

Halachic Perspectives on Live Kidney Donations

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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 והשבותו 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 קי"ז:

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 ramifications 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.