

THE ELLIS FAMILY EDITION



TZURBA צורבא
M'RABANAN מרבנן
לעילוי נשמת מאיר (מיש) אלימלך ז"ל

צורבא מרבנן

TZURBA M'RABANAN

WITH ENGLISH TRANSLATION, COMMENTARY AND ESSAYS

A concise learning method from the Talmudic source
through modern-day halachic application

Volume 6 Excerpt

SELWYN & ROS SMITH AND FAMILY



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נתנאל זאב בן מרדכי



Halachic Perspectives on the Coronavirus I

נקודות מבט הלכתיות על נגיף הקורונה א'

What to Do When Plagues Strike?

What If It Is Not One's Time to Die?



“What we love, we inherit. What we fail to love, we lose.”

— *Rabbi Jonathan Sacks*

Dedicated by

Candice and Darren Katz

to our parents who taught us what to love
and to the miracle of each Jewish person alive today
who has the opportunity to truly love our precious Torah.





Tanach



Talmud (Chazal)



Rishonim



Acharonim



Contemporary Poskim

In the previous *shiur* we examined some of the halachot of *sakana*, many of which are mentioned in the *Shulchan Aruch* in *siman* 116 of *Yoreh De'ah*. Another case of *sakana* is mentioned in the Rema there that has unfortunately become extremely relevant across the globe over the past few months, and that is the danger of *dever*, a plague or epidemic. Since the pandemic of COVID-19, known also as the coronavirus, has significantly impacted all of our lives during this time, we felt it fitting to devote an entire *shiur* to the subject. In this *shiur*, we will survey some of the relevant sources and halachic responses to plagues over history and discuss briefly how they apply to our current situation. In addition, we hope to discuss some of the halachot related to *davening* alone without a *minyan* in a second installment to be distributed later, as this has become the norm in many places during this period, given the temporary mass closing of shuls and *batei midrash* all over the world.¹

WHAT TO DO WHEN PLAGUES STRIKE?

We will begin by quoting the **Rema** mentioned above, which appears in *se'if* 5 (in the same *se'if* as the halacha of food placed underneath the bed discussed in the previous *shiur*). The Rema first presents a general warning to avoid dangerous activities or places, and then proceeds to offer a number of examples of this principle, including our situation of *dever*.

נ Rema, Yoreh De'ah 116:5

Likewise, one should be cautious about all matters that lead to danger, since danger is more severe than a prohibition, and one should be more concerned with possible danger than with a possible prohibition... they [the earlier authorities] have also written that one should flee from the city when there is an epidemic in the city, and one should exit the city at the onset of the epidemic and not at the end. And all of these matters [the examples brought in the Rema] are due to danger, and one who guards his soul should distance himself from them (and see *Choshen Mishpat* 427).

1. רמ"א | יו"ד קט"ז:ה

וכן יזהר מכל דברים המביאים לידי סכנה, כי סכנתא חמירא מאיסורא ויש לחוש יותר לספק סכנה מלספק איסור... עוד כתבו שיש לברוח מן העיר כשדבר בעיר, ויש לצאת מן העיר בתחלת הדבר, ולא בסופו. וכל אלו הדברים הם משום סכנה, ושומר נפשו ירחק מהם כיוצא בזה. (ועיין בחושן משפט סימן תכ"ז).

According to the Rema, who is quoting the Responsa of the **Maharil**, the proper response to the presence of an epidemic in one's city is to flee due to the danger. The simplest reason for fleeing is that it is dangerous to remain due to the significant chance that one will become infected with the disease, and the best manner of avoiding it is to flee.²

The **Kaf HaChaim** adds to this that fleeing is the proper course of action because *dever* is highly contagious, and he notes that the **Arizal** already cautioned against even handling the belongings or clothing of

1. This *shiur* was written by the English editors for the English edition of the *Tzurba M'Rabanan* series.

2. The Maharil also offers two additional reasons for fleeing. The first is that even if there is a Heavenly decree against a certain location, perhaps if one flees elsewhere, one can escape the Divine decree. The second is that those that remain may panic significantly, which is also extremely unhealthy (as we have seen in the current crisis as well).

one who is ill could infect a person (considerations that are relevant for preventing the spread of the coronavirus as well, though the details of how long the virus can last on various surfaces may vary).

