

Yeshiva University Center for the Jewish Future
Rabbi Isaac Elchanan Theological Seminary

Shavuot To-Go

5768

Featuring Divrei Torah from

Rabbi Josh Flug

Dr. Naomi Grunhaus

Rabbi Zev Reichman

Rabbi Daniel Stein

Rabbi Moshe Taragin



And a fun and exciting packet of divrei Torah
and activities for families by Aaron Steinberg



Dear Friends,

It is my sincere hope that the Torah found in this virtual ספר may serve to enhance your יום טוב (holiday) and your לימוד (study).

We have designed this project not only for the individual, studying alone, but perhaps even more for a חברותא (a pair studying together) that wish to work through the study matter together, or a group engaged in facilitated study.

With this material, we invite you to join our *Beit Midrash*, wherever you may be, להגדיל תורה ולהאדירה (to enjoy the splendor of Torah) and to engage in discussing Torah issues that touches on a most contemporary matter, and which is rooted in the timeless arguments of our great sages from throughout the generations.

בברכת חג שמח

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Dear Readers,

Torah was neither received nor fulfilled in a vacuum.

We received the Torah seven weeks after leaving Egypt. Those seven weeks - which correspond to the seven weeks of sefirat haOmer - were filled with collective and individual introspection; with a quest for harmony and unity; with inculcation of honesty and humility. We received the Torah “as one man, with one heart.” We received the Torah in a desert, in an unpretentious and downtrodden clime, and our mood mirrored that setting. Torah cannot be received in a vacuum.

We departed to Israel - the land of our destiny, the land of Torah’s fulfillment - eleven months after receiving the Torah. For eleven months, we studied at Sinai’s foot. We learned from Moshe, Aharon, Aharon’s sons, the elders, and each other. We stood before Moshe from dawn until dusk to present our questions, to clarify his teachings. We accustomed ourselves to act as Jews, as proud wearers of the yoke of mitzvot. Sans these eleven months of study, we did not and could not depart. Torah cannot be fulfilled in a vacuum.

Shavuot marks the threshold between preparation to receive and preparation to fulfill. Each year, it is a checkpoint in the odyssey of character formation and a starter’s pistol for reinvigorated commitment to study Torah’s theoretical and practical aspects. In this spirit, we present Shavuot-to-Go 5768. Filled with uplifting and enlightening words of Torah, Shavuot-to-Go is a cherry atop sefirat haOmer and a foundation for future Torah study.

We would like to thank Yeshiva University President Richard M. Joel and Rabbi Kenneth Brander, Dean of the Center for the Jewish Future for their vision and support of the To-Go project. We also would like to thank the authors of the articles in this publication, for giving so generously of their time.

We would also like to thank all the important people who made this publication possible: Rabbi Ronald Schwartzberg, Rabbi Mordechai Willig, Cantor Alan Brava, Ari Pinchot, Shalom Silbermintz, and Chaviva Fischer. A special thanks as well to the Boca Raton Community Kollel, and to the Student Organization of Yeshiva.

In the merit of our proper preparation, may Hashem help us receive and fulfill the Torah in Eretz Yisrael by speeding the redemption in our days. Amen.

Chag Kasher veSameach,

Ephraim Meth

Halachic Perspectives on Live Kidney Donations

Rabbi Joshua Flug

Rosh Kollel, Boca Raton Community Kollel

Introduction

The human being was created with two kidneys, although he can survive with just one. This phenomenon allows a healthy person to donate one of his kidneys to someone suffering from renal disease. In some situations, a kidney donation is the only means of saving the patient's life. While the patient has the option of dialysis in many situations, transplants have been shown to prolong the life of a recipient in comparison to dialysis.¹

In this article, we will explore the following questions relating to live kidney donations:

- 1) The Torah states:

Do not stand idly by your neighbor's blood.

Vayikra 19:16

לא תעמד על דם רעך

ויקרא יט:טז

If one knows of someone who is in need of a kidney and decides not to donate, does he violate the prohibition against standing idly by his neighbor's blood?

- 2) Assuming that there is no obligation to donate a kidney to someone in need, is it permissible to donate in light of the risks involved in removing a kidney?
- 3) Given that providing a kidney to someone in need constitutes *pikuach nefesh* (saving a life), is it ever permissible to employ unethical means to procure a kidney?

In order to answer these questions, we will explore the prohibition against standing idly by in a life-threatening situation. It is the goal of this article to not only inform the reader about live kidney donations, but to present a clear understanding as to how far one *must* go to save a life and how far one *may* go to save a life.

¹ See Robert A. Wolfe, Valarie B Ashby, Edgar L Milford, Akinlolu O Ojo, et al. (1999). Comparison of mortality in all patients on dialysis, patients on dialysis awaiting transplantation, and recipients of a first cadaveric transplant. The New England Journal of Medicine, 341(23), 1725-30.

The Prohibition of Standing Idly By

The centerpiece for the discussion about the nature of the mitzvah of saving a life is found in *Masechet Sanhedrin*:

"Whence do we know that if a man sees his neighbor drowning, mauled by beasts, or attacked by robbers, he is bound to save him? From the verse, 'Thou shalt not stand by the blood of thy neighbor.'" But is it derived from this verse; is it not rather from elsewhere? Viz., "Whence do we know [that one must save his neighbor from] the loss of his body? From the verse, 'And thou shalt restore him to himself!'" — From [the first] verse I might think that it is only a personal obligation, but that he is not bound to take the trouble of hiring men [if he cannot save him himself]: therefore, this [second] verse teaches that he must.

Sanhedrin 73a- Soncino Translation

מנין לרואה את חברו שהוא טובע
בנהר או חיה גוררתו או לסטין
באין עליו שהוא חייב להצילו
תלמוד לומר לא תעמד על דם
רעך והא מהכא נפקא מהתם
נפקא אבדת גופו מניין תלמוד
לומר והשבתו לו אי מהתם הוה
אמינא הני מילי בנפשיה אבל
מיטרה ומיגר אגורי אימא לא קא
משמע לך.

סנהדרין עג.

According to the Gemara, the mitzvah of saving a life is included in the mitzvah of *hashavat aveidah*, the mitzvah of returning a lost item; if we must return a lost item, how much more so must we restore the waning life of another individual. Yet, the mitzvah of saving a life contains a feature that is not apparent in the mitzvah of *hashavat aveidah*. When it comes to saving a life, one must hire help, if necessary, in order to attempt the life-saving mission. This is not required when it comes to *hashavat aveidah*.

Question: By noting that there is an added feature in the mitzvah of saving a life - that one must hire help - does the Gemara imply that this is the *only* difference between *hashavat aveidah* and saving a life; or is this feature reflective of a general principle that one must make all types of extraordinary efforts to save a life?

Many practical issues relate to this question. For example, if hiring help is the only characteristic that distinguishes saving a life from *hashavat aveidah*, a rescuer need not risk his own life to save someone else. However, if hiring help is an example of the extra effort one must make to save a life, perhaps one is even obligated to risk his own life to save someone else. The Talmud Yerushalmi addresses the issue of risking one's own life to save someone else:

Rav Imi was captured in a dangerous area. R. Yochanan stated "Wrap the dead in his shrouds." R. Shimon ben Lakish responded "I will either kill or be killed, I will go with might and save him.

Talmud Yerushalmi, Terumot 8:4, 47a

רבי אימי איתצד בסיפסופה (ניצוד במקום סכנה הרבה,
פני משה) אמר ר' יוחנן יכרך המת בסדינו (כלומר
שנתייאשו הימנו ואין לו אלא להכין לעצמו תכריכי המת,
פ"מ) אמר ר' שמעון בן לקיש עד דאנא קטיל אנא מתקטיל
אנא איזיל ומשיזיב ליה בחיילא (שמע רשב"ל ואמר או
אני אהרוג או אני נהרג אני אלך ואציל אותו בכח פ"מ).
תלמוד ירושלמי תרומות ח:ד מז.

R. Shimon ben Lakish attempted a life-saving mission knowing that there was a real possibility that he could be killed in the attempt. *Hagahot Maimoniot* in the context of discussing the mitzvah of saving a life, comments on this story:

The [Talmud] Yerushalmi concludes that one must even enter into potential danger [in order to save a life.]

Hagahot Maimoniot 1:15 (Kushta Edition)

בירו' מסיק אפי' להכניס עצמו בספק סכנה
הגהות מיימוניות הל' רוצח א:טו
(דפוס קושטא)

According to *Hagahot Maimoniot* it is obligatory to undertake some degree of risk in order to save a life.

One of the commentaries on *Shulchan Aruch*, R. Yehoshua Falk, in his *Sefer Me'irat Einayim* (*S'ma*) notes *Shulchan Aruch*'s omission of *Hagahot Maimoniot*'s comment:

In Hagahot Maimoniot they wrote that the [Talmud] Yerushalmi concludes that one must even enter into potential danger for this. This was cited by Beit Yosef who commented "it would seem that the reason for this is that the other one (the victim) is definite and he (the rescuer) is only questionable." This [ruling] was omitted by Shulchan Aruch and Rama, and one can suggest that the reason for this is that since Rif, Rambam, Rosh, and Tur did not include it in their codification, they (Shulchan Aruch and Rama) omitted it as well.

SM" A 426:2

ובהג"מ כתבו דבירושלמי מסיק
דצריך אפילו להכניס עצמו בספק
סכנה עבור זה והביאו הב"י וכ' ז"ל
ונראה שהטעם הוא מפני שהלה ודאי
והוא ספק עכ"ל גם זה השמיטו
המחבר ומור"ם ז"ל ובזה י"ל כיון
שהפוסקים הרי"ף והרמב"ם
והרא"ש והטור לא הביאו בפסקיהן
מ"ה השמיטוהו ג"כ.
סמ"ע תכ"ב

R. Ya'akov Etlinger, in his *Aruch LaNer, Sanhedrin 73a*, posits that the reason many Rishonim did not codify the Talmud Yerushalmi's statement is that the Talmud Bavli disagrees. R. Etlinger comments on the aforementioned Gemara:

According to what Beit Yosef wrote in Choshen Mishpat in the name of the [Talmud] Yerushalmi that one must potentially risk his life in order to save someone else's life, one must ask: why does the Gemara question the necessity for the verse mandating saving a life once we have a verse for hashavat aveidah; if [Hagahot Maimoniot's idea is correct] it [the verse mandating saving a life] is certainly necessary for this case [of potential risk]. [Yet] according to the codifiers who omitted this law, everything works well, because they are of the opinion that our Talmud [Bavli] disagrees with the Yerushalmi.

Aruch LaNer, Sanhedrin 73a

ק"ק לפי מה שכתב הב"י בח"מ (סי'
תכ"ו ס"א) בשם הירושלמי דאפילו
בספק נפשות צריך להכניס את עצמו
כדי להציל את חבירו א"כ מאי פריך הא
ודאי צריך לזה לא תעמוד על דם רעך
דמוהשבותו לו לא הוי ידעינן למימר
הכי ולפי שיטת הפוסקים שהשמיטו דין
זה א"ש ד"ל דסברו דהש"ס דילן
באמת פליג על הירושלמי
ערוך לנר, סנהדרין עג.

