The Laws of Saving Lives

The Teachings of Rabbi S. Z. Auerbach

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Introduction

For over thirty years I was privileged to consult the late Rabbi Auerbach on halachic issues in his home, at the Vilna Gaon Synagogue, and at times whilst walking with him in the streets of Shaarei Chesed in Jerusalem. When I was a young boy my father took me to visit Rabbi Auerbach, and years later he sent me to ask him halachic questions. I continued, when puzzled or in doubt over a controversy, to ask the rabbi, who always welcomed me with love as was his way. With his passing, our generation has lost a powerful decision-making authority, and I have lost an irreplaceable teacher.

From what I learned from him over the years, I have chosen a selection of his decisions on practical issues in which I was personally involved and which typify his approach to the laws concerning saving lives on Shabbat.

Searching for a Missing Person on Shabbat

On a Friday afternoon fifteen years ago, I received an urgent call from worried parents whose son, a yeshiva student, was due to have arrived with a friend for Shabbat. It was getting late, an hour before sunset, and the young man had not yet arrived. As my home was near his yeshivah, I was able to reach the student's room within minutes. A few words with his room-mates only increased the mystery; the young man had been absent for three days, his *tefillin* bag remained, and nobody had the faintest idea where he was.

Although the start of Shabbat was approaching, there was still time to check two possibilities. During the week there had been two demonstrations in the northern part of the city, and the police had made widespread arrests among the demonstrators. An inquiry addressed to the Police Headquarters in the Russian Compound in Jerusalem confirmed that the student's name did not appear on the list of those arrested or on the list of people injured in road accidents in the previous few days. As sunset approached I informed the parents of the results of my inquiries. About an hour later, at the end of the *Maariv*, I asked Rabbi Eliashiv how to continue. Would further searching be considered life-saving and therefore permitted? Was I permitted, perhaps even obliged, to continue to search and try to locate the young man on Shabbat even though the search itself may involve breaking the laws of Shabbat?

Rabbi Eliashiv replied decisively: "Who says that the boy's life is actually in danger? And who says that your breaking the laws of Shabbat can help? There is no justification for breaking the laws of the Shabbat in this case!"[1]

The next morning, I passed through Shaarei Chesed and made a point of arriving there at the time that Rabbi Auerbach would be finishing his prayers at the Vilna Gaon Synagogue. I accompanied the Rabbi to his home and told him the story in full, including Rabbi Eliashiv's reply.[2] Rabbi Auerbach told me to treat the matter as one

1. See "The laws of Shabbat may not be overridden on account of two remote possibilities," cited by Rabbi A. I. Neriah in the name of Rabbi Eliashiv in his article "Saving Lives on the Sabbath in the Army" (*Tehumin* 3, 5742 pp.11-23), chapter 8, p.23, responsum to case 3, contrary to the opinion of Rabbi Kluft.
2. There is a principle that if one asks a rabbi for a decision on whether or not something is permitted and he declares that it is not, one may not ask another rabbi for him to permit it (Talmud *Avodah Zarah* 7a). Despite this, I was able to ask Rabbi Auerbach for the following reasons:
   a. According to Tosefot *(Niddah* 20b), this means that the second rabbi should not overrule the first, but the questioner may ask whatever he wishes to ask. This way the issue is entered into in greater detail, and it sometimes emerges that the first rabbi made a mistake, and the matter is brought to light. See also *Darchei Moshe Yoreh Deah* 245, quoting Mordechai *Avodah Zara* 796.

of life-saving, to travel immediately, and to do all that was required to locate the young man as if it were a weekday.[3] To my question whether I might wait two hours until after delivering the shiur for which many participants were waiting, he answered decisively: "No!" It is absolutely forbidden to delay the start of the search in life saving circumstances.