נ Kaf HaChaim, Yoreh De'ah 116:55

One should flee the city when there is a plague in the city, etc. – Since it is a contagious illness, as it states (*Devarim* 28:21): “God will make pestilence cling to you,” and one should even distance oneself from the area where the sick person is standing or even his possessions or clothing, that one should not be harmed, as it says in the *Sha’ar HaKavanot* [of the Arizal], page 13d, see there.

2. כף החיים | יו"ד קטז:נה

שיש לברוח מן העיר כשדבר בעיר וכו' – לפי שהוא חולי המתדבק כמו שכתוב ידבק ה' בך את הדבר, ואפילו באותה השכונה שעומד שם המוכה או אפילו איזה כלי ומלבוש שלו צריך להתרחק ממנו דלא לותזק כמ"ש בשער הכוונות דף יג ע"ד יעו"ש.

Although this instruction was certainly a logical one during earlier times in history, the problem is that it appears to conflict with a passage in the **Gemara** in *Bava Kamma*. The Gemara states that when one encounters *dever* in one's city, one should remain at home.

ה Masechet Bava Kamma 60b

The Sages taught: If there is **plague in the city, gather your feet**, i.e., enter your house, **as it is stated** in the verse (*Shemot* 12:22): “**And none of you shall go out of the opening of his house until the morning.**” **And it says** in another verse: “**Come, my people, enter into your chambers, and shut your doors behind you;** hide yourself for a little moment, until the anger has passed by” (*Yeshayahu* 26:20). **And it says:** “**Outside the sword will bereave, and in the chambers terror**” (*Devarim* 32:25). The Gemara asks: **What** is the reason for citing the additional verses introduced with the term: **And it says?** The first verse seems sufficient to teach the principle that one should not emerge from one's house when there is a plague. The Gemara answers: **And if you would say that this matter**, the first verse that states that none of you shall go out until morning, applies only **at night, but in the day** one may think that the principle does **not** apply, for this reason the Gemara teaches: **Come and hear:** “**Come, my people, enter into your chambers, and shut your doors behind you**”...

3. מסכת בבא קמא ס:

תנו רבנן דבר בעיר כנס רגליך שנאמר ואתם לא תצאו איש מפתח ביתו עד בקר ואומר (ישעיהו כו, כ) לך עמי בא בחדריך וסגור דלתיך בעדך ואומר (דברים לב, כה) מחוץ תשכל חרב ומחדרים אימה מאי ואומר וכי תימא הני מיילי בליילא אבל ביממא לא תא שמע לך עמי בא בחדריך וסגור דלתיך...
תנו רבנן דבר בעיר אל יהלך אדם באמצע הדרך מפני שמלאך המות מהלך באמצע הדרכים דכיון דיהיבא ליה רשותא מסגי להדיא, שלום בעיר אל יהלך בצדי דרכים דכיון דלית ליה רשותא מחבי חבוי ומסגי.

The Sages taught: If there is a **plague in the city, a person should not walk in the middle of the road, due to the fact that the Angel of Death walks in the middle of the road, as, since** in Heaven **they have given him permission** to kill within the city, **he goes openly** in the middle of the road. By contrast, if there is **peace** and **quiet in the city, do not walk on the sides of the road, as, since** the Angel of Death **does not have permission** to kill within the city, **he hides himself and walks** on the side of the road.

According to the Gemara, it seems that the appropriate response to an epidemic is not to venture outside both at night and during the day. In addition, if one does need to be outside, one should not walk on the main thoroughfares. How do the Maharil and Rema reconcile this with their ruling to flee the city?

The first response is that one must evaluate the medical reality of every situation based on the “facts on the ground” and not simply based on comments in the Gemara, as every situation may be different.