According to R. Etlinger, the Talmud Bavli should have presented another important difference between *hashavat aveidah* and saving a life, i.e. that one must undertake some degree of risk to

save a life, but not to perform *hashavat aveidah*. The Bavli's omission of this distinction implies that in fact, one is not required to undertake risk for the mitzvah of saving a life.

One can argue that even the Talmud Yerushalmi does not require risking one's life in order to save someone else. R. Moshe Feinstein states:

According to what I wrote that the prohibition against standing idly by your neighbor's blood has the same status as other negative prohibitions, one cannot be obligated to risk one's life in order to save someone else from definite death because regarding other negative prohibitions, it is not only unnecessary but prohibited to risk one's life. In fact, it is just the opposite, for if one must violate Shabbat in order to save oneself from a questionable danger, certainly one cannot enter into danger to avoid violation of Shabbat or other negative prohibitions. Therefore, one cannot require someone to potentially endanger himself even if it is to save someone else. However, it is logical that there is a difference between the prohibition against standing idly by and other negative prohibitions, in that one is prohibited from risking one's life in order to avoid violation of a negative commandment ... but in order to save a life, even though it is a negative commandment, it is permissible to endanger oneself since this will accomplish saving a Jewish life.

Igrot Moshe, Yoreh De'ah 2:174

ולפי הטעם שכתבתי דלאו דלא תעמוד על דם רעך הוא בדין כל הלאוין, אין לחייב לאדם ליכנס בספק סכנה להצלת חברו מודאי סכנה, דהא להנצל מעבירת כל הלאוין ודאי לא רק שאינו צריך אלא שגם אסור להכניס עצמו לספק סכנה דאדרבה הא מחללין שבת אף לרפאות מספק סכנה וכ"ש שאסור להכניס עצמו לספק סכנה להנצל מחלול שבת ומכל הלאוין, וא"כ אין לחייבו להכניס עצמו לספק סכנה גם בשביל להציל נפש חברו. אבל מסתבר שיהיה חלוק לאו דלא תעמוד על דם רעך משאר לאוין לענין איסור דבשאר לאוין הא אסור להכניס עצמו לספק סכנה כדי שלא יעבור אלאו ... אבל להציל נפש חברו אף שג"כ הוא רק באיסור לאו יהיה מותר להכניס עצמו בספק מאחר דעכ"פ יוצל נפש מישראל
אגרות משה יו"ד ב:קעז

According to R. Feinstein, one is not obligated to risk one's life in order to save someone else's life. Nevertheless, it is permissible to do so. As such, the incident in the Talmud Yerushalmi is no longer a proof that one must risk one's life in order to save someone else. Although R. Shimon ben Lakish risked his own life in order to save R. Imi, it is possible that he did so not out of obligation but rather on his own volition.

Question: How can we relate live kidney donations to the discussion about risking one's own life in order to save someone else?

Donating a kidney entails a certain degree of risk. In a survey of over 10,000 kidney donations, two donor deaths were reported.² If we assume that one must undertake a certain degree of risk in order to save a life, one cannot absolve himself from the obligation to donate a kidney based on the risks associated with donating a kidney. If we assume that there is no obligation to risk one's life in order to save someone else, then ostensibly, one is exempt from donating a kidney to someone in need although according to R. Feinstein, he may donate voluntarily.

² Arthur J. Matas, Stephen T. Bartlett, Alan B. Leichtman, Francis L. Delmonico (2003). Morbidity and mortality after living kidney donation, 1999-2001: Survey of United States Transplant Centers. American Journal of Transplantation, 3 (7), 830-834.

Nevertheless, one can question whether one is exempt from donating a kidney on the basis of risk to the donor. Halacha has a certain threshold as to what is considered significant risk. Thus, to prevent risk to a life one may violate a Torah prohibition, but if the risk to life is negligible one may not violate a Torah prohibition:

The intention of Rabbeinu Shimshon is not that there is actual danger or potential danger. Rather there is great pain and suffering and there is a remote possibility - a one in a thousand chance - that this may become dangerous. Even though we don't treat the current condition as an actual danger or potential danger, nevertheless, since it can become dangerous, we use the term "danger." We find a similar idea in Perek Kirah (the third chapter of Masechet Shabbat) where it states that one can rely on R. Shimon in a pressing situation. Rashi explains that we are dealing with danger. [One can ask:] doesn't one violate any biblical prohibition for actual danger or potential danger? Why then, must one rely on the opinion of R. Shimon? Rather one must conclude that there is no current potential danger, but there is a remote possibility that it will become a dangerous situation, and that is considered a pressing situation where one can rely on the opinion of R. Shimon.

Teshuvot R. Akiva Eger, Pesakim no. 60

אין כוונת הר"ש דאיכא סכנה ממש או ספק סכנה אלא דאיכא כאב וצער טובא ואפשר ע"צ הריחוק אחת מני אלף דיצמח מזה סכנה דאף דאין דנין אותו כעת בכלל סכנה או ספק סכנה מ"מ כיון דאיכא צד אפשרות לבא לזה קורא בלשון סכנה ... וכעין זה בפרק כירה כדאי ר"ש לסמוך עליו בשעת הדחק פירש"י סכנה, והרי סכנה או ספק סכנה אפילו איסור דאורייתא נדחית ומאי צריך לסמוך אדר"ש, אע"כ דאין כאן עתה בגדר ספק סכנה להתיר איסור בשביל זה אלא כיון דעל צד הריחוק הסתעפות סכנה מקרי שעת הדחק וסמכו אדר"ש.

שו"ת רבי עקיבא איגר פסקים ס' ס

According to R. Eger, any risk that is less than "one in a thousand" is not considered a risk that allows one to violate a Torah prohibition. As such, the remote risk of death from kidney donation is not a valid exemption from the mitzvah of saving a life.

However, there are two other factors that must be considered.

First, R. David Friedman expands the scope of the exemption of undertaking risk:

The only [additional] obligation that we find regarding saving a life is to make the extra effort and to hire someone else as they said in Sanhedrin 73a, based on the verse 'do not stand idly by your neighbor's blood,' that one is obligated to make extra effort and hire someone else. This implies that one is not required to risk one's life or to cause oneself discomfort, for if this were true, the Gemara should have noted that this is an additional feature that one does not derive from hashavat aveidah ... It is clear that one is not required to cause oneself pain that may lead to illness, G-d forbid, in order to save someone else.

She'eilat David, Even HaEzer no. 6, note 4

שלא מצינו חיובא בהשבת גופו של חברו אלא בטירחו או לאגורי' פועלים כאמרם בסנהדרין דף ע"ג א' מקרא דלא תעמוד על דם רעך שמחויב אף להטריח ולשכור פועלים משמע דלסכן עצמו או לצער גופו אינו מחויב דאי לא"ה ה' לו להגמרא לומר דאי מוהשבות לו אינו מחויב בצער הגוף לצער עצמו להצלת ממון חברו ... מוכרח שאינו מחויב לצער עצמו בחולי ר"ל שיכול ליפול לחולי בשביל הצלת חברו.

שאילת דוד, אהע"ז ס' ו הע' ד

According to R. Friedman, not only is there no obligation to risk one's life, there is no obligation to perform an action that will cause one physical distress or cause one to become ill in order to save a life. Kidney donations do cause a great deal of discomfort for the donor³ and therefore, according to R. Friedman, the discomfort would be grounds for exempting one from donating a kidney.

Second, Radvaz discusses a case wherein Reuven was coerced into choosing one of the following alternatives: either allow the coercer to amputate Reuven's limb, or he will kill Shimon. Radvaz writes:

One cannot violate Shabbat for the threat of loss of limb. However, we have not heard of [an obligation] for one to accept a threat instead of one's friend ... even though he has an obligation to save him with his money, this obligation does not extend to risking one of his limbs ... Furthermore, [the verse] states 'Her ways are ways of pleasantness,' and the laws of the Torah must correspond to reason and logic, so how can we think that a person should allow someone to blind him or to amputate a limb in order that he (the threatener) won't kill his friend. Therefore, I see no reason for this and it is only a meritorious act. Praised is the portion of one who can withstand this. If there is a potential danger, he is a pious fool, because his life vis-à-vis the potential danger supercedes the definite death of his friend.

Teshuvot Radvaz 3:627

אין סכנת אבר דוחה שבת אבל שיביא הוא האונס עליו מפני חבירו לא שמענו ... אע"ג דחייב להצילו בממונו אבל לא בסכנת איבריו ... ותו דכתיב דרכיה דרכי נועם וצריך שמשפטי תורתנו יהיו מסכימים אל השכל והסברא ואיך יעלה על דעתנו שיניח אדם לסמא את עינו או לחתוך את ידו או רגלו כדי שלא ימיתו את חבירו הלכך איני רואה טעם לדין זה אלא מדת חסידות ואשרי חלקו מי שיוכל לעמוד בזה ואם יש ספק סכנת נפשות הרי זה חסיד שוטה דספיקא ידידה עדיף מוודאי דחבריה.
שו"ת רדב"ז ג:תרכז

According to Radvaz, there is no obligation to relinquish a limb in order to save someone else's life. If there is a risk to your own life involved, sacrificing a limb is even considered a foolish act.

This ruling is relevant to live kidney donations. In the early years of kidney donation, R. Yitzchak Y. Weiss authored a responsum (dated 1961) prohibiting donating a kidney. He states:

Regarding our discussion about the medical innovation of transplanting a kidney from a healthy person to someone suffering from renal failure, [we discussed] if it is permissible for a healthy person to allow someone to take one of his kidneys for the purpose of healing his friend. We spoke about the issue of someone who sees his friend drowning in the river if he has to potentially risk his own life in order to save his friend. Radvaz in a responsum distinguishes between cases where there is danger and cases where there is no danger, and in our case, there is certainly

וע"ד אשר דברנו בנוגע להמצאת הרופאים, במה שמרכיבים כוליא מאדם בריא, באדם אחד שכוליתו נתקלקלה, אם מותר לאדם בריא להניח ליטול כוליא אחת משלו בשביל רפואת חבירו, ודברנו מהא דרואה את חבירו טובע בים, אם צריך להכניס עצמו לספק סכנה בשביל הצלת חבירו ... והרדב"ז בתשו' (ח"ג סי' תרכ"ה) חילק בין אם יש סכנה או לא, דאם אין סכנה הוי מדת חסידות, וביש סכנה, הוי חסיד שוטה, ובנד"ד בודאי איכא

³ See Paul C. Kuo, Lynt B. Johnson, and James V. Sitzmann (2000). Laparoscopic donor nephrectomy with a 23-hour stay: A new standard for transplantation surgery. *Annals of Surgery*, 231(5), 772–779.

danger in the procedure itself and in the future because he now lacks a kidney. Also, that which is implicit that the dispute (regarding risking one's life to save another) is only whether it is obligatory, but (everyone agrees that) it is permissible if he desires to do so, that is only true if by risking his own life he will certainly save his friend.

Minchat Yitzchak 6:103

סכנה על הנתוח בעצמו, וגם להבא על חסרת כוליא שלו, וגם מה דמשמע לכאורה דהפלוגתא רק אם צריך או לא, אבל מותר אם רוצה, כל זה דוקא אם יכניס עצמו לספק סכנה יציל את חברו בבירור.
מנחת יצחק ו:קג

The basis for R. Weiss' ruling is the ruling of Radvaz that if one volunteers to relinquish a limb to save someone else and there is a risk in the donation, he is a pious fool. R. Weiss considered kidney donation to be a risky enough procedure to prohibit the act.

