

SIMAN 329:

FOR WHOM MAY SABBATH LAWS BE SET ASIDE

§1: Sabbath laws are set aside in every instance of danger to life and whoever hastens to do so is praiseworthy. If a fire broke out in one courtyard and there is a fear that it might spread to another and endanger life, it may be (A) put out before it spreads.

§4: Sabbath laws (B) are set aside for someone who is buried

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differ as to whether it is permissible<sup>(417)</sup> or not<sup>(418)</sup> to assemble it on Shabbat. See also the Yabia Omer.<sup>(419)</sup>

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(A) put out before it spreads: It is forbidden to put out a fire on Shabbat unless there is danger to life. A non-Jew may not be asked to do so to prevent monetary loss.<sup>(1)</sup> The Magen Avraham<sup>(2)</sup> rules that even though a patient or child could be carried to safety via a public domain, it is better to put out the fire, since this is a melachah she'enah tz'richah legufah and is therefore a melachah only in terms of Rabbinic law. On the other hand, since many authorities rule that there are, even today, public domains as defined by the Torah,<sup>(3)</sup> carrying a child or patient out to safety through a public domain will mean setting aside Torah law. The Chayei

Adam,<sup>(4)</sup> however, rules that it would be better to carry them through a public domain rather than to put out the fire.<sup>(5)</sup>

(B) are set aside: The Beit Yosef<sup>(6)</sup> quotes a Talmud Yerushalmi<sup>(7)</sup> that rules that a person must put himself into possible danger in order to save another who is in certain danger. However, both the Mechaber and the Rama omit this ruling in the Shulchan Aruch. The Sema<sup>(8)</sup> explains that they did not include it because the Rif, the Rambam, the Rosh and the Tur all omitted this Yerushalmi from their rulings. The Pitchei Teshuvah<sup>(9)</sup> writes that it was omitted because the Talmud Bavli<sup>(10)</sup> rules differently from the Yerushalmi (and the halachah is usually according to the Bavli). The Radvaz<sup>(11)</sup> writes that someone who puts himself into possible danger to save his fellow is acting

- על הרייף ריש פכ"ב דשבת ד"ה ובמקום, תוס' שם שם ע"ב ד"ה דכל, סי' רעה במ"ב סי' א' עכ"ד
- 5. דקטן היודע לילך הרי חי נושא את עצמו - מהגרש"ז אויערבאך זצ"ל
- 6. חו"מ סי' תכו
- 7. תרומות סוף פ"ח
- 8. שו"ע חו"מ סי' תכו סי' ב
- 9. שם סי' ב
- 10. נדה סא ע"א וסנהדרין עג ע"א. וראה בערוך לנר שם. וראה במהר"ם שיק על המצוות מצוה רלח. שו"ת ציץ אליעזר ח"ט סי' מה
- 11. סי' אלף נב (תרכו)

- 417. הגרש"ז אויערבאך זצ"ל והגר"י נויבירט שליט"א בשמירת שבת כהלכתא שם ס' ט והערה מג
- 418. קצה"ש סי' קלח בבדה"ש סי' יד. שו"ת ציץ אליעזר ח"ח סי' טו פט"ז סי' ב
- 419. ח"ג סי' כא סי' ו' ר"ז
- 1. ראה סי' שלר ס' בה ומ"ב סי' סג ו"סח
- 2. סי' א
- 3. ראה סי' שמה ס' ו ובכ"ה"ל שם ד"ה שאין
- 4. כלל מה ס' טו מובא במ"מ סי' ב. ועיי' בחי"א שכותב שצ"ע לפי הפוסקים דבוח"ז לית לן ר"ה, וא"כ ג"כ אינו אלא מדרבנן, והאיסור של כ"בוי חמור יותר משאר איסור דרבנן כיון דיש בו צד חיוב לכ"ו"ע (ר"ן

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with lovingkindness but illogically. However, elsewhere<sup>(12)</sup> the Radvaz qualifies his view and writes that if the possibility of danger to the rescuer is close to certain, and even if the odds are even, he is not required to endanger himself. On the other hand, if the danger to himself is small and the chances of success great, if he fails to attempt to save his fellow he would have set aside the negative Torah command that he not stand idly by when his fellow's blood is being spilled.<sup>(13)</sup> Rav Ovadiah Yosef shlita told me that the Radvaz's first ruling refers to a rescuer who puts himself into a situation where there is at least a 50 percent chance of danger. The Pitchei Teshuvah<sup>(14)</sup> continues that the rescuer must weigh the situation carefully as to whether he will really be putting himself into danger and he should not be overly concerned about himself, and this is also the opinion of the Shulchan Aruch.<sup>(15)</sup> The Aruch HaShulchan<sup>(16)</sup> also writes in the same vein.