Since Chazal's primary goal was to offer us spiritual guidance and inspiration, if at times we see that the medically or scientific advice of the doctors differs, one should follow the advice given at the time.³ Thus, if it was accepted in the time of the Rema that the safest method of avoiding an epidemic was to flee the city, then this was the correct approach at the time.

But aside from this general consideration, the commentaries do in fact address this question. The **Maharsha** suggests that indeed, it is preferable to flee, but so long as one does not flee, one should remain in one's home.



Maharsha, Bava Kamma 60b

It would seem that this [the instruction to remain at home] does not intend to exclude, [i.e., it does not mean] that one should not spread his feet [flee]... it is impossible to say this, as certainly if there is a plague in the city, it is also proper to spread one's feet and flee for one's life. Rather, this is the explanation: So long as one does not spread one's feet from the city, one should enter one's house and not go out to the streets.

4. מהרש"א | בבא קמא ס:

נראה לומר דלא בא לומר לאפוקי שלא יפזר רגליו... ואי אפשר לומר כן דהא ודאי בדבר בעיר נמי טוב לפזר רגליו ולהמלט על נפשו אלא דהכי פירושא כל זמן שאינו מפזר רגליו מן העיר יכנס רגליו לביתו ולא יצא ברחובות.

The **Maharil** also holds that it is preferable to flee (as he states in his ruling), but he explains that the Gemara refers to a case where one did not flee at the onset of the epidemic. In a case where the epidemic has then taken hold across the city, it is preferable to remain at home, as venturing outside may prove to be more dangerous, as one may likely contract the illness this way (especially given the poor sanitary conditions at the time).



Responsa of the Maharil, Siman 41

And concerning that which we say in the chapter of "*HaKoneis*" [the sixth chapter of *Bava Kamma*] that one should gather one's feet, I have heard from Rav Shalom, he should live,⁴ that once it has begun and strengthened, and it has been given permission to go openly, one should go inside. And we also say that all of the roads are considered to be dangerous. But ideally, it is good to flee.

5. שו"ת מהרי"ל | סימן מא

והא דאמרינן פרק הכונס כנוס רגלך ויליף מקראי טובא, שמעתי מפי מה"ר שלום שי' דלאחר שהתחיל ונתחזק ואיתיהיב ליה רשותא למסגי להדיא יש לכנוס רגליו. ואמרינן נמי כל הדרכים בחזקת סכנה, אבל מתחלה טוב הוא לברוח.

This is also the basis for the Rema's recommendation that one flee at the onset of the epidemic and not wait until the end.

Thus, it seems like many authorities hold that if possible, it is preferable to flee the city entirely, but if this is not possible or one has not left yet, it is best not to leave one's home. It is interesting to note that the Rema himself (when he was much younger) fled his hometown of Cracow during the spread of an epidemic there to take refuge in a small town in the Polish countryside. The **Rema** mentions this in his introduction to his commentary on *Megillat Esther* known as **Mechir Yayin**, which he wrote to his father in place of *mishloach manot* because he lacked the resources to send food or organize a *Purim seuda*.⁵

3. See, for example, *Otzar HaGeonim (Pesachim 68b)*, where Rav Sherira Gaon states that Chazal were our Sages, not our doctors.

4. This likely refers to Rav Shalom of Neustadt, also known as Rav Shalom of Vienna, who was one of the Maharil's primary teachers.

5. See the very end of the commentary (which is available online at he.wikisource.org/wiki/מחיר_יין) where the Rema alludes to this.