R. Ovadia Yosef, in a responsum (dated 1980), notes that the risk involved in donating a kidney has diminished:

Based on these ideas, the great scholar, R. Yitzchak Ya'akov Weiss, Justice of the Eidah Chareidit, in his book Minchat Yitzchak Vol. VI, rules that it is prohibited to donate a kidney to someone suffering from renal failure ... However, in truth, we were told by expert G-d fearing physicians that the risk to the donor in kidney donations is very remote, that approximately 99% of donors fully recuperate. Based on this fact, it should be known that that which these decisors rule that one may not endanger oneself, that is only when both possibilities (life and death) are equal. However, in our case, it is certainly a mitzvah to donate in order to save the life of a friend.

Yechaveh Da'at 3:84

על יסוד הדברים הנ"ל, דן הגאון רבי יצחק יעקב וייס, ראב"ד העדה החרדית בירושלים, בספרו שו"ת מנחת יצחק חלק ו' (סימן ק"ג) לאסור לתרום כליה לחולה כליות שנשקפת לו סכנה... אולם באמת שנמסר לנו מפי רופאים מומחים ויראי שמים שדרגת הסיכון בהוצאת הכליה לאדם התורם, היא מועטת מאד, וכתשעים ותשעה אחוזים מהתורמים חוזרים לבריאותם התקינה. ולפי זה הרי כל מה שהסכימו הפוסקים הנ"ל שאסור להכניס עצמו בספק סכנה, זהו רק בספק השקול, מה שאין כן בנידון שלנו שבדאי שמצוה היא לתרום כדי להציל את חברו ממות בטוח.

יחיה דעת ג:פד

According to R. Ovadia Yosef, a 1% morbidity rate is not considered a significant enough risk to prohibit kidney donations. Therefore, one receives a mitzvah for donating a kidney, but is not obligated to do so.

Procuring a Kidney Through Unethical Means

Question: Now that we determined that kidney donation is meritorious but not obligatory, can one use unethical means to procure a kidney?

For instance, is it permissible to pressure someone else into donating a kidney? Rabbeinu Yonah states:

"Thou shalt not covet thy neighbor's house" (Exodus 20: 14), and, "Neither shalt thou desire thy neighbor's house" (Deuteronomy 5: 18). We have hereby been exhorted not to

לא תחמוד בית רעך לא תתאוה בית רעך הוזהרנו בזה שלא להתעולל עלילות ברשע לקחת שדה וקרם וכל

engage in wicked acts for the purpose of taking the field or vineyard or any other possession of our neighbor, although we pay for it. We have been exhorted even against contemplating this evil design, against resolving its undertaking in our thoughts, as it is said, "Thou shalt not covet." If one strongly desires that another sell him his field or vineyard, or any other of his possessions, and he knows that the other does not wish to sell it, but that if he is besought with many words of supplication he will be ashamed to refuse, it is forbidden to beseech him thus for it would be akin to compelling him. And if a respected person desires something and knows that because of the high regard in which he is held he will not be refused, he may not ask his neighbor to sell or give it to him unless he knows that it will be given willingly, with no misgivings.

Sha'arei Teshuva 3:43- Translation by Shraga Silverstein (Feldheim).

אשר לרענו, גם כי נתן מכרם. והוזהרנו על מחשבת הדבר הרע הזה שלא נסכים במחשבתנו לעשותו, שנאמר: לא תחמוד. ואם יכסוף אדם שימכור לו חברו שדה או כרם או אחד מחפציו ולא יש את נפשו למכרו, ואם יפצר בו ברוב דברי תחנונים יבוש להשיב פניו, אסור לפצור בו, כי זה כמו הכרח ואונס. והחומד לקחת כל חפץ והוא איש נכבד, שאם ישאל שאלה אור פניו לא יפילון אסור לשאול מעם רעהו מקח או מתת, בלתי אם ידע כי נתון יתן לו בנפש חפצה ולא ירע לבבו בתתו לו.
שערי תשובה שער ג' ס' מג

According to Rabbeinu Yonah, one violates *lo tachmod*, the prohibition against coveting, by asking for a gift that the potential giver feels pressured to give. When a relative or friend is approached to donate a kidney, there exists explicit or implicit pressure to donate.⁴ Thus, on the one hand, pressuring someone even implicitly into giving a kidney is a potential violation of *lo tachmod*.⁵ On the other hand, the ultimate goal is to save a life. May one violate *lo tachmod* in order to save someone else's life?

A similar question is raised in the Gemara regarding whether it is permissible to steal in order to save someone's life:

Scripture says: And David longed, and said, Oh that one would give me water to drink of the well of Bethlehem, which is by the gate. And the three mighty men broke through the host of the Philistines and drew water out of the well of Bethlehem that was by the gate etc. What was his [David's] question? ... R. Huna said: [The question was this:] There were stacks of barley which belonged to Israelites but in which Philistines had hidden themselves, and what he asked was whether it was permissible to rescue oneself through the destruction of another's property. The answer they dispatched to him was: [Generally speaking] it is forbidden to rescue oneself through the destruction of another's property; you, however, are King, and a king may break

ויתאוה דוד ויאמר מי ישקני מים מבור בית לחם אשר בשער ויבקעו שלשת הגבורים במחנה פלשתים וישאבו מים מבור בית לחם אשר בשער [וגו'] מאי קא מיבעיא ליה ... רב הונא אמר גדישים דשעורים דישראל הוו דהוו מטמרי פלשתים בהו וקא מיבעיא ליה מהו להציל עצמו בממון חבירו שלחו ליה אסור להציל עצמו בממון חבירו אבל אתה מלך אתה [ומלך] פורץ

⁴ See Robert D. Truog (2005). The ethics of organ donation by living donors. *New England Journal of Medicine*, 353(5), 444-446.

⁵ There are a number of factors involved in the question of whether coercion to donate a kidney is considered *lo tachmod*. Some of the questions include whether *lo tachmod* applies to a gift, whether *lo tachmod* applies to a third party asking on behalf of someone else and whether *lo tachmod* applies when the giver has the option of giving one of multiple items. For a further discussion of *lo tachmod*, see this author's "*Lo Tachmod*" available at YuTorah.org.

[through fields belonging to private persons] to make a way [for his army], and nobody is entitled to prevent him [from doing so].

Baba Kama 60b- Soncino translation

לעשות לו דרך ואין מוחזין בידו.
בבא קמא ס:

The Gemara concludes that it is prohibited to save one's life with someone else's money. Rashi does not restrict or reinterpret the Gemara's conclusion, implying that it is actually prohibited to steal or damage someone's property in order to save a life. However, Tosafot state:

The question is whether one must pay when he [damages another's property] to save his own life.

Tosafot, Baba Kama 60b, s.v. Mahu

איבעיא ליה אי חייב לשלם כשהציל עצמו
מפני פקוח נפש.
תוס' ב"ק ס: ד"ה מהו

According to Tosafot, one may certainly steal or damage in order to save a life. The Gemara merely wishes to know who incurs the expense of the theft or damage.

It is possible to explain the opinion of Tosafot that since stealing or damaging property is not one of the three cardinal transgressions, one may violate the prohibition against stealing in order to save a life, just as one may violate Shabbat in order to save a life. However, the act is still considered an act of theft even though it was for the purpose of saving a life. Therefore, the monetary consequences of theft are not lifted and one must reimburse the property owner.⁶

Nevertheless, there is an alternate way of understanding the opinion of Tosafot based on the comments of Ra'avad. Ra'avad notes that there is a comment of the Gemara which seems to contradict the rule that it is prohibited to save a life with someone else's money. The Gemara states:

[If he says,] 'Be thou betrothed unto me for a loaf of bread', [and she replies,] 'Give it to the dog', she is not betrothed; but if it was her dog, she is betrothed. R. Mari asked: What if the dog was pursuing her? [Do we say that] in return for the benefit of saving herself from it she resolves and cedes herself to him; or perhaps she can say to him, 'By Biblical law you were indeed bound to save me'?

Kiddushin 8b- Soncino Translation

התקדשי לי בככר תנהו לכלב אינה
מקודשת ואם היה כלב שלה מקודשת
בעי רב מרי כלב רץ אחריה מהו
בההוא הנאה דקא מצלה נפשה מיניה
גמרה ומקניא ליה נפשה או דלמא מצי
אמרה ליה מדאורייתא חיובי מחייבת
לאצולן.
קדושין ח:

A man can perform *kiddushin* (betrothal) by giving something of monetary value to a woman. The Gemara, in stating that *kiddushin* may be executed if the prospective groom feeds the prospective bride's dog, considers the feeding of the dog tantamount to giving monetary value to the woman. The Gemara then describes a case where a woman is being chased by a dog (not her dog). The prospective groom would like to execute the *kiddushin* by throwing food to the dog, causing it to cease its pursuit of the prospective bride. The Gemara states that on the one hand, the prospective bride benefits monetarily from his act because he provides food on her behalf and terminates the

⁶ See *Even HaEzel, Hilchot Chovel UMazik* 8:4, who explains Rambam's position in a similar manner.

dog's pursuit of her. We can treat it as if he gave the food to the woman as a gift and then threw it to the dog as her agent. On the other hand, the *kiddushin* may be invalid since the prospective groom has an obligation to save the woman from the dog with his own money, regardless of his interest in marrying her. The Gemara provides no resolution to this question.

Ra'avad states:

Now that we have discussed the topic of saving one's life with someone else's property, let us discuss an idea because there are two contradictory statements [in the Talmud]. In the chapter HaKones Tzon LaDir (the sixth chapter of Baba Kama) it states "And David longed, and said, Oh that one would give me water ... The answer they despatched to him was: [Generally speaking] it is forbidden to rescue oneself through the destruction of another's property." In the first chapter of Kiddushin it states "Be thou betrothed unto me for a loaf of bread', [and she replies,] 'Give it to the dog' ... R. Mari asked: What if the dog was pursuing her? [Do we say that] in return for the benefit of saving herself [etc]." This implies that that one must save someone's life with someone else's property because one must spend his own money to save someone else. So why, in fact, [does the Gemara state that] it is prohibited to save one's life by damaging someone's property? One can suggest that a person is only obligated to save someone else with his money when the victim is present as it states "And you shall return it to him [which teaches] even loss of life." However, when the victim is not present, his property is not bound to the life saving mission. Even when he is present, he is not required to lose his property and he must be reimbursed.

Ra'avad, Baba Kama 117b

ומציל עצמו בממון חברו הואיל ואתא לידן נימא ביה מילתא דאיכא מילי דקשיין אהדדי. התם בפרק הכונס צאן לדיר אמרינן ויתאו דוד ויאמר מי ישקני מים ... שלחו ליה אסור להציל וכו'. וגרסינן בקידושין פרק קמא התקדשי לי בכרך תנהו לכלב וכו' בעי רב מרי כלב הרץ אחריה מהו מי אמרינן חייב לאצולה אלמא אדם חייב להציל בממון חברו ואם זה חייב להצילו בממונו מה טעם אסור לאדם להציל עצמו בממון חברו. ואיכא למימר מה שאדם חייב להציל חברו בממונו הני מילי בפניו כדכתיב והשבחו לו אפילו אבדת גופו אבל שלא בפניו לא נתחייב ממונו בכך ואפילו בפניו נמי לא שיפסיד זה ממונו אלא שישלם פסידתו.

