not a legal, but a physical and developmental reality. For boys the age is 13, for girls, 12.
3. Since this is stated before the giving of the Torah, it should apply equally to Noahides. This is a statement of reality, not of law or *mitzvah*.
4. The Rosh holds that development is irrelevant for Jews; the ages are divinely ordained. According to the Rosh, before Sinai the age of obligation would be based on the intellectual development of the individual.
5. Although there are a few *poskim* who rule like the Rosh, the Rosh's opinion is rife with problems.
6. Nevertheless, by age 13 or 12 a boy or girl is certainly a *bar Chiyum*, obligated, according to all. This transition is a life event that, by logic, deserves to be marked somehow.