8. Mechir Yayin, Introduction

...I, Moshe Isserles of Cracow, was in exile that we were exiled from our city... due to the foul air [i.e., the epidemic], God forbid, and we lived in a foreign land in the city of Szydlow, a place where there was no fig or grape and nearly no water to drink... and we were not able to observe the days of Purim with celebration and joy, to remove the agony and grief. I said that I would get up and rejoice in my work, and my wisdom stood up for me also... and I put my heart to explore and expound the intent of the *Megilla*, whose words are an analogy,⁶ and an explanation of each word...⁷

6. מחיר יין | הקדמה

...אני, משה בן כבוד אבא מרי הפרנס והמנהיג ישראל שלי"א הנקרא משה איסרלש מקראקא, הייתי בתוך הגולה אשר נתגלינו מעירינו בשנת שי"ז לפ"ק מחמת עיפוש האויר, לא עלינו, והיינו גרים בארץ לא לנו בעיר שידלוב מקום אשר אין תאנה וגפן וכמעט מים אין לשתות... ולא יכלנו לקיים ימי הפורים במשתה ושמחה, להסיר יגון ואנחה. אמרתי אקומה ואשמח במפעלי, אף חכמתי עמדה לי... ונתתי לבי לתור ולדרוש כוונת המגילה הנמשל בדבריה ופירוש כל מלה ומלה...

The **Kaf HaChaim** offers another reason as to why one should attempt to flee at the beginning of an epidemic and not wait until it has spread.

9. Kaf HaChaim, Yoreh De'ah 116:57

And not at the end – Since at that point, he can no longer flee from the city, since that will not give him a place of respite, since even his loved ones and friends will stand opposite him and his relatives will distance themselves [i.e., no one will want to have him stay with them]. This is from the *Lechem HaPanim*, 9; *Beit Lechem Yehuda*, 13.

7. כף החיים | יו"ד קטז:נז

ולא בסופו – כי אז לא יכול לברוח מן העיר כי לא יתן לו מקום מנוחה כי גם אוהביו ורעיו מנגד נגעו יעמדו וקרוביו ירחיקו. לחם הפנים אות ט, בית לחם יהודה אות יג.

According to the *Kaf HaChaim*, if one waits too long, one may not be able to leave, since even his friends and relatives will be too fearful to take him in (an echo of which we see today with the closing of borders of many countries across the world).

How do these guidelines that we have seen so far apply to our current pandemic of the coronavirus? As mentioned above, clearly one must evaluate the situation based on the recommendations of the health professionals and not simply based on rulings in the Gemara and the Rema. Nevertheless, one can easily extrapolate some general principles from here. First, since our pandemic has spread worldwide, even if one would argue that it qualifies as exactly the same high level of danger as the *dever*, there is no point in fleeing, since traveling itself may be dangerous, exactly as the Maharil and Rema explain. However, the Gemara's advice of remaining at home appears to be exactly on target in our current circumstances, and coincides perfectly with the recommendation of the health professionals and orders of the government (depending on which country one lives in) to remain at home.

It would also seem apparent from these rulings that one is not obligated to *daven* in a shul with a *minyan* during such times. If the *Acharonim* ruled that it was dangerous to exit one's home during a *dever* and

6. The Rema in the continuation explains that his commentary views the *Megilla* (in addition to its simple meaning) as a homiletic parable for the journey of the soul through life, from birth to death, which is a unique approach among the commentaries.

7. Appreciating the motive behind the Rema's writing of this commentary during difficult times from an epidemic can serve as a powerful message to us as well to use the situation as a catalyst for great spiritual achievements. A similar message can be gleaned from the fact that the Chida, Rav Chaim Yosef David Azulai, wrote one of his most famous books, *Shem HaGedolim* (a biography of great Torah scholars), during the forty days that he was in quarantine waiting to enter the city of Livorno, Italy (a practice at the time instituted for anyone coming from certain parts of the world who were suspected of carrying infectious diseases).

one should flee the city completely, then certainly they did not expect one to *daven* with a *minyan*, and likely discouraged it as well. This too coincides well with the instructions given by rabbanim in many places not to leave one's home to attend shul (and in many places the shuls have been closed temporarily for this reason).⁸

Another important precedent for halachic responses to epidemics can be found in the writings of **Rav Akiva Eiger**, who offered a detailed list of instructions, both religious and medical, for responding to the cholera epidemic in 1831.

א Sefer Igerot Soferim, Siman 29–30⁹

A correspondence concerning the cholera epidemic, God forbid, so that people will know how to conduct themselves during these difficult times.