פירוש הראב"ד לבבא קמא קיז:

According to Ra'avad, when someone is being chased by a dog, the bystanders have a monetary obligation to provide food to the dog. The only question in the Gemara is whether that food can effect *kiddushin*. This ostensibly contradicts the principle that it is prohibited to save life by stealing someone else's property. If in fact each individual has a monetary obligation to save a life, shouldn't all property be considered ownerless when that property is needed to save a life? Why then is it prohibited to steal in order to save a life?

To resolve this contradiction, Ra'avad distinguishes between a case where the property owner is himself a bystander to the life-threatening situation and a case where he is not. If the property owner is a bystander, one may steal or damage his property in order to save a life. When he is not a bystander, one may not damage his property. Ra'avad explains that when the property owner is a bystander, he is personally obligated to spend his own money to save a life. Therefore, one may steal or damage his property as long as he is reimbursed. If the property owner is not a bystander, one may not steal or damage his property in order to save a life because he has no personal obligation towards that life-saving mission.

One must add to Ra'avad's explanation that in principle, one may not violate an interpersonal law (*bein adam l'chaveiro*) in order to save someone's life.⁷ Therefore, if the property owner is not present, he has no obligation towards the victim and one may not damage his property in order to save a life.⁸ If he is present, he has a moral obligation to spend money in order to save the victim. The prohibition against stealing or damaging property with intent to reimburse is strictly moral in nature. The subsequent obligation to reimburse for damages or return stolen property is legal in nature. The moral obligation binding on the property owner to save the victim overrides the moral prohibition against stealing or damaging his property. This allows one to steal or damage his property without consent when he is present. However, it does not override the legal ramification of such an action, and that is why the property owner must be reimbursed.

Accordingly, one can explain that Tosafot agree in principle with Ra'avad that one may not violate an interpersonal mitzvah in order to save a life. The reason why Tosafot allow one to steal or damage property in order to save a life is that Tosafot assume that the moral obligation to save someone else's life applies even when one is not present to witness the life-threatening situation. Therefore, one may always steal or damage someone else's property in order to save a life as long as the damager defrays the cost. However, if hypothetically, the property owner has no obligation to save the life of the victim, Tosafot would agree that one may not damage or steal property.

As mentioned previously, the mitzvah of saving a life does not obligate one to donate a kidney. According to Ra'avad, the basis for violating an interpersonal mitzvah in the presence of the property owner is the property owner's moral obligation to forgo his rights to the property. However, regarding a kidney, there is no obligation to donate a kidney, even in the presence of the patient. Therefore, according to Ra'avad, one may not use unethical means in order to procure a kidney if those means violate interpersonal law. Furthermore, it is possible that Tosafot also agree to this premise.⁹

Questions for further discussion:

- 1) It is possible for someone to donate a portion of his liver for transplant. The donor's liver will regenerate over the course of the next few months. Nevertheless, the risk for

⁷ R. Shlomo Kluger, *HaElef L'Cha Shlomo*, *Yoreh De'ah* no. 200, is of the opinion that one may not violate any interpersonal mitzvah in order to save a life. He explains that the rule that one may violate any Torah law in order to save a life (with the exception of murder, licentiousness, and idolatry) only applies to *mitzvot* that are between man and G-d. When G-d gave the commandments, he included a clause that he "forgives" those who violate the Torah in order to save a life. However, regarding interpersonal *mitzvot* it is insufficient to receive forgiveness from G-d. One must also receive forgiveness from the victim of the violation. Therefore, one may not violate another person's rights without the victim's consent, even if the purpose is to save a life.

⁸ R. Ovadiah Yosef, *Yabia Omer*, *Choshen Mishpat* 4:6, and R. Yisrael Y. Fischer, *Even Yisrael* 8:105, both assert that Rashi is of the same opinion as Ra'avad and that Rashi only prohibits damaging or stealing property in order to save a life when the property owner is not present.

⁹ Even if Tosafot do not accept the premise of Ra'avad, R. Ya'akov Etlinger, *Teshuvot Binyan Tzion* no. 171, notes that even Tosafot do not allow one to steal or damage if there is no possibility of reimbursing the victim. It is possible that coercion to donate a kidney is a form of "damage" that is not subject to reimbursement.

- the donor is significantly greater than one who donates a kidney.¹⁰ Furthermore, the recovery time is longer. How would you apply the above discussions to liver donation?
- 2) Suppose a rescuer had to spend money in order to save someone's life. Is the victim required to compensate the rescuer? Would the case be different if the victim claims that the rescuer was over-zealous in his attempt and the victim was not really in danger?
 - 3) Is offering money for a kidney an unethical form of coercion?

¹⁰ Katrina A. Bramstedt (2006). Living liver donor mortality: Where do we stand? *The American Journal of Gastroenterology* 101 (4), 755–759.

“Can I Have a Ride?”

Carpooling & *Middas*

Sodom

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The Mitzvah of Chesed

The human head and face is comprised of only seven elements: the shape of head, shape of face, eyes, eyebrows, nose, mouth, and hair. Yet it is widely accepted that there are no two people who look exactly alike. The Talmud, in recognition of this axiom, comments: “just as no two faces look exactly alike, no two people possess exactly the same ideas and personality.”¹¹ Nonetheless, the Talmud does assert that there are three personality traits shared by every member of the Jewish people. Every Jew is inherently merciful (*rachmanim*), humble (*bayshanim*), and benevolent (*gomlei chasadim*)¹². Obviously individuals can tamper with or contaminate their initial proclivity towards these qualities, but these are the hallmarks of the Jewish nation as a whole.

The last item enumerated - benevolence, or the mitzvah of *chesed* - is without a doubt a Biblical mitzvah¹³. The Gemara struggles to distinguish between the mitzvah of *chesed* and another Biblical directive, the mitzvah of *tzedakah* (charity to the poor)¹⁴. The Gemara resolves that the general mitzvah of *chesed* includes the specific mitzvah of *tzedakah* and surpasses it in three areas. *Tzedakah* only applies to the indigent, whereas *chesed* applies to wealthy as well. *Tzedakah* only relates to the living, but *chesed* can exist even with the dead. Lastly, *tzedakah* refers solely to monetary support, whereas *chesed* exists even in the form of a non-monetary favor (i.e. to deliver a eulogy, to visit the sick, etc.).

¹¹ Talmud Yerushalmi, *Berachos* 9:1.

¹² *Yevamos* 79a, and Talmud Yerushalmi, *Kiddushin* 4:1.

¹³ The rishonim dispute the source for the mitzvah of *chesed*. The author of the *Halachos Gedolos* (cited by the *Rambam*, *Sefer HaMitzvos Shoresh* 2) believes that the mitzvah to do *chesed* is subsumed under the general command to follow in the ways of God, based either on the pasuk (*Shemos* 18, 2), “And you shall tell them the path they should follow,” or the pasuk (*Devarim* 28, 9), “And you shall go in His ways.” The *Rambam* disagrees and argues that the source for the obligation to do *chesed* is rooted in the pasuk (*Vayikra* 19, 18), “You shall love your neighbor as yourself.”

¹⁴ *Sukah* 49b.

Middas Sodom

Similar to the way the Talmud's ascribed certain attributes to the Jewish people, the Talmud ascribes the trait of refusing to aid a friend even when one would not lose by doing so to the people of Sodom (*middas Sodom*)¹⁵. The Talmud continues that in certain circumstances the Beth Din will even coerce an individual not to act in the ways of Sodom. The classical discussion of *middas Sodom* is found in the following passage in the Gemara:

There was a certain person who bought land on the boundary of his father's property. When he and his brothers were dividing their father's estate, he said to his brothers, "Give me a tract of land that borders on my existing property." Rabbah said, "In an instance such as this we coerce people not to emulate the traits of the people of Sodom." [Since it costs the brothers nothing to honor the request, for all the fields are of equal value - Rashi]. Rav Yosef challenged: But his brothers can say to him, "The field that you request is as valuable to us as the property of the Ber Meryon household. [The Gemara discusses fields that subsist solely on rainfall. Thus even if the soils of such fields are of equal quality, they will still produce different yields if they receive different amounts of rain. The brothers can therefore say, "We want the field that you want, because it might receive more rainfall and produce more." - Rashi]. And the halachah is in accordance with Rav Yosef.

Bava Basra 12b

ההוא דזבן ארעא
אמצרא דבי נשיה, כי
קא פלגו, א"ל: פליגו
לי אמצראי; אמר רבה:
כגון זה כופין על מדת
סדום. מתקיף לה רב
יוסף, אמרי ליה אחי:
מעלינן ליה עלויא כי
נכסי דבי בר מריון!
והלכתא כרב יוסף.
בבא בתרא יב:

The Gemara clearly states that if there is any conceivable loss to the other party, his refusal to do the given favor cannot be construed as *middas Sodom*, and he cannot be coerced. The only time refusing a favor can be considered *middas Sodom* is when there is no downside at all to the party from whom the favor is requested. Hence, if one is asked to do a favor which entails incurring a loss, or a potential loss, even though it is a mitzvah of *chesed* to perform the favor, he would not be acting in the ways of Sodom if he refuses.

In this essay we will delineate the extent of *middas Sodom*, and its converse, the mitzvah of *chesed*. Under what circumstances, if any, is one allowed to refuse to do a favor, when there is no additional cost involved? Similarly, is fulfilling any and all requests for a favor included in the mitzvah of *chesed*, or does this mitzvah have its limits as well?

Consider the following everyday dilemmas:

- If someone is driving to a certain place independently, and his friend asks for a ride to that exact place, must the driver always take the additional passenger¹⁶? Under what

¹⁵ *Kesubos* 103a.

¹⁶ An example of this would also be hitchhiking, which although not popular in America, is very common in Eretz Yisrael.

circumstances is the driver allowed to ask the passenger to share in the expenses of travel (ie. gas and tolls)?

- One is asked to do a *chesed* and drive his friend to a distant location, but because of the detour he will arrive home much later than expected. When should he refuse, and when should he be amenable?

Reimbursement in a Case of “Ze Lo Neheneh”

Let us commence with an analysis of a relevant passage in the Talmud.

Rav Chisda said to Rami bar Chama, “You were not with us last evening within the techum, when we inquired about excellent things.” He said, “What were the excellent things?” He said to him, “The inquiry was, if one lives in the yard of his fellow without the latter’s knowledge, does he have to pay him rent or does he not have to?” What are the circumstances? If you say that it refers to a yard that is not for rent and a person who does not usually rent, then this one does not benefit, and this one does not lose anything. Rather it refers to a yard that is for rent and a person who usually rents. But in this case this one benefits and this one loses. There is no difficulty. The inquiry is regarding a yard that is not for rent but a person who usually rents. What is the law? Can the squatter say to the owner, “What loss have I caused you?” Or can the owner say, “But, you have benefited?”