The Tzitz Eliezer<sup>(17)</sup> therefore rules that a person may volunteer for experiments on himself for the benefit of another and that this is a mitzvah, but only if the doctors assure him that there is no possible danger to himself. The Igrot Moshe,<sup>(18)</sup> however, rules that a person may endanger himself in order to save another. Both the Tzitz Eliezer<sup>(19)</sup> and Rav Ovadiah Yosef shlita<sup>(20)</sup> also permit one to donate a kidney while he is living if doctors assure him that this does not bring certain danger to himself and if the level of medical knowl-

edge is such that there is every good reason to believe that both the donor and the recipient will live.

As far as a doctor is concerned, however, the Tzitz Eliezer<sup>(21)</sup> rules that not only may he endanger himself in order to save the life of a patient with an infectious disease, but it would even be considered a great mitzvah for him to do so.<sup>(22)</sup> Rav Neuwirth shlita points out that the case of the patient with an infectious disease is different since it is by no means certain that the doctor will be affected. However when one undergoes an operation (the example discussed by the Radvaz), or when one receives an experimental drug which may be dangerous, he leaves himself vulnerable to the side effects of the operation or of the drug.

How much must a person be prepared to spend in order to save the life of another? The Torah tells us not to stand idly by. A negative commandment, such as not to stand idly by, if set aside passively, i.e. by not doing anything, is a less serious offense than a negative commandment which is actively transgressed. Rav Ahiva Eiger<sup>(23)</sup> quotes the Chavot Yair<sup>(24)</sup> that since there is no action involved in setting it aside, such a negative commandment has the lesser status of a positive commandment, and there is no obligation for one to spend all of his money to keep a positive commandment.<sup>(25)</sup> On the other hand, the Rivash<sup>(26)</sup> rules that even in these circumstances, one must give all his money in order not to transgress such a

- 17. חיי"ג סי' קא
- 18. יו"ד ח"ב סי' קעד ענף ד
- 19. ח"ט סי' מה וח"י סי' כה פ"ז
- 20. ספר דיני ישראל כרך ז עמ' כה
- 21. ח"ח סי' טו פ"י סי' יג
- 22. שם ח"ט סי' יז פ"ה
- 23. יו"ד סי' קנז ס' א
- 24. סי' קלט
- 25. עיין במ"ז סי' תמו סי' ק
- 26. סי' שפז

- 12. ללשונות הרמב"ם סי' אלף תקפב (ריח). וראה בהירושוי של החת"ס על כתובות טא ע"ב ד"ה מ"ט סמכת אניסא. ש"ך יו"ד סי' קנב סוסי"ג. שו"ת ציץ אליעזר ח"ח סי' טו פ"י סי' יג
- 13. ויקרא יט:טז
- 14. חו"מ שם. כאותה שאמרו בב"מ לג ע"א גבי שלך קודם לכל אדם, שכל המדקיק בעצמו כן, סופו בא לידו ככל
- 15. חו"מ סי' רסד ס' א
- 16. חו"מ סי' תכו ס' ד

## (C) under rubble even if he is crushed and it is certain that

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negative commandment. The *Pitchei Teshuvah*<sup>[27]</sup> quotes the *Pri Megadim*<sup>[28]</sup> amongst other *acharonim* who rule like the *Chavot Yair*.

The *Chafetz Chaim*<sup>[29]</sup> writes that although one should not give more than a fifth of one's wealth for charity, this is only where there is no danger to life. However, if there is a possible danger to life, if a prisoner whose life is in danger must be redeemed or if someone might die from hunger, there is no limit to the amount that should be spent to save him. For although it is true that the *Gemara*<sup>[30]</sup> rules that one's own life comes before that of another, it does not rule that one's wealth comes before the life of another.<sup>[31]</sup>

However, the *Maharsham*<sup>[32]</sup> rules that one is not obligated to give all of his wealth to save another's life. He bases this on a *Ra'avad*<sup>[33]</sup> who says that one need not give more than a fifth lest he himself become poor, and poverty is compared by *Chazal* to death to some extent.<sup>[34]</sup> Similarly, *Rav Zilberstein shlita*<sup>[35]</sup> reports in *Rav Eliashiv shlita's* name that one is not obligated to give up more than a fifth of his wealth to save the life of a fellow Jew. *Rav Eliashiv shlita* reasons that the obligation to save life is derived from the Torah's command to return lost property.<sup>[36]</sup> Since there is no obligation to spend all one's wealth to return lost property — the source — the same applies to the require-