I received his letter concerning prayer in shul. In my opinion, it is true that a gathering in a narrow area is improper, but it is possible to *daven* in separate groups, each one consisting of only a small number, approximately fifteen people, and they should begin at the light of morning and afterwards another group, and it should be designated which time each person should come to *daven*, and the same should be done for *Mincha*.

And one should recite a number of chapters of *Tehillim* of one's choosing after the *davening* at night and in the morning, and then the text of *Kel Rachum Shemecha, Aneinu*, and *Mi She'ana*,¹⁰ and the "*yehi ratzon*" following *Tehillim*, and to mention in it [a prayer on behalf of] the king [of the land] as well. And one should also recite the entire text of "*pitum haketoret*" in the morning and evening...

And one should be careful that more than the aforementioned number of people not push to enter the shul, and this can be done by stationing a policeman to supervise, that once there is already the maximum number present, they should not allow others to enter until after they have concluded...

8. ספר איגרות סופרים |

סימן כט–ל

מכתב בענין המגיפה קעללרע ר"ל למען ידעו להתנהג בעתים קשים הללו.

כתבו הגיעני בענין תפילה בבית הכנסת, לדעתני זה אמת שהקיבוץ במקום צר אינו נכון, אבל אפשר להתפלל כתות כתות, ובכל פעם במתי מעט, ערך טו' אנשים, ויתחילו כאור הבוקר ואחריה כת אחרת, ויהיה מיוחד לאשים אלו באיזהו זמן יבואו להתפלל שם וכן במנחה.

ולומר אחר התפילה בערב ובבוקר תהילים איזה מזמורים שיבחר, ואח"כ הנוסח א-ל רחום שמך, ענינו ה' ענינו, מי שענה, ויהי רצון אחר התהילים, ולהזכיר בתוכו גם על המלך. ולומר בבוקר ובערב כל נוסח פרשת הקטורת...

ולחוש שלא ידחקו אנשים יותר מהסך הנ"ל לבא לבית הכנסת, ואפשר על ידי עמידת שומר מפאליציי להשיג בזה שמאחר שיש כבר כפי המספר אל יניחו לאחר לבא לשם עד אחר שישלימו הם...

8. One example of such a ruling was given in mid-March by the Rabbinical Council of Bergen County (RCBC), where they instructed all of the shuls in Bergen County, NJ, to close completely (which occurred earlier than in many other places). It is clear from the letter written (available at www.jewishpress.com/news/us-news/breaking-news-bergen-county-hrabbis-cancel-all-shul-forbid-minyanim-shabbat-gatherings-eating-out-and-more/2020/03/12) that they were concerned with the possibility that continued community infection might cause the hospitals to be overloaded and be able to treat dangerously ill patients. Respected *poskim* in the chareidi community, including Rav Chaim Kanievsky, have also endorsed such a decision.

9. These letters have been reprinted in new editions of *Chidushei Rabbi Akiva Eiger, Nedarim* 39a, some of which has been posted recently on various websites, such as www.ladaat.co/archives/44014.

10. This refers to the three passages that we recite at the end of *Selichot* asking Hashem for salvation.

One should not be nervous and one should distance himself from all types of sadness, one should not walk at night in the air of the city, but in the afternoon when the sun is shining it is helpful to walk in the fields to get fresh air, and open windows in the morning so that air enters the rooms [of one's home]...

My holy congregation here... did what I instructed them to focus their hearts on Hashem... to inspect their actions, to improve on wrongdoings, to knock on the entranceway of Hashem with prayers and supplications... and also to pray for our master, the great king, Hashem should raise his glory, and his children, officers, servants, and all of the residents of our country... and to increase the amount of *tzedaka* given, which saves one from death...

I also warned time after time, warning after warning, that people's manner of eating and drinking should be according to what the doctors have instructed to be cautious about, and they should distance themselves from them like the distance of two bowshots [see *Bereishit* 21:16], as if they were forbidden foods, and they should not violate their words even to a hairsbreadth. And this includes being careful about everything [that the doctors say], such as not going out from one's home in the morning on an empty stomach, and the necessity to drink hot water beforehand.