Bava Kamma 20a

א"ל רב חסדא לרמי בר חמא לא הוית גבן באורתא בתחומא דאיבעיא לן מילי מעלייתא, אמר מאי מילי מעלייתא, א"ל הדר בחצר חבירו שלא מדעתו, צריך להעלות לו שכר או אין צריך. היכי דמי, אילימא בחצר דלא קיימא לאגרא וגברא דלא עביד למיגר, זה לא נהנה וזה לא חסר, אלא בחצר דקיימא לאגרא וגברא דעביד למיגר, זה נהנה וזה חסר, לא צריכא, בחצר דלא קיימא לאגרא וגברא דעביד למיגר, מאי, מצי אמר ליה מאי חסרתך, או דלמא מצי אמר הא איתנהני.

בבא קמא כ.

The explicit assumption of the Gemara is that only where the squatter had intended to rent a house, and instead chose to live in a vacant house which was available for rent, would he be obligated to pay. Since the squatter was planning on paying rent, the benefit reaped by the squatter is viewed as a “monetary benefit,” or *Ze Neheneh* “this one benefited.” The enjoyment of a “monetary benefit” obligates the squatter to reimburse the owner for the benefit received. However, where the squatter never would have rented the house, but rather would have scrounged around for a complimentary residence, then living in the house is deemed a “non-monetary benefit”, or *Ze Lo Neheneh* - “this one did not benefit,” which does not obligate him to pay rent.

Reimbursement in a Case of “Ze Neheneh Ve’ze Lo Chaser”

The Gemara also grapples with the scenario of *Ze Neheneh Ve’ze Lo Chaser*, i.e. where someone gains and no one loses. For example, if the squatter planned on renting a house, but the owner had no intention of renting out his house, would the squatter be obligated to pay rent? From the

squatter's perspective the benefit could certainly be viewed as a "monetary benefit," since he had planned on renting a house. However, from the owner's perspective it is not a "monetary benefit." Since the owner had not planned on renting the premises, dwelling in his house has no monetary significance per se, rendering the squatter's benefit as "non-monetary".

Tosfos asks, "How can the Gemara entertain the possibility that the owner should be allowed to charge the squatter; it should be *middas Sodom* to refuse the tenant permission to live in the otherwise empty house which is not available for rent?" *Tosfos* answers:

Even according to the one in Bava Basra (12b) who believes that we force the issue of *Middas Sodom*, and we compel the landowner to give him the adjacent property, it is different here, because he could have prevented him from living in his house in the first place.

Tos. Bava Kamma 20b, sv. Ha

אפילו למ"ד בפ"ק דב"ב (דף יב:)
 כופין אותו על מדת סדום ויהבינן ליה
 אחד מצרא שאני הכא שהיה יכול
 למונעו מתחילה מלדור בביתו.
תוס' ב"ק כ: ד"ה הא

Tosfos postulates that it is not *middas Sodom* to refuse a boarder permission to occupy a privately owned residence. Therefore, since the owner could evict the squatter outright, we can not force him to keep the squatter gratis under the pretext of *middas Sodom*. Rabbi Shimon Shkop z"l (d. 1940) explains further, that it is only considered *middas Sodom* to deny a cost-less benefit to one's fellow if it does not involve relinquishing ownership rights on the given object¹⁷. If anyone could barge into, and occupy the property at anytime, that itself would be a valuable loss to the owner, because he would be deemed powerless to control his own grounds¹⁸. The only time *middas Sodom* would be applicable is if it does not involve use of someone else's property.

Rabbi Mordechai ben Hillel, ha-Kohen (d. 1298) quotes a divergent opinion.

The master Avi haEzri writes, I have heard that we can force him (to accept the tenant) because we can compel in cases of Middas Sodom. There are those who have explained (differently), that we can only compel when the owner could not have profited through the use of this item, therefore we can compel him because he is losing nothing. But when the owner of the field could have rented it out and profited, even though he presently is not renting it out, we can not compel him.

Mordechai, Bava Kamma, ch. 2, no. 16

כתב הרבנו אבי העזרי שמעתי דמצי
 למיכפייה דהא כופין על מדת סדום,
 וי"מ דאין כופין אלא כגון היכא דאפילו
 אי הוה בעי לארווחי בהא מלתא לא מצי
 לארווחי הלכך כיפינן ליה כיון דלא
 חסר מידו, אבל הכא דאי הוה בעי בעל
 החצר לאיגורי הוה מירווח, השתא נמי
 כי לא מוגר ליה לא כייפי ליה.
מרדכי בבא קמא פרק ב' אות טז

The latter opinion cited by the *Mordechai* reasons that *middas Sodom* is only applicable to an item which offers no possibility of rental. Therefore, reimbursement for dwelling in a house which could be rented can never be denied based on *middas Sodom*. This latter opinion is cited as the normative opinion by the *Ramo*, Rabbi Moshe Isserles (d. 1572) in his glosses to the

¹⁷ *Chiddushei Reb Shimon, Bava Kamma* sec. 19 part 3.

¹⁸ *Tosfos* is forced to conclude that the Gemara's entire query is limited to where the tenant initially obtained permission to live in the house.

*Shulchan Aruch*¹⁹. Nonetheless, Rabbi Ephraim Zalman Margolioth (d. 1828) questions why the *Ramo* chose to side with the *Mordechai* and not with *Tosfos* whose opinion is shared by other Rishonim as well²⁰. Therefore, Rabbi Margolioth and other later authorities side with *Tosfos* over the *Mordechai* in disagreement with the *Ramo*²¹.

All Aboard?

We asked at the beginning, “If someone is driving to a certain place independently, and his friend asks for a ride to that exact place, must the driver take the additional passenger?”

The answer depends on the dispute between *Tosfos* and the *Mordechai*. Ostensibly, the driver has no intention of renting out the extra seat in his car; unless the driver operates a regular limousine service, he has no possibility of renting seats in his car. Therefore, if the driver would deny his fellow a ride in this instance, according to the *Mordechai* he might be acting in the ways of Sodom²². For *Tosfos* however, the driver should be allowed to exercise his rights of ownership and refuse the additional passenger, just as the landowner is able to deny initial access to the squatter²³.

Even according to *Tosfos* the driver would not be allowed to charge the passenger for tolls incurred along the way. This should be comparable to the Gemara’s case of *Ze Neheneh Ve’ze Lo Chaser* where one benefits and no one loses, where the tenant does not have to pay. Since the driver was going to incur tolls even when traveling alone, the fact that he accepted an additional passenger should not obligate the passenger to pay half.

The aforementioned dispute notwithstanding, it is difficult to unequivocally label any given case as *middas Sodom*. The Gemara (cited previously) declares that if there is any possible cost (downside) to the other party, than refusal to perform the favor cannot be deemed *middas Sodom*. Even assuming the driver does not have to expend gas and time to pick up or drop off the passenger, there are other potential downsides to having a passenger in the car²⁴. In today’s

¹⁹ *Choshen Mishpat* sec. 363 part 6.

²⁰ *Beis Ephraim*, *Choshen Mishpat* sec. 49, cited by *Pischei Teshuva* to *Shulchan Aruch* ad loc. part 3.

²¹ See *Pnei Yehoshua* to *Bava Kamma* ad loc.

²² If someone will be away for Shabbos and he is asked to lend out his house, all should agree that it would not be *middas Sodom* to refuse since the house offers the possibility of being rented, and he is being asked to relinquish control of his house.

²³ Rabbi Dr. Aaron Levine, *Case Studies in Jewish Business Ethics*, (Ktav Publishing, New York, 2000) pg. 339, argues that even *Tosfos* would agree the driver can not deny the passenger in this instance. *Tosfos*’ reasoning in permitting the landowner to deny the squatter was because the squatter asked the owner to relinquish his control of the said property for the period of the occupancy. Since the great majority of people harbor a preference to retain control of their property, denying the squatter’s request does not reflect a Sodomite character. However, in this instance, argues Rabbi Levine, since the driver is not being asked to relinquish control over his car, but only to take an additional passenger along the planned route, to deny the request would be Sodomite behavior. I agree with Rabbi Levine in principle, but disagree in application. When the passenger attempts to push his way on board by invoking *Middas Sodom*, while he is not commandeering the car, he has rendered the driver impotent to control his own property. This itself violates the ownership rights of the driver, thereby permitting the driver to refuse to take him.

²⁴ It is generally assumed that an additional passenger increases the amount of gas expended by the car. However, with regards to accompanying an ill person to the hospital on Shabbos, Rabbi J. David Bleich, *Contemporary*

culture many people make use of their time in the car to listen to shiurim, make business or personal calls, or generally relax; if there is a passenger in the car, the driver might be inhibited by their presence. While these reasons alone might not suffice to forgo the mitzvah of *chesed*, they should serve to liberate the driver's refusal from the realm of *middas Sodom*²⁵.

The Collective Responsibility

Two people from the same block arrive on the same plane at the airport. One emerges from the luggage retrieval area before the other. The first one is in the process of soliciting the services of a taxi service to take him home, when his neighbor steps out of the terminal. The second person observes that his friend has already engaged a taxi and asks if he can tag along, as that will not increase the cost of the taxi.

In this scenario most poskim are of the opinion that the one who hired the taxi is allowed to ask the second person to pay for half the fare, even though he had in any case hired the taxi for himself²⁶. They believe that it can never be called *Ze Neheneh Ve'ze Lo Chaser* or *middas Sodom* for one to refuse to do a favor for his friend when he is also in need of that same favor. Under these circumstances there is always a loss involved for the one who hired the taxi to take the additional passenger, for that passenger could just have well been the one to hire the taxi, allowing the first person to go for free.

Rabbi Aaron Levine cites a proof to this point from a comment of Rabbi Meir ben Baruch of Rothenburg (d. 1293):

Proof to this can be derived from that which we have learned in the first perek of Bava Basra. The people of the town can force one another to build a wall, doors, etc. Even though there are enough inhabitants, and even without him they would have as much as with him, we do not apply here *middas Sodom*, and with good reason. For if we would not force everyone, each individual would say "I don't need it for me", and he will think his friend will do it without him. Due to this predicament, the matter will be adjourned and the town will be in danger.

Teshuvos Maharam Rutenberg, vol. 4 sec. 39

וראי' נמי מדאמר בפ"ק דב"ב (ז' ע"ב, ח' ע"א) כופי' בני העיר זא"ז לעשות חומה דלתים וכו' אע"ג דאיכא התם מילי טובא דאי לא איהו נמי היו מוציא' כל כך כמו עתה לא שייך כגון זה כופין על מדת סדום וטעמא רבא איכא שאם לא היינו כופי' כל א' ה' אומר איני צריך והיה מחשב חבירו יעשה חוץ ממני ומתוך כך ידחה הדבר ויבא לידי סכנה.
שו"ת מהר"ם מרוטנבורג, ח"ד סי' ל"ט

Halachic Problems, vol. 1 pg. 137, quotes the opinion of Dr. Jonathan Wachtel, a professor of Physics in Yeshiva University, that there are so many mechanical variables that it is impossible to quantify the effect of an additional passenger. Rabbi Yehoshua Neuwirth, *Shmiras Shabbos Kehilchasa*, ch. 40 fn. 155 distinguishes between extremely heavy vehicles versus lighter vehicles. Practically, it is hard to accurately depict the effect of the passenger on the function of the car.

²⁵ This point is discussed in a recent article by Rabbi Eliyahu Shlesinger, appearing in the weekly newspaper *Hamodia*, May 14, 2008, sec. B pg. 3.

²⁶ This point was related to me by Rabbi Hershel Schachter, and is also made by Rabbi Levine, *Case Studies in Jewish Business Ethics*, ad loc.