ment to save life — the derivation. As to the *Chafetz Chaim's* proof from the *Gemara* (mentioned before), *Rav Eliashiv shlita* takes the *Gemara* which the *Chafetz Chaim* saw as proof that one must spend all he has to save a life, and explains it differently. In the *Gemara*, *Rebbe Akiva* and *Ben Petura* speak of two men in a desert, one of whom has just enough water to enable him only to reach safety. *Ben Petura* rules that he must share the water with his fellow, even if they will both die as a result. *Rebbe Akiva* rules that the owner of the water may keep it all for himself since his life takes precedence over that of another. This he derives from the Torah's command.<sup>[37]</sup> "and your brother shall live with you"; this means you are the primary party and he is secondary to you. *Rav Eliashiv shlita* says that *Ben Petura* also derives his ruling from the same source,<sup>[38]</sup> but explains "with you" to mean "together with you." Since in practice we accept *Rebbe Akiva's* opinion that one's own life comes first, this includes one's wealth, for poverty is likened to death to some extent.

I have dealt with the above subject in fuller detail elsewhere.<sup>[39]</sup>

(C) under rubble: This law is based on a *Mishnah*.<sup>[40]</sup> However, *Rav Meltzer zt"l*<sup>[41]</sup> asks: What Torah prohibition is set aside when stones and rubble must be moved to get to the victim? [Author's note: Surely

he only has a short time to live. If he is (D) no longer breathing then he is certainly dead and rescue attempts must stop.

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the *Mishnah* could have given another more obvious example, such as lighting a fire, to teach us that Torah law may be set aside to save life.] He discusses the possibility that removing rubble in the street comes under the *melachah* of "building" or "dismantling." Another possibility is carrying, the carrying of spades and axes (rescue equipment) through a *public domain*.<sup>[42]</sup> Further study seems to be required to clarify why the *Mishnah* chose this particular example where the Torah law involved is not obvious.

(D) no longer breathing: It is interesting to note that the *Mishnah Berurah*<sup>[43]</sup> quotes *rishonim* who write: If found alive, even if his brain is crushed and he only has a short time to live, efforts must be made to rescue him.

*Rav Auerbach zt"l* told me that this *halachah* was based on the extant medical knowledge at the time. Since there was no treatment for a patient who had stopped breathing, even if his heart was still beating, there was no point in setting aside Sabbath laws for him as there was no way that his life could be saved or even prolonged. Therefore, the question of whether his heart was still beating or not was immaterial. Today, however, since treatment is available, full resuscitation efforts must be made as long as there is even a remote chance that the patient might be saved.

Sabbath laws are set aside for a *gosses* or for someone who has only a short time

to live<sup>[44]</sup> even if this only leads to a slight lengthening of the patient's life.<sup>[45]</sup>

At first sight this ruling apparently contradicts a *Gemara*. The *Gemara*<sup>[46]</sup> states that someone who is about to die may be treated even if only to prolong his life for a short while so that he may make his last wishes known as to his estate. Why does the *Gemara* need to give a reason for prolonging his life? Surely this should be done even if there were no such reason? *Rav Eliashiv shlita* told me that the *Midrash* says that *Yaakov Avinu* prayed that people should not die suddenly (as was customary at the time) but rather should fall ill beforehand so that they would have time to make a will.<sup>[47]</sup> [Author's note: The *Midrash* shows us that *Yaakov Avinu* saw that making one's last wishes known was important enough for him to pray to Hashem to change the way people died. This being so, it becomes important to tell the *gosses* to make his wishes known.] Thus the *Gemara's* intent is not to tell us that everything must be done to prolong life even if only for a short while, since this ruling is obvious and well known. The *Gemara's* intent is to tell us that if such time can be gained the *gosses* should be told the importance of making his last wishes known. *Rav Waldenberg shlita*<sup>[48]</sup> also wrote to me giving a similar explanation. *Rav Auerbach zt"l* explained to me that the *Gemara* gives a picture of a person close to death and suffering whom one did not need to resus-

35. מודפס משיעור שמסר בטבת תשנ"ג. וראה באסיא חוברת נה טבת תשנ"ה עמ' 46

36. דברים כבא. ב"ק פא ע"ב וסנה' עג ע"א. רמב"ם פהמ"ש נדרים פ"ד מ"ד

37. ויקרא כהלו

38. ספרא שם

39. המעין כרך כב ניסן תשמ"ב עמ' 81

40. יומא פג ע"א. וראה גם באהע"ז סי' ד סע' לד

41. אבן האזל הל' שבת פ"ב הי"ח

27. יו"ד סי' קנו ס"ק ד

28. א"ח סי' תרנו א"א ס"ק ח

29. אהבת חסד ח"ב פ"ב ענין חומש ס"ק ב

30. ב"מ סב ע"א

31. וראה גם בערוה"ש יו"ד ריש סי' רנב

32. שו"ת ח"ה סי' נד

33. מובא בר"ן על הרי"ף סוכה פ"ג ובב"י א"ח סי' תרנו

34. וראה גם בתורה תמימה פ' ויצא ס"ק כג ומג"א סי'