Following his instructions, I immediately organized the search together with a leading rabbi from a major yeshiva. The police gave us full details of their system for locating missing people, and we went to the police headquarters in the Russian Compound. Before a national search was begun, I asked to check again that the young man was not among the detainees there. Along with the officer incharge we went to the cells. The identity card of each detainee was produced in turn. Suddenly my eyes lit up, the picture of the lost young man appeared on one of the identity cards! A further check showed that it was indeed him, and a short inquiry elicited that he had been in the area of the demonstrations in North Jerusalem, had been arrested by the police, and had been brought to the Russian Compound. This ended the search. We left our car where it was and walked to inform the worried parents what we had discovered.[4]

A person who performs an act which is normally forbidden on Shabbat while believing at the time that he is saving someone's life is doing nothing wrong; he will receive his reward from Heaven, even if he was wrong

Life-saving Procedures Undertaken in Error

The rabbi who had accompanied me continued to Shaarei Chesed and reported to Rabbi Auerbach that we had found the young man. Rabbi Auerbach was worried that I would feel pangs of conscience at having profaned Shabbat when the young man's life had not been in any danger. He therefore sent me an urgent message: despite the happy ending all that had been done during the morning had been in accordance with the halachah and was considered as life-saving since it had been so defined according to information available *at that time*.

Furthermore, Rabbi Auerbach asked me to instruct others to follow this example in the future and not to hesitate over breaking Shabbat where there is any possibility of danger to life. He also stressed that even if it later emerged that there was no threat to life, whatever had been done does not become a sin in retrospect, but remains a real *mitsvah* since it was in accordance with what was known at the time "and G-d will grant him his reward for his good intentions."[5]

This important principle also appears in an interesting case in *Nishmat Avraham:*[6] A doctor is asked by phone to visit a patient whose life is in danger. The doctor agrees to travel by car on Shabbat to see the patient. However, in the meantime the patient recovers or dies. Should one phone the doctor (a minor offense) to cancel the request and thus prevent him unnecessarily driving on Shabbat (a serious offense)?

Rabbi Auerbach answered that the second phone call is forbidden.[7] Since the doctor will legitimately break Shabbat in his intention to save a life, he will receive his reward from Heaven.[8] Since permitted to drive while believing that he is engaged in life saving, no offense is permitted to prevent him from driving.

This is the principle: A person who performs an act which is normally forbidden on Shabbat while *believing at the time* that he is saving someone's life is doing nothing wrong. He will receive his reward from Heaven, even if he was in error.

A further example occurred in the army. A battalion commander decided to perform an army exercise and

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b. Even those who disagree with this (including Tosefot *Avodah Zarah 7a)*, a second rabbi may not be asked without telling him "I have already asked so-and-so who forbade it," but if the questioner informs the second rabbi that he has already asked the first one, all agree that this is allowed. See Glosses of Isserles on *Shulchan Aruch Yoreh Deah* 242:31.

c. "Where the saving of lives is concerned, we do not pay attention to a person's dignity." *Matteh Ephraim* quoted by *Nishmat Avraham:* 1:328:9. Rabbi Auerbach in his article, "Clarifications and Problems Related to the Overriding of the Laws of the Sabbath When a Life is in Danger" in *Moriah,* (5731) 3-4, 3 *Torah Shebe'al Peh* 14: 17-45, Mosad Harav Kook (5732), and *Minchat Shlomoh* 7, p.38.

3. The difference of opinion between Rabbis Kluft and Eliashiv mentioned in note 1 above appears to reflect two different approaches to the definition in halachah of life-saving (in respect of Shabbat). If so, we should apply the general principle that the laws of Shabbat are overridden even in a case where it is not certain that life-saving applies, either because there is uncertainty over the seriousness of the patient's condition, or because the chances of success are in doubt (Talmud *Yoma* 84b). Furthermore, where we know the situation, but there is doubt as to whether this is considered as life-saving in halachah, there is a general halachic principle that we must treat the situation as one of definite danger to life (Talmud *Sabbath 129a* and the statement of Rabbi Yeroham quoted in *Seridey Esh* 2:120.

4. Since the young man's surname was not clearly printed on his identity card, the police did not find him on their list when we contacted them on the Friday afternoon.

5. *Shulchan Aruch Orach Chayyim* 328:15 etc.

6. *Orach Chayyim* 338:1. See also Rabbi Yitzhak Silberstein, quoting his father-in-law Rabbi Eliashiv, *Torat Hayyoledet* chapter 21, elaborated in notes 1 and 2 pp.147-9 (2nd ed. 5747), where he also mentions Rabbi Scheinberg who disagrees.