Apparently, whenever a matter is equally incumbent upon two parties to undertake, neither one can take advantage of the fact that one party has initiated his involvement prior to the other. Were this not so, every group project would fail because of free-loaders.

It would emerge that if two people are departing from the same location at the identical time, the concepts of *middas Sodom* or *Ze Neheneh Ve'ze Lo Chaser* are irrelevant. Even if one party has already committed to drive, since both parties are in need of a ride, the driver could say to the passenger, "You drive and I will go with you." Therefore, if parents are organizing a carpool to drop children at school, or co-workers are organizing rides to work, the principles of *middas Sodom* or *Ze Neheneh Ve'ze Lo Chaser* should be mute, and all parents should be obligated to participate uniformly. Additionally, if one does acquiesce to give a ride to his friend in this type of scenario, he would certainly be allowed to ask the passenger to pay his fair share of the expenses.

In this general setting, the only time the principles of *middas Sodom* or *Ze Neheneh Ve'ze Lo Chaser* are active is if the neighbors meet at a distant location, where one has his car and one does not. Since the party with the car does not plan on deserting his car at that location, the second party can legitimately make a claim of *Ze Neheneh Ve'ze Lo Chaser*²⁷.

The Chasid Shoteh

Much of the discussion up to this point has focused on what is minimally required, namely when is one allowed to refuse a favor, or when can the driver ask the passenger to pay his portion of the expenses of travel. However, the mitzvah of *chesed* applies in all these cases; it is a mitzvah to help out one's friend by offering a ride free of charge.

The dilemma then becomes the following: Are there limits to the mitzvah of *chesed*? Every time someone asks for a ride, should the driver feel obligated to oblige, so as not to pass up a potential mitzvah?

The Mishnah states unambiguously that the obligation to do *chesed* is limitless:

These are the items for which are limitless: field-corners, first fruits, being seen [in Jerusalem on the three festivals], gemilus chasadim, and Torah study.

Pe'ah 1:1

אלו דברים שאין להם שיעור הפאה והבכורים והראיון וגמילות חסדים ותלמוד תורה.
פאה פ"א מ"א

There is however a mitigating passage in the Gemara:

In Usha they decreed that one should not give more than one fifth of his wealth [to tzedakah] etc. lest he become impoverished [and ultimately need tzedakah himself]²⁸.

Kesubos 50a

באושא התקינו, המבזבז אל יבזבז יותר מחומש וכו', שמא יצטרך לבריות.
כתובות נ.

²⁷ Rabbi Levine, *Case Studies in Jewish Business Ethics*, ad loc.

²⁸ The Talmud Yerushalmi, *Peah* ch. 1, states that this decree was originally a Biblical precept given only to Moshe Rabbeinu which was subsequently forgotten and later restored by the Rabbis of the Talmud.

The Gemara states regarding the mitzvah of *tzedakah* that one is either not allowed, or not advised, to give more than a fifth of his wealth to the poor²⁹. *Tosfos* and later the *Ramo* evoke this principle regarding the performance of other mitzvos as well³⁰. The Rambam extends this principle even further, and classifies the person who spends more than the required amount on mitzvos as a “pious fool” or *chasid shoteh*.

A person should never consecrate all of his property or designate it as a cherem-pledge. A person who does so violates the Torah's guidance, as it states, "from all that is his," but not "all that is his," as our sages explained. This is not piety but foolishness, for he will lose all his money and become dependent on others. We should not show mercy to such a person. In a similar vein, our sages said, "A man of foolish piety is among those who destroy the world." Instead, a person who distributes his money for mitzvos should not distribute more than a fifth.

Hilchos Arachin 8:13

לעולם לא יקדיש אדם ולא יחרים כל נכסיו, והעושה כן עובר על דעת הכתוב שהרי הוא אומר מכל אשר לו ולא כל אשר לו כמו שבארו חכמים, ואין זו חסידות אלא שטות שהרי הוא מאבד כל ממונו ויצטרך לבריות, ואין מרחמין עליו, ובזה וכיוצא בו אמרו חכמים חסיד שוטה מכלל מבלי עולם, אלא כל המפזר ממונו במצות אל יפזר יותר מחומש.

הל' ערכין פ"ח הי"ג

Utilizing this principle with regards to the mitzvah of *chesed*, we can surmise that a person should not engage in excessive *chesed* to the point where he himself is in need of *chesed*. For example, a person should not taxi so many other people to an event that by doing so he causes his family to beg a ride from a third party. Moreover, a person should not become so ensconced in the enterprise of giving of his time to others, to the degree that his own family is ignored. In every situation a person must weigh the effects that his time spent doing *chesed* will have on himself, his family, and those around him. One who neglects this is perilously close to becoming the *chasid shoteh*.

The Lazy Parent

At times, unscrupulous people try to take advantage of others who offer *chesed*. Let us consider the person who is fully able to do a specific action for himself, but out of laziness or lack of interest asks his friend to perform it. Is there a mitzvah of *chesed* to perform the favor for that person nonetheless?

Rabbi Judah ben Samuel (d. 1217) in his *Sefer HaChasidim* formulates a compelling argument regarding the mitzvah of *tzedakah*:

But if one sees his fellow who is able to study and understand, or a counter who is able to write, however they do not wish to study or write - if one gives them charity I attribute to them the verse

אבל אם תראה איש שיכול ללמוד והוא מבין וסופר שיכול לכתוב ואינם רוצים ללמוד ולכתוב אם תתן להם

²⁹ Rabbi Moshe Feinstein, *Iggros Moshe, Orach Chaim* vol. 1 sec. 143, discusses whether this is a prohibition to expend more than one fifth, or is it just not advisable.

³⁰ *Tosfos* to *Bava Kamma* 9b s.v. *Ileimah*, and *Ramo, Orach Chaim* sec. 656. See Rabbi Asher Weiss *Minchas Asher, Parshas Va'yetzei*, for a careful reading of *Tosfos* and the *Ramo*.

“(and he looked for) righteousness but behold a cry.” As it states, “for it is a people of no understanding, therefore he that made them will not have mercy on them, and he that formed them will show them no favor³¹.”

Sefer HaChasidim, sec. 1035

צדקה קורא אני עליהם לצדקה והנה
צעקה (ישעיה ה:ז), שנאמר כי לא עם
בינות הוא על כן לא ירחמנו עושהו
ויוצרו לא יחוננו (שם כז:יא) עכ"ל.
ספר החסידים, תתלה

The *Sefer HaChasidim* makes it clear that if the needy person is capable of supporting himself he is not entitled to charity, and seemingly there is no mitzvah to provide for him. We can extrapolate from this to all modes of charitable activities. Whenever the person is able to do something for himself, but is neglectful, there is no mitzvah of *chesed* to help them.

Therefore, a person who is as capable of driving as those around him, but consistently refuses to drive himself, and subsists only on the goodwill of others, might in fact be taking advantage of that goodwill, and would not be entitled to *chesed* at all.

Baseless Chesed

Clearly we need to be cognizant of the particulars of *middas Sodom*, *chesed*, and *Ze Neheneh Ve'ze Lo Chaser* in order to perform the mitzvos properly. Nonetheless, assessing individual situations is complex, and it can be difficult to determine what our course of action should be. In confronting these situations it is advisable to bear in mind the gravity of the mitzvah of *chesed*. One Mishnah states that one of the three pillars upon which the world rests is the mitzvah of *chesed*³². Another Mishnah proclaims that one of the mitzvos for which reward is meted out in this world as well as the next is the mitzvah of *chesed*. Therefore, when in doubt, presumably we should err on the side of *chesed*.

The story is told of how the Brisker Rav, Rabbi Yitzchok Zev Soloveitchik, was once placed in charge of arranging a certain *chesed* matter. He called for his son who was learning Torah to come and take care of the issue at hand. The onlookers questioned the Brisker Rav as to why he summoned his son who was engaged in Torah rather than utilizing someone not otherwise engaged in a mitzvah. Moreover, someone who is learning Torah is technically exempt from interrupting his learning to perform a mitzvah if there are others available to perform the mitzvah.

The Brisker Rav responded: “The Gemara is only open to the person who is willing to close it to help others”. *Chesed* is not only an important endeavor for its own sake, but it validates all of our religious activities. Someone who is selfish about his involvement in religious pursuits indicates that his involvement in those pursuits is for personal gratification and not for Heaven’s sake. Hence, the Brisker Rav advocated his son to partake in *chesed* activities which were not incumbent upon him, in order to deepen this lesson.

³¹ See also *Imrei Tzedakah*, Rabbi Shimon Taub (Artscroll, 2001) pg. 20 who after a lengthy discussion of the issues accepts the statement of the *Sefer HaChasidim* as normative based on analogous comments in other sources.

³² *Avos*, 1:2.

Conclusion

We are now concluding the period of sefirah during which we mourn the students of Rabbi Akiva. The Talmud tells us that the students of Rabbi Akiva, while extremely learned and pious, were guilty of not treating each other with proper respect³³. Rabbi Eliyahu Dessler suggests that this shortcoming was so grave because it reflected negatively on all of their other religious accomplishments. The fact that they could not behave properly towards one another showed that their overarching motivations were tainted by personal aggrandizement, and were not dedicated to the pure service of God. May we all be able to approach interpersonal dealings with the proper attitude, and thereby enhance our entire religious experience.

³³ *Yevamos* 62b.

The Significance of *Matan Torah*

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Three Names of Shavuot in the Torah

The written Torah gives three names for the holiday of *Shavuot*, none of them specifically related to *Matan Torah*. Each name corresponds to a different aspect of *Shavuot*.

One name of the holiday is "Feast of Harvest".

*And the **feast of harvest**, the first-fruits of thy labours, which thou sowest in the field...*

Exodus 23:16

והג הקציר בכורי מעשיך אשר תזרע בשדה...
שמות כג:טז

When the *Beit Hamikdash* stood, a special sacrifice, the *minhah hadashah* "new meal-offering" was brought on *Shavuot*. Consisting of two loaves of leavened bread made from the recently harvested wheat, the *minhah hadashah* celebrated the successful harvest.³⁴

Another characterization of *Shavuot* is "Day of the First Fruits."

*Also in the **day of the first-fruits**, when ye bring a new meal-offering unto the Lord in your feast of weeks, ye shall have a holy convocation: ye shall do no manner of servile work;*

Numbers 28:26

וביום הבכורים בהקריבכם מנחה חדשה
לה' בשבעתיםכם מקרא קדש יהיה לכם כל
מלאכת עבודה לא תעשו:
במדבר כח:כו

Shavuot began the season of *Bikkurim*, the bringing of the first fruits. The first, ripe fruits of *shivat haminim*, the seven species with which the *Eretz Israel* is blessed, were brought ceremoniously to the *Mikdash*.³⁵

Lastly, we find *Shavuot* referred to as a "Feast of Weeks".

³⁴ Several animals were sacrificed along with the breads. See Lev 23:15-21 and *Sefer ha-Hinuch*, Commandment 307.

³⁵ See Deut 26 and *Sefer ha-Hinuch*, Commandment 91.

You should make for yourself a **feast of weeks** [at the time]
that the wheat harvest yields its first fruits...

Exodus 34:22

והג שבעת תעשה לך בכורי קציר חטים...
שמות לד:כב

Shavuot is called “the feast of weeks” because of the seven weeks of counting the *Omer* that precede it.