And one who transgresses the instructions of the doctors in his manner of practice has greatly sinned to God, since danger is more severe than prohibition, especially where there is danger to him and to others, where he could God forbid cause the illness to spread through the city, and his sin would be too great to bear.

שלא לדאוג ולהרחיק כל מיני עצבות, שלא לילך בלילה באוויר העיר, בצהרים כשהחמה זורחת, טוב לטייל על פני השדה לשאוב אוויר ולפתוח החלונות בבוקר שיבוא אוויר בחדרים...

עדתי עדה קדושה דפה... עשו כאשר הערתי אותם ליחד לבבם לד'... לפשפש במעשים לתקן המעוות לדפוק על פתחי ה' בתפילות ותחנונים... ולהתפלל גם כן על אדוננו מלך האדיר, ד' ירים הודו ועל זרעו ושירו ועבדיו וכל אנשי מדינתו... ולהרבות בצדקה המצלת ממותה...

גם הזהרתי פעמים הרבה באזהרה אחר אזהרה שיהיו הנהגתם באכילה ושתיה כפי אשר סדרו ואשר שפטו הרופאים להזהר מזה וירחקו כמטחוי קשת כאילו הם מאכלות אסורות ולא יעברו על דבריהם אף כמלא נימא ובכלל הזה להשמר מכל דבר ודבר כגון שלא לצאת בשחרית מביתו אליבא ריקנא וההכרח לשתות חמין מקודם והעובר על ציווי הרופאים בסדר ההנהגה חוטא לה' במאוד כי גדול סכנתא מאיסורא ובפרט במקום סכנה לו ולאחרים שגורם ח"ו התפשטות החולי בעיר וגדול עונו מנשוא.

Rav Akiva Eiger here enumerates medical instructions that were thought to be helpful in preventing cholera, such as eating habits and getting fresh air, together with forceful words stressing the importance of following the doctors' instructions. This should give us clear precedent of the significance given to medical instructions by great *poskim* (even if some of the details may not be relevant today). In addition, his religious suggestions of the types of *tefillot* to add or stress, giving *tzedaka*, and even *davening* for the government and all of the citizens affected by the epidemic can (and have) certainly serve as a precedent for our situation today. Finally, Rav Eiger's suggestion of establishing *minyanim* limited to fifteen people (in order to limit the spread of germs in the air) using police to enforce it if necessary is also an important precedent for today in allowing changes to be made in the regular schedule of *minyanim* in shul.¹¹

11. At the time of the writing of this *shiur*, the current recommendations are that even having a *minyan* of ten to fifteen people is not advisable or not allowed in many places, but at the earlier stages of the spread of the coronavirus, the instructions given in Israel were quite similar to this (and they may yet return to them at some point). It should also be noted that Rav Akiva Eiger also permitted shortening the *davening* on the *Yamim Nora'im* due to the situation.

WHAT IF IT IS NOT ONE'S TIME TO DIE?

A number of the commentaries raise the question of why one must take protective measures at all during a time of an epidemic. After all, doesn't Hashem decree on Rosh Hashana whether a person will live or die during the coming year? If one is destined to live, then it should not matter whether one places oneself in harm's way or engages in actions that could infect other people.¹² If they are supposed to live, then Hashem will protect them. Rav Shlomo ben Shimon Duran, known as the **Rashbash**, wrote an important and lengthy *teshuva* on this subject (referenced in brief by the **Pitchei Teshuva, Y.D. 116:8**) and explains that things are not always so simple.



Responsa of the Rashbash, Siman 195

Question: Will fleeing from one place to another during the time of an epidemic help a person or not? As if he is inscribed on Rosh Hashana for death, how will fleeing help, and if he is inscribed for life, even staying put will not harm him.