7. See my comments in *Assia 5,* p.323.

8. *Shulchan Aruch Orach Chayyim,* 328:15.

move his unit from one hill to another on a Friday night. He explained the reason for this to his troops, many of whom observed Shabbat, and implied that lives were at stake. Moving an entire unit involves breaching the primary and secondary Torah laws of Shabbat including creating fire, building and destruction. One of the soldiers discovered that the officer had misled his troops, that there was no military need for the movement, and no life-saving was involved. He could prevent mass breach of Shabbat simply by phoning headquarters and reporting the officer's intention to profane Shabbat with no military justification. Was he allowed to perform a minor offense (of telephoning) to prevent serious offenses by the troops?[9]

Rabbi Auerbach's reply was clear:[10] he should not phone on Shabbat. The reason is that phoning is an offense, albeit a minor one, whereas the soldiers who were misled by the officer were not committing any offense at all. According to the information they received there was an issue of saving lives, and they would receive their reward from Heaven for their good intentions.

Fasting on Yom Kippur after Giving Birth

During the War of Attrition, I visited Rabbi Auerbach to ask him a halachic question regarding life-saving. In the course of our discussion he gave an example of the approach of the rabbis of the Talmud in laws of life-saving to prevent even a slight risk. The example was that of a woman within three days after giving birth, who is given normal quantities of food to eat on Yom Kippur even if she does not specially request it.[11] This is so even if the doctors say that there is no danger in her fasting. The reason is that fasting within three days of giving birth can, in some circumstances, lead to death. Since life-saving is so important, the rabbis entirely removed the obligation to fast from women who were within three days after childbirth.[12] Rabbi Auerbach added that it is better that a thousand women eat unnecessarily on Yom Kippur than that one woman endanger herself and die. To prevent danger the rabbis absolutely permitted eating, disregarding even a doctor's permission to fast.

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Although today the life of a woman in childbirth is not normally considered to be at risk and the mortality of mothers in childbirth in Israeli hospitals is extremely low, the decision of the rabbis of the Talmud remains in effect.

Where saving lives is concerned, we do not "go according to the majority"

Incidentally, the latest medical information states that even today childbirth involves risk to the mother's life,[13] but the actual mortality rate is drastically reduced by appropriate treatment.[14] In light of this, the decision of the Talmud remains fully applicable.

A Remote Danger to the Lives of Many

In 5752 (1992) a question was raised in connection with a postmortem examination. The condition of a Jerusalem baby began to deteriorate a short time after he was given a routine inoculation against a viral liver infection, and he died within a few hours of receiving the inoculation. The Ministry of Health requested a postmortem examination to determine the reason for the sudden death and to find out if his death was in any way connected with the inoculation. When asked for my opinion, I replied that there might be a justification in halachah for performing the postmortem. If there proved to be some connection between the inoculation and the baby's death, this could have immediate effect in preventing danger to other children. The chance that the inoculation had been the cause of death was remote, since millions of children abroad and thousands in Israel

9. "Rabbi [Judah the President] considered that it is better for a man who is meticulous in observance to commit a minor offense, rather than that an ignorant man should commit a serious one" Talmud *Sabbath* 4a; also *Tosefot* and *Bet Habehirah ibid.*
10. Quoted by Rabbi Yitzhak Kaufman in *The Army in Halachah*, Kol Mevasser, Jerusalem (5752) 32:1,7.
11. *Shulchan Aruch* Orach Chayyim 617:4.
12. Rabbi Auerbach wrote similarly in his article "Clarifications and Problems Related to the Overriding of the Laws of the Sabbath When a Life is in Danger" in *Moriah* (5731) 3-4, 3 pp. 10-36 pp.18-19, *Torah Shebe'al Peh* 14:17-45 Mosad Harav Kook (5732) p.26, and *Minchat Shelomo* 7, p.44.
13. An estimate made in 1989 of the maternal mortality rate in different parts of the world gives the following figures (in deaths per 100,000 births): developed countries 30, Latin America 270, Asia 420, Africa 640 i.e. 6.4 per thousand births. See Harrison, K.A., "Tropical Obstetrics and Gynecology, Maternal Mortality" *Trans. R. Soc. Trop. Med. Hyp* (1989) 449-453: (4) 83.
    Other medical articles that have appeared in the past ten years indicate that in some parts of the world the rate is as high as 1%, and that overall over half a million women die each year from childbirth. See, for example, *Int. J. Gynaecol. Obstet* (1988) 365-370: (3) 27, *Ann. Soc. Belg. Trop. Med.* (1993) 279-285: (4) 73.
14. The low maternal mortality rate in Israel (about 10 in 100,000 births, or 0.1% is due to the application of suitable medical treatment, such as infusion, blood transfusion and antibiotics when required, Cesarean operations, inducing birth in certain circumstances, and so on.

had already received a similar inoculation without incident.