Two Names of Shavuot in Chazal

Chazal commemorate the seven-week prelude to Shavuot with another name, *Azeret* “a solemn gathering.”³⁶ Just as *Shemini Azeret*, the eighth day from the start of *Succoth*, is a solemn gathering extending from the first seven days of *Succoth*, so too *Shavuot* extends from *Pesach*. The days of counting the *Omer* parallel the intermediate days of *Succoth*.

Chazal note that the end of the seven weeks of the counting of the *Omer* corresponds to the day of *Matan Torah*. According to *Shir ha-Shirim Rabbah* 2:2, “from the day the Jews left Egypt until they received the Torah was 50 days.” Similarly, *Ruth Zuta* (Buber) 1 explains that the Book of Ruth is read aloud on *Azeret*, which is the time of the giving of the Torah, to show that Torah was and is acquired through suffering and hardship. This aspect gives *Shavuot* yet another appellation, *Zman Matan Torateinu* “the day of the giving of our Torah.”³⁷

The first two aspects of *Shavuot* – the harvest time and the *Bikkurim* – can not be celebrated completely in the present era. While we can and must study and discuss these aspects of the *Chag*, we are sadly not privileged to perform these mitzvot completely, owing to our lack of a Beit Mikdash. However, commemoration of *Azeret*, the conclusion of the counting of the *Omer*, which coincides with *Zman Matan Torateinu*, is well within our reach. In fact, the choice of Torah portion for the holiday reflects this reality.³⁸ In what follows, we will focus on the significance of this aspect of *Shavuot*.

Matan Torah: The Cornerstone of Belief

The written Torah abounds with statements proclaiming the momentousness of *Matan Torah*.³⁹ Exodus 19:9 identifies the purpose in *Matan Torah* as “I come unto thee in a thick cloud, that the people may hear when I speak with thee, and may also believe thee forever.” The experience at Sinai would imprint belief onto the hearts of the Jewish nation – the revelation at Sinai would enable them to believe forever in Moshe and the Torah he delivered.

Similarly, the Torah poignantly points to the uniqueness of *Klal Yisrael*, who experienced the revelation at Sinai.

³⁶ Mishnah *Bikkurim* 1:3.

³⁷ See M. Breuer, *Pirkei ha-Moadot*, volume 2:347-78, for a full discussion of these multiple aspects of the holiday.

³⁸ See *Megillah* 31a.

³⁹ See especially Exod 19-20 and Deut 4-5.

“For ask now of the days past, which were before thee, since the day that God created man upon the earth, and from the one end of heaven unto the other, whether there hath been any such thing as this great thing is, or hath been heard like it? Did ever a people hear the voice of God speaking out of the midst of the fire, as thou hast heard, and live?... Unto thee it was shown, that thou mightest know that the Lord, He is God; there is none else beside Him. Out of heaven He made thee to hear His voice, that He might instruct thee; and upon earth He made thee to see His great fire; and thou didst hear His words out of the midst of the fire.”

Deuteronomy 4:32-36

כי שאל נא לימים ראשנים אשר היו לפניך למן היום אשר ברא אלהים אדם על הארץ ולמקצה השמים ועד קצה השמים הנהיה כדבר הגדול הזה או הנשמע כמהו: השמע עם קול אלהים מדבר מתוך האש כאשר שמעת אתה ויחי: או הנסה אלהים לבוא לקחת לו גוי מקרב גוי במסת באתת ובמופתים ובמלחמה וביד חזקה ובזרוע נטויה ובמוראים גדלים ככל אשר עשה לכם ה' אלהיכם במצרים לעיניך: אתה הראת לדעת כי ה' הוא האלהים אין עוד מלבדו: מן השמים השמיעך את קלו ליסרך ועל הארץ הראך את אשו הגדולה ודבריו שמעת מתוך האש:

דברים ד:לב-לו

Although medieval Jewish thinkers subscribed to a range of views regarding the exact content and depth of the experience at Sinai, all agreed to its centrality in Jewish thought. Following is a modern characterization of the *Kuzari's* view:

“The revelation at Sinai is the cornerstone upon which Halevi builds his defense of Judaism against all the challenges facing it... Rational skepticism concerning the possibility of God communicating to humanity ... is silenced by this miraculous event. An entire people attested to the veracity of this event, together with those miraculous events preceding and following it. Halevi argues that rational proofs attempting to establish the existence of God and the truths of Judaism based on God’s creation of the world ... are far less conclusive than the certainty provided by these historical events reflecting God’s supernatural activity.”⁴⁰

Maimonides characterizes the critical role of *Matan Torah* as follows:

What were the grounds for the faith in him [Moses]? The Revelation on Sinai, which we saw with our own eyes, and heard with our own ears, not having to depend on the testimony of others, we ourselves witnessing the fire ... And so it is said, “The Lord spoke with you, face to face” (Deut 5:4); and furthermore, “The Lord made not this covenant with our fathers only, [but with us, even us, who are all of us here alive this day]” (Deut 5:3)... Hence the inference that before that event they did not believe with a faith that would endure forever, but only with a faith followed by hesitating and doubting speculation.

Rambam Yesodei HaTorah 8:1⁴¹

ובמה האמינו בו במעמד הר סיני שעיינינו ראו ולא זר ואזנינו שמעו ולא אחר האש והקולות והלפידים והוא נגש אל הערפל והקול מדבר אליו ואנו שומעים משה משה לך אמור להן כך וכך, וכן הוא אומר פנים בפנים דבר ה' עמכם, ונאמר לא את אבותינו כרת ה' את הברית הזאת ... מכלל שקודם דבר זה לא האמינו בו נאמנות שהיא עומדת לעולם אלא נאמנות שיש אחריה הרהור ומחשבה.

רמב"ם הלכות יסודי התורה ח:א

⁴⁰ H. Kreisel, *Prophecy: The History of an Idea in Medieval Jewish Philosophy* (Amsterdam: Kluwer, 2001), 100.

⁴¹ *The Code of Maimonides* (Yale: Yale Judaica Series, 1949), *Hilchot Yesodei Hatorah*, 8:1.

According to Nahmanides, there is a specific negative commandment not to forget the revelation at Sinai.

This verse, in my opinion, is a negative commandment in which He admonishes severely "... that you should not forget the revelation on Mount Sinai, nor all the things which your eyes saw there – the thunderings, and the lightnings, His glory and His greatness, and His words that you have heard there out of the midst of the fire. And you should convey all the things which your eyes saw at that glorious revelation unto thy children and thy children's children forever." ... The benefit of this commandment is very great ... for when we shall also transmit the matter to our children they will know that the thing was true without doubt as if all the generations had seen it, for we would not testify falsely to our children ... and they will not doubt at all the testimony we will give them. Instead they will believe for a certainty that all of us saw it with our eyes, and likewise [they will believe] all that we told them.

Nachmanides, Deuteronomy 4:9⁴²

אבל הכתוב הזה לפי דעתי מצות לא תעשה, הזהיר בה מאד ... שלא תשכח מעמד הר סיני מכל הדברים אשר ראו שם עיניך הקולות והלפידים את כבודו ואת גדלו ודבריו אשר שמעת שם מתוך האש, ותודיע כל הדברים אשר ראו עיניך במעמד הנכבד ההוא לבניך ולבני בניך עד עולם ... והתועלת במצוה הזאת גדולה מאד ... כי כשנעתיק גם כן הדבר לבנינו ידעו שהיה הדבר אמת בלא ספק כאלו ראוהו כל הדורות, כי לא נעיד שקר לבנינו ... והם לא יסתפקו כלל בעדותנו שנעיד להם, אבל יאמינו בודאי שראינו כולנו בעינינו, וכל מה שספרנו להם.

רמב"ן דברים ד:ט

The views of these thinkers represent the consensus that the revelation at Sinai is vital to Jewish belief. To summarize them - according to Halevi, the revelation at Sinai is more conclusive proof of the existence of God and the truth of Judaism than rational argument. For Maimonides, the Jewish nation's belief in Moses and the Torah was not absolute until the Sinaitic revelation. Nahmanides stresses the importance of the transmission of this belief to future generations, because of the patent veracity of eyewitness testimony coupled with received tradition.

Even as we live in the modern world and attempt to approach it rationally in the philosophical sense, let us rejoice in the underlying basis of our faith. Through the study and discussion of Torah, we must strengthen the memory of the revelation at Sinai, this cornerstone of our faith. At the same time, we look forward to the day when we will celebrate fully *all* aspects of *Shavuot* - the *minhah hadashah* commemorating the harvest, the *Bikkurim* when we will bring our first fruits, as well as *Azeret*, the conclusion of the counting of the *Omer*, and *Matan Torah*.

⁴² Ch. B. Chavel, *Commentary on the Torah by Ramban*, Vol 5: 53-54.

Shavuot: Torah and Middot Linked Together

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The Unique Holiday of Shavuot

A careful reading of the section of holidays in Parshat Emor reveals that Shavuot is unique among all holidays of the Jewish calendar. While other moadim are determined according to a date on the calendar, such as Pesach being on the fifteenth of the first month, and Sukkot being on the fifteenth of the seventh month, Shavuot is not on a set date. The Torah does not say, "On the sixth day of the third month celebrate a holiday." Instead, we are told to bring the Omer offering on Pesach, then to count seven weeks, and then at the end of seven weeks to offer the two loaves and celebrate the day as a holiday. This raises a question: Why is Shavuot different? Why did the Torah not establish Shavuot on a set day as it did for the other holidays?

Rav Yosef Dov Soloveichik z"l taught that this scriptural anomaly highlights an innate difference between Shavuot and other holidays. The other moadim are bound to a date on the calendar, regardless of the actions of man. For example, when Shabbat arrives the world is filled with a special kedushat hayom, sanctity of the day, which then creates obligations. So too, when the fifteenth of Nissan arrives the holiness of Pesach fills the world and as a result there are special Mitzvot to be performed such as eating matzah, refraining from work, and avoiding chametz. So it is with Rosh Hashana, Yom Kippur, and Sukkot. The arrival of the date causes the sanctity to appear and the unique celebrations for each holiday are the ways in which the holiness of the time should be expressed.

Shavuot is different. The counting of the Omer creates the holiness of Shavuot. Were there to be no counting of the Omer, then theoretically there should be no Shavuot. The counting of the Omer is what enables Shavuot. Once the seven weeks have been counted and the fiftieth day arrives, the holiness of Shavuot enters the world. The date is not set on the calendar, but rather is dependent on the nation of Israel counting the Omer. In theory Shavuot can be on the fifth, sixth,

or seventh of Sivan. It is not dependent on a date at all. After Jews count the Omer the holiday arrives regardless of the date. Shavuot needs the Jews to count Omer to make it happen.⁴³

This observation can reveal to us a new understanding of the counting of the Omer. One might have thought that the counting of the Omer is a mitzvah linked to Pesach. Indeed, in the Code of Jewish Law, the laws of counting the Omer are in the sections that deal with the laws of Pesach. However, according to the Rav, the counting of the Omer is also an intrinsic part of Shavuot. Counting the Omer is what creates the kedushat hayom for the holiday of receiving the Torah.