רמח ס"ק טו

42. שו"ע כאן. וראה במאמר שכתבתי בספר הלכה ורפואה ח"ב עמ' קפה

43. גיטין ע ע"א

44. ב"מ פז ע"א

45. שו"ת צ"ח אליעזר חכ"א סי' ל

42. ראה עירובין לה ע"א רעז ע"ב

43. ביח"ל ד"ה אלא לפי שעה בשם הסמ"ג וסמ"ק מובא באו"ח

44. ביח"ל שם. שו"ת שבות יעקב ח"א סי' יג. שו"ת חת"ס יו"ד סי' שלח. אליה רבה ס"ק א. פמ"ג מ"ז ס"ק ב

## §9: Those who set out to save life <sup>(E)</sup> may return with their equipment.

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cite *halachically*, since this would add to his suffering without changing the prognosis. However, if the dying person had some important matter to take care of, such as "making a will," this would be permitted.

Sabbath laws are set aside even for someone who deliberately endangered himself.<sup>[49]</sup>

**(E) may return:** See *Siman* 318A and 245A. This is permitted lest they would not wish to act in the same way another time.<sup>[50]</sup> However, only Rabbinic law may be set aside.<sup>[51]</sup> Therefore a doctor (or anyone else) who drove a car to save life may not drive back home unless there is reason to believe that he will be needed again for another *seriously ill* patient who will contact him at home. He may return home with a non-Jewish driver or by public transportation (if the driver is non-Jewish). *Chazal* permitted the setting aside of Rabbinic law to enable him to return so as to encourage him to set out again if necessary (*sofo me'shum techilato*).<sup>[52]</sup> However, he may only return home (with a non-Jewish driver) if he lives within the city limits. He must also not carry anything with him unless there is an *eruv*.

Those who work in a hospital in Israel (doctors, nurses, etc.) and whose work is concerned with the care of patients, even *non-seriously ill* ones, may travel with a non-Jewish driver to and from work on their shifts on *Shabbat* (see *Siman* 245A). There is no need for them to try to stay

close by on *Shabbat* to be able to walk to work on *Shabbat*. However, they may use a non-Jewish driver only if it is too far for them to walk, if the weather is bad or for other such reasons.<sup>[53]</sup> The *Har Tzvi*<sup>[54]</sup> points out that the *Talmud*<sup>[55]</sup> permits a midwife, who had come from out of town to deliver a baby, only to walk freely throughout the town (plus 2,000 *cubits* beyond its precincts — the same as is allowed for anyone who lives there). But she is not permitted to set aside any Rabbinic law beyond what the *Talmud* allows in her case (without this special ruling of the *Talmud* she would only be allowed to walk four *cubits* in town after completing her task).<sup>[56]</sup> At the other end of the spectrum, the *Chatam Sofer*<sup>[57]</sup> and the *Ya'avetz*<sup>[58]</sup> both permit Torah law to be set aside. In their view the doctor, and all others who fit into the same category, may return home. The *Igrot Moshe*<sup>[59]</sup> was asked by *Hatzalah* whether they may return home after answering a call late at night on *Shabbat*. He answered that since it would be dangerous for them to walk back (even if this were physically possible), and they would need to remain there until daybreak, their families would not allow them to go out on another such call and they themselves may not want to do so again under these circumstances. Therefore, he permitted them to drive home although the driver is Jewish. *Rav Auerbach zt"l*, in response to this ruling, wrote to me: It requires study and thought since

54. שו"ת ארי"ח ח"ב סי' י  
55. משנה ר"ה כג ע"ב ועירובין מה ע"א. סי' תו סע"א  
56. סי' תה סע"ו  
57. שו"ת ארי"ח סי' רג  
58. שאילת יעב"ץ ח"א סי' קלב ד"ה ורקשיא  
59. ארי"ח ח"ד סי' פ

49. שו"ת אג"מ ארי"ח ח"א סי' קכו. שו"ת ציץ אליעזר  
ח"ח סי' טו פ"ז  
50. מ"ב ס"ק ב  
51. שו"ע סי' תו. מג"א סי' תצו ס"ק יח  
52. שו"ת ציץ אליעזר ח"א סי' לט. שמירת שבת  
כהלכתה פ"מ סע' סט  
53. שמעתי ממורד הגרונ"י נויבירט שליט"א