However, the issue was one of danger to the lives of many. Where saving lives is concerned, we do not "go according to the majority" (i.e. demand that the risk is over 50%[15]) and where many lives are concerned we worry about very rare situations.[16] There was the ever-present possibility that a particular production batch had become contaminated or that another contaminant caused the child's death.[17]

After the case had been explained to Rabbi Eliashiv he stressed the remoteness of the possibilities and the small chance of the postmortem being of any practical effect. I asked Rabbi Eliashiv's permission and told him of Rabbi Auerbach's decision in the case of the young man who was lost (as related in the first two sections above). Rabbi Eliashiv smiled and said that we should consult Rabbi Auerbach, which we did. The latter, after hearing all the information that we were able to provide, gave an unambiguous decision that the postmortem should be carried out on account of the dangers although, and he stressed this, it was clear even to him that the danger was remote. He then reiterated to us several times the duty to be careful in matters of life-saving so that *in no circumstances* should laxity be allowed to lead to the death of a single person.

15. Talmud *Yoma* 84*b*.
16. Rabbi Hanan'el and Rashba commenting on Talmud *Sabbath* 42a quote the opinion of Rabbi Hai Gaon in connection with a particular incident where, with respect to an individual, the danger is of damage or injury only, but when considering the public at large the danger becomes one to life, which allows laws of the Torah to be overridden. See also *Tur Yoreh Deah* 178, where *Bet Yossef* comments that, according to one opinion, those who are connected with the royal court may follow certain customs forbidden by the Torah, in order to maintain their privileged position (of being able to approach the highest authorities) which might enable them to rescue the Jews in the event of some anti-Jewish law being promulgated at a future date.
17. At the time that AIDS first began to spread, many patients were infected from blood products that had been declared to be safe in the pre-AIDS era. Many countries, including France and Japan, delayed changing their medical policy, as a result of which many more were infected in a way that could have been prevented had their health authorities merely taken the measures that had earlier been demanded. At the present time (Iyyar 5756 - 1996)legal actions are in progress against various companies, including Bayer (Germany), Baxter (America) Alpha Therapeutics, part of Green Cross (Japan) and Rond Polan Ror (France). Hemophiliacs in the U.S.A. have so far presented 800 claims, maintaining that these companies preferred to make a profit by selling AIDS-infected blood products without taking the necessary safety precautions (of pre-heating the blood). These companies, without admitting guilt, have so far offered affected patients 640 million dollars in compensation to settle their claims (*Telegraph* 20-21, April 1996, p.6).

Repairing a Pertrochanteric Fracture on Shabbat:

Criteria for Determining Danger to Life

About a year before Rabbi Auerbach passed away, I waited many hours at Shaarei Zedek Medical Center on account of a relative who had suffered a serious injury. A religious orthopedic specialist turned to me with a practical halachic question. A pertrochanteric fracture of the femur (thigh-bone) is common among older people and a person who suffers this is in mortal danger: the annual death rate is about 35% for those who do not undergo surgery and about 17.5% for those who undergo an appropriate orthopedic operation.[18] It is accepted in the medical world that deferring the operation for up to 3 days (72 hours) after the fracture occurs does not increase the risk to life although the patient suffers severe pain before the operation.[19] For this reason, it is not usual to call out an emergency team from their homes to open an additional room for an operation to repair a pertrochanteric fracture since deferring the operation will not increase the danger to the patient's life. This is the standard procedure in most hospitals, including Shaare Zedek.

The orthopedic surgeon's question was simple. If a patient arrives *on Shabbat* with a pertrochanteric fracture and an operating room is available with its operating team, may the operation be performed on Shabbat, or should it be deferred until Shabbat is over, just as it is deferred on a weekday if there is no room available, without calling out an emergency team?