Counting Down, Counting Up

Perhaps this can be understood based on the lesson of the Sefer Hachinuch. The Sefer Hachinuch teaches that our exit from Egypt was an incomplete redemption. When we left Egypt we were physically free yet spiritually shackled. We therefore looked forward eagerly to zman matan torateinu, the Torah-giving time, to receiving the Torah at Sinai. Once we would be bound by the strictures of Torah, then we would be truly free. We count Omer to relive those excited yearnings for Torah guidance. Each day we count brings us one step closer to reliving the acceptance of Torah, which is when we arrived at real freedom.

One might ask, if the point of counting is to express our anticipation for Torah as the culmination of the exodus, why do we count in an ascending order? Why do we say on the first day, "Today is the first day of the Omer" and on the second "Today is the second day of the Omer?" We should count in a descending order. On the first day we should say, "There are forty nine days to go before we will receive the Torah," and on the second we should say, "There are forty eight days to go before we receive the Torah."

Perhaps our counting style teaches us a lesson. We must climb to receive the Torah. If we would count in descending order, then on each day, the previous day would be lost. One who hears the count on the third day, "Today we count forty seven days to Sinai" would be unaware of the days that preceded it. By counting in an ascending order we are reminded each day of the days that passed. The process is thus preserved. Each day is lasting. When we work to change ourselves, each step in that effort is eternal and valuable. Each day is important for what we achieved on that day. On the first day of the Omer we are to fix one aspect of our nature, on the second day another, until finally after climbing a ladder of 49 days we have created the vessel for Torah. This creative work is what brings the holiness of Shavuot into the world.

The Link Between Omer and Shavuot

The Shem Mishmuel in his Pesach haggada raises a problem with the view of the Sefer Hachinuch. According to the Sefer Hachinuch, that the theme of the count is to prepare for receiving the Torah, then we should have called it the count of Shavuot, the countdown to Sinai,

⁴³ See the extensive analysis of this thought in Mo'adei Harav, by Rav Shlomo H. Pick, pages 159-167.

or the count of the two loaves, (the offering brought on Shavuot). Why do we link the count with the Omer and Pesach, and call it Sefirat Haomer?

Perhaps the answer is based on the idea we have been developing. The counting of the Omer is more than a mere recording of time as it passes. It is a chance to change ourselves. It is a mandate to make each day count. In it we are to prepare ourselves for the Torah by changing our middot and feelings. Only when we have transformed our personality, one day at a time, will the holiness of Shavuot enter this world. Forty nine days of personal growth creates the holiday of Shavuot.

This is the significance of the name Sefirat Haomer. The Omer was an offering of barley, animal feed. The word Sefira means to count but it also brings to mind the word, Sapir, a glowing clear panel. These are forty nine days to transform the animal part of man. To turn the opaque earthy spirit into a glowing source of Divine illumination. This transformation is what creates the holiness of Shavuot.

As we celebrate Shavuot these thoughts might serve as an inspiration. On Shavuot we received the Torah. The Torah contains ideas and guidance for our minds. Yet to receive the Torah we need forty nine days of fixing our middot. We need to transform our personalities into vessels fitting to hold the light of Torah. This is why we learn Pirkei Avot during this season. Ethics of the Fathers teach us how to refine ourselves. This process of character development creates the holiness of Shavuot. Torah and middot share a link. Forty nine days of fixing our character create the sanctity of this holiday. Now it is up to us. Let us struggle with the beast within ourselves and thereby create the special kedusha of zman matan torateinu.

Twice Kissed

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The revelation at Har Sinai was the epic event of religious history and of the Jewish odyssey. It therefore features prominently in King Shlomo's Shir Hashirim, which allegorically chronicles Jewish history.

Indeed, at its very outset, Shir Hashirim describes how the Ribono shel Olam kissed us – a reference to the unsurpassed intimacy which accompanied matan Torah.

Let him kiss me with the kisses of his mouth for thy love is better than wine.

Song of Songs 1:2

ישקני מנשיקות פיהו כי טובים דדיך מיין:
שיר השירים א:ב

Sensitive to the pluralization of 'neshikot', kisses, Chazal infer that the song refers to the *two* sections of Torah – the written and the oral - each delivered on the 6th of Sivan. Although we typically identify Shavuot with the delivery of the written law, Shlomo HaMelech reminds us that Har Sinai was also the platform for delivering the oral Torah, Torah sheba'al peh.

Without question, anchoring the two components of Torah to the same mountain and the same moment in history underscores their fundamental cohesion. Denying either element of Torah is tantamount to heresy, as demonstrated by Shammai's refusal to convert a candidate solely interested in the written Torah, Torah shebichtav⁴⁴.

Yet, despite their unity, an intriguing gemara asserts that a unique covenant centers around Torah sheba'al peh.

Rav Yochanan said, Hashem only affirmed His covenant with Yisrael because of those things that are oral (al peh), as it says "for based (al pi) on these words I have made a covenant with you and with Israel."

Gittin 60b

א"ר יוחנן: לא כרת הקב"ה ברית עם ישראל אלא בשביל דברים שבעל פה, שנאמר: (שמות ל"ד) כי על פי הדברים האלה כרתי אתך ברית ואת ישראל.

גיטין ס:

This dramatic statement isolates Torah sheba'al peh as the subject of a special brit, a covenant, that somehow excludes Torah shebichtav. What unique attributes does this brit confer upon Torah sheba'al peh?

⁴⁴ Shabbat 31a

Covenant of Bilateralism

Torah shebichtav is immutable and unchanging. Every letter, every word, and every grammatical mark was dictated by the Ribono shel Olam. Hence, the gemara states:

When Moshe went up, he found Hakadosh Baruch Hu sitting and tying crowns to the letters (of the Torah)

Menachot 29b

בשעה שעלה משה למרום, מצאו להקב"ה שיושב וקושר כתרים לאותיות
מנחות דף כט:

The Gemara emphasizes that even seemingly secondary embellishments such as the crowns of the letters are pivotal to the subtextual meaning. Consequently, our own role in studying this Divinely written Torah is merely to reveal or disclose Hashem's will. We are not meant or even allowed to create meaning or alter the textual structure. As the Gemara in Megillah claims "kol pesuki d'lo paskei Moshe anan lo paskinan,"⁴⁵ we may not even fragment the pasuk from its original whole. Such dissection is prohibited since it vandalizes Divine perfection.

By contrast, Torah sheba'al peh is a brit - a symbiotic treaty demanding mutual participation. Humans are entrusted to develop and even create the literature of Torah sheba'al peh, as long as they adhere to the divinely dictated guidelines of Halacha. Hakadosh Baruch Hu provided the basic patterns of thought, the fundamental templates, the 13 literary tools of exegesis and interpretation, and the overall halachic structure. Within this structure, we are allowed and even requested to apply, differentiate, classify, organize, formulate, and extrapolate - in short, *to create*. Torah sheba'al peh is a product of the human imagination wedded to the Divine will.

The beracha recited after the public Torah reading captures this essential difference between Torah shebichtav and Torah sheba'al peh:

Who gave us the Torah of truth, Torat Emet, and planted in us eternal life.

אשר נתן לנו תורת אמת וחיי עולם נטע בתוכינו

The Tur⁴⁶ demonstrates that "Torat Emet" refers to the absolute and unchanging Torah shebichtav. Hashem "gave us" Torah shebichtav, and we must preserve the form in which it was given. In contrast, "eternal life" refers to Torah sheba'al peh, which is dynamic and flexible and can respond to the vicissitudes of life. Hashem "planted in us" Torah sheba'al peh; Hashem meant us to tend and cultivate this fluid Torah like a seed, to be responsible for its growth and development.

There are vastly different opinions as to where the imposed structure of Torah sheba'al peh ends and where personal creativity begins. How specific was the set of parameters provided by Hakadosh Baruch Hu, and how much room was left for human invention? Is a dispute, machloket, merely a product of the disintegration of the tradition, or did the Ribono shel Olam

⁴⁵ Megillah 22a

⁴⁶ Orach Chayim 139

give us a Torah replete with multiple coexistent truths, each championed by a different party to the dispute, each reflecting a different aspect of His transcendent wisdom? While the scope of permissibility to innovate is debated, all agree that Torah sheba'al peh is a brit, a dynamic, progressive partnership between Hakadosh Baruch Hu and Am Yisrael.

Covenant of History

The Beit Halevi⁴⁷ writes that originally Torah sheba'al peh did not exist as a separate corpus. Merely glancing at the written luchot yielded a comprehensive understanding of both Torah shebichtav and Torah sheba'al peh. Ultimately, as the egel debacle rerouted Jewish history and precipitated galut, Torah sheba'al peh was detached from the written Torah and incorporated as an autonomous tract. Why did the decree of galut necessitate detachment of the oral Torah from the written Torah?

The inexorable advent of galut posed the challenge of maintaining Jewish identity without country, currency, or flag. Bereft of national symbols, the Jewish nation would be in dire need of a coagulant to unify its scattered citizens who barely spoke the same language. Torah sheba'al peh is our symbol, our unifier. Despite geographical and cultural differences, Jews across the globe always spoke the language of Torah sheba'al peh, and together adhered to the legislation of Chazal that comprises Torah sheba'al peh. The oral Torah provided a 'secret' language and a common schedule to bind together Jews who would otherwise follow disparate personal and collective trajectories. Torah sheba'al peh alone assures our national survival.

Torah shebichtav broadcasts a universal message of monotheism, morality, and obedience to the Divine summons. Early in Sefer Devarim, Rashi⁴⁸ reminds us that Torah shebichtav was translated into 70 languages, because its message is universal. Indeed, the Biblical text has perennially been accessible to Jew and Gentile alike; as a written narrative, it is not and cannot be exclusively reserved for the Jewish community. In Western Civilization, the Ten Commandments still serve as moral guideposts for human behavior. Yet this "accessibility" has resulted in tragic consequences, for in some cases Torah shebichtav was hijacked in the service of fraudulent religious tenets.

In contrast, Torah sheba'al peh remained a secret and esoteric code only decipherable by those who diligently pursued its study and received its transmission from the previous generation. The gemara in Kiddushin⁴⁹ portrays the deliberation of King Yannai prior to annihilating the talmidei chachamim of his generation. To allay his concern about the future of Torah without these scholars, Yannai's advisors assured him that "the book of Torah is still available [without these teachers]; whoever chooses to study may still acquire its knowledge." The gemara comments that Yannai should have responded that although Torah shebichtav would be accessible even

⁴⁷ Derashot Beit Halevi 18

⁴⁸ Rashi, Devarim 1:5

⁴⁹ Kiddushin 66a

without scholars, Torah sheba'al peh would vanish without them. Torah sheba'al peh remains complex and elusive.

Torah sheba'al peh has remained the exclusive legacy of a wandering and scattered people. For this reason, one may teach Torah shebichtav to a Gentile, but not Torah sheba'al peh. Even now that Torah sheba'al peh is committed to writing, it remains accessible only through massive effort and only through endowment from its scholars and masters. Confidential and inaccessible to outsiders, Torah sheba'al peh is our covenant of survival.

Conclusion

Torah sheba'al peh's covenantal nature indicates the desirability of dynamic human participation in its formulation as well as its exclusivity and secrecy which assure Jewish survival. May the Ribono shel Olam bestow upon the Jewish nation sweeping knowledge of His Torah as we once again celebrate the Torah's delivery from Heaven.