In the light of the principles regarding life saving that I had learned from Rabbi Auerbach over the years, I answered decisively: an operation on a pertrochanteric fracture may be performed on Shabbat. In fact it is obligatory. My reasons were the following:

1. One who has a pertrochanteric fracture is defined, according to all opinions, as one whose life is in danger (mortality rate 35% without an operation and 17% with an operation). It is universally agreed that a patient whose life is at risk must be given the best medical attention that can be given in his condition.[20] There is no doubt that from a medical viewpoint it is generally preferable to perform the operation quickly, so

18. According to a senior orthopedic surgeon at Shaare Zedek, Jerusalem. See also *Campbell's Operative Orthopedics* 8th ed., ed. Crenshaw, A. H. p.898.
19. *Ibid.* Regarding pertrochanteric fractures, see Rogers, F. B. et al., *Prompt fixation of isolated femur fractures in rural trauma center: a study examining the timing of fixation and resource allocation.* J. Trauma 36(6):774-777, June 1994.
20. *Shemirat Shabbat Kehilechatah* vol.1 (5739) 32:27.

we are dealing here with life saving that overrides the laws of Shabbat.

2. The view of Maimonides, as interpreted by the *Maggid Mishneh,*[21] is well known: when a patient's life is in danger whatever he requires can be done on Shabbat. This is undoubtedly the case when considering surgical treatment. Many other leading authorities have concurred with the decision of the *Maggid Mishneh*, including *Tashbets,*[22] *Magen Avraham,*[23] Rabbi I.Z. Solovechik of Brisk[24] and Rabbi Y. Abramsky.[25] It is also implicit in the words of the *Shulchan Aruch.*[26]

3. *Meiri,* according to *Mishnah Berurah,*[27] disagrees with *Maggid Mishneh* and forbids the provision of non-medical requirements of a patient whose life is at risk, but even he allows the laws of Shabbat to be overridden within the realm of medical treatment for any action "which will hasten the restoration of the proper functioning of his body organs, and no effective matter that might complete his cure is delayed" even when "there is no urgency" and one might be tempted to say "let us wait so as not to break the laws of Shabbat."[28] In our case, the operation is undoubtedly part of the appropriate treatment for the endangered patient and is certainly included in "treatment that hastens the restoration of the proper functioning of the patient's body organs" and far beyond this.

4. According to Rabbi Moshe Feinstein,[29] when a patient's life is in danger and serious pains can shorten his life; preventing such pains therefore overrides laws of the Torah. Rabbi Auerbach also wrote that the laws of Shabbat are overridden for a patient whose life is at risk "not only to save his life for an hour, but also to relieve him of pain."[30] There is no doubt that deferring an operation on the upper thigh adds long hours of severe pain to the patient, of a type that overrides the laws of Shabbat.

5. One must take into account that if the operation is not performed immediately when the operating room is available, there is no absolute certainty that it will be possible to perform it the next day, owing to other urgent operations or professional problems regarding the operating teams.

6. In my opinion, there is reason to cast doubt on the halachic significance of research data that claim that deferring the operation up to three days does not increase the risk to life. There may be a certain danger that has not yet appeared in the statistics.

Therefore, from a halachic point of view there is no doubt that performing the operation on Shabbat is permitted and even obligatory. Since we are dealing with a case of genuine danger to life, any one of the above reasons on its own is sufficient to justify performing the operation on Shabbat, and certainly it may be permitted when all apply together. Even if it subsequently turns out that there was no danger to life, whatever is done does *not* become a breach of Shabbat in retrospect. On the contrary, it remains a worthy deed since "the doctor overrode the laws of Shabbat with full permission in his intention to save a life, for which he will receive a reward from Heaven."[31]

About an hour later, I happened to meet a world-famous physician in the intensive care unit. I told him of my decision and was amazed at his reaction. In his view, he said, there was no justification in permitting the operation to be performed on Shabbat, since the orthopedic experts stated that deferring the operation did not increase the risk to life. In view of our difference of opinion we agreed to put the question to two of Rabbi Auerbach's leading disciples, Rabbis Neuwirth and Nebenzahl. If they disagreed, we would place the matter before Rabbi Auerbach himself.

As agreed, I put the question to Rabbi Nebenzahl, who at first was inclined to require the operation to be deferred until after Shabbat. However, after hearing my reasons (listed above) he was inclined to permit it. At the same time, the doctor I had discussed it with put the question to Rabbi Neuwirth, who answered that the operation should be deferred until after Shabbat,[32] basing his reply on what Rabbi Auerbach himself had written.

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21. *Laws of Sabbath* 2:11.
22. 1:54
23. 328:4.
24. Novellae on Maimonides, *Laws of Yom Kippur.*
25. *Chazon Yehezkel* on Tosefta *Shabbat* 16:12.
26. *Orach Chayyim,* 328:4. There is a statement there that where someone suffers an injury that is known not to endanger his life, the laws of Shabbat are not to be overridden. This seems to imply that one who suffers that type of injury *is assumed to be* in danger of his life *until* there is evidence to the contrary; thus if one knows that there is no mortal danger, the laws of Shabbat may not be overridden. However, where it is definitely known that the patient *is* in danger, treatment may not be deferred, even if it is estimated that delay will not increase the existing danger, as explained by Meiri on Talmud *Yoma* 84b. However, *Mishneh Berurah ibid.* §16) seems not to accept this interpretation.
27. 328:4.
28. Commentary on *Yoma* 84b.
29. *Iggerot Moshe, Choshen Mishpat* 2:73:9.
30. Comments to *Lev Avraham* part 1, p.15 (on 6:5)
31. See "Life-saving Procedures Undertaken in Error" above.
32. See *Shemirat Shabbat Kehilechatah* part 1 (5739) 32:23.

In view of the disagreement, Rabbi Neuwirth and the doctor went to put the question to Rabbi Auerbach, with whom they had a number of meetings. Eventually Rabbi Auerbach decided that an operation to repair a pertrochanteric fracture should be performed on Shabbat despite the statement of the doctors that deferring it would not increase the risk to life. His main reason, as explained to me by the world-famous physician, was simple:

"When a patient is in danger and either the patient or the doctor feels that it is urgent to perform the operation, it should be performed as soon as possible, even on Shabbat, and even if the doctors consider that delay will not increase the risk to the patient's life."[33]

an operation to repair a pertrochanteric fracture should be performed on Shabbat

Some weeks later it became apparent that doctors are not in universal agreement that delaying the operation does not increase the risk to life. A number of medical articles were found that claimed that even delaying the operation for less than 72 hours could increase the mortality risk.[34] But Rabbi Auerbach's decision to permit the operation on Shabbat was given at a time when the medical data presented to him claimed that deferring the operation would not increase the risk to life.

Both the examples given above and the thousands of other halachic decisions of Rabbi Auerbach seem to me to express clearly the ideas of the Tosafist Rabbi Yitzhak: "The reason we do not go according to the majority in cases where life is at risk is because the Torah states, 'and he shall live on their account,' live and not die on their account, and that on no account should they lead to a person's death!"[35]

33. Following this, Professor Abraham wrote in his book *Halachot for the Physician on the Sabbath and Festivals 56*, p.30 (Schlesinger Institute, 5755): "If the condition demanding an operation is acute, one must operate on the Sabbath if possible, even if on a weekday one sometimes postpones such an operation for a day or two for lack of operating time." [In the original Hebrew version, "even if on a weekday one sometimes postpones such an operation for a day or two because all the operating rooms are occupied with more urgent operations."] In a footnote (100 in the Hebrew, 84 in the English version] he adds "I heard this from Rabbi Auerbach."

34. See Raunest J. et al., *Zur Komplikationsincidenz bei der operativen Versorgung coaxler Femurfrakturen,* Langenbecks Arch. Chir. 375(3):156-160 (1990); Bonnaire et al., *Schenkelhalsfrakturen beim Erwachsenen: gelenkerhaltende Operationen; Die Bedeutung des Operationszeitpunkts und des Implantantats für die Genese der aseptischen Hüftkopfnekrose,* Unfallchirurg. 98(5): 259-264 (1995).

35. *Tosefot* on Talmud *Yoma* 85a.