Answer: Every person has a set amount of time to live, and this is written in the Torah, "I will fill the number of your days" (*Shemot* 23:6). It is repeated in the Prophets, "I will add to your days," (*Yeshayahu* 38:5), and repeated a third time in the Writings (*Ketuvim*), God has informed me of my end, etc." (*Tehillim* 39:5). And it is mentioned in the words of our Sages in the chapter of *Ein Bein Hamoder* (*Nedarim* 41a) that once the end of a person's time [in this world] has arrived, everything has dominion over him...

Therefore, I say according to my limited intellect that one who has not committed a sin for which he is liable to death or shortening of his days will remain with the fixed number of days to his life, and on Rosh Hashana he is not judged for life or for death, but remains with his set length of time, and at the end of his time, he will die if he does not possess [the merit of] a mitzva that lengthens his days, and this is the case of dying without sin [see *Shabbat* 55b]... And concerning this person who is not judged on Rosh Hashana for life or death, it is stated in the Torah, "lest he die in war," (*Devarim* 20:5). As if it is written on Rosh Hashana that he will live or die, it is not part of the realm of possibility, it is in the realm of what must happen, so if he is inscribed for death by the sword, then even if he is in his home or he hides, he will be stabbed by the sword... But one who has a set time to live is not subject to judgment of life and death on Rosh Hashana, but is subject to judgment

9. שו"ת הרשב"ש | סימן קצה

שאלת: הניסה בימי דבר ממקום למקום אם תועיל לאדם או לא, שאם נכתב בראש השנה למיתה מה תועילנו הניסה, ואם נכתב לחיים לא תזיקנו העמידה.

תשובה: כל אדם יש לו קץ קצוב מספר ימי חייו, ודבר זה כתוב בתורה את מספר ימיו אמלא, שנוי בנביאים הנני מוסיף על ימיו, משולש בכתובים הודיעני ה' קצי וכו', ובדברי רבותינו ז"ל בפרק אין בין המודר כיון שהגיע קצו של אדם הכל מושלך בו וכו'...

על כן אני אומר לפי קוצר שכלי, מי שאין בידו עבירה מחייבת מיתה וקוצר ימים מהעקר נשאר על הקץ הקצוב מספר ימי חייו, ובראש השנה אינו נדון לא בחיים ולא במות, אבל נשאר על הקץ הקצוב ובתום קצו ימות אם אין לו מצוה מחייבת אריכות ימיו, וזו היא מיתה בלא חטא... ועל זה שלא נדון בראש השנה בחיים ובמות נאמר בתורה פן ימות במלחמה, שאם נכתב בראש השנה בחיים או במות אינו בחק האפשר אבל הוא בחק החיוב, שאם נכתב שימות בחרב אפילו בתוך ביתו או יסתר במסתרים ידקר בחרב...

אבל בעל הקץ הקצוב אינו נכנס בדין החיים והמות ביום ראש השנה, אבל נכנס לענין

12. The same should be true concerning whether a person will become seriously ill even without dying.

for other matters such as whether he will have children, livelihood, health, illness, and the like. And for one who is not subject to judgment for life and death on the Day of Judgment, it remains in the realm of possibility that he may die from a plague or war and the like, or a natural death through irresponsible conduct. This is what the wise one [Shlomo] said, “some die without judgment,” like the story in the first chapter of *Chagiga* (4b) concerning Miriam the braider of hair and Miriam the raiser of babies.¹³ And those that are not inscribed definitively on Rosh Hashana for health can become ill if they are negligent... and similarly what they said... (*Shabbat* 32a) that one who is pious should never stand in a place of danger...

And even though it is inscribed on Rosh Hashana concerning the collective community which ones will fall by the sword and by plague, as we say... “and concerning the countries it says, which one by sword and which one for peace,” but there are individuals who may not have been inscribed for [death by] the sword or by plague, since they had no sins committed that make them liable to these. Therefore, fleeing from the sword and protecting oneself from war can be effective, since this was not inscribed on Rosh Hashana and remains only in the realm of possibility. Likewise, proper conduct concerning maintaining one's health and removing illness can also help, and this is what they said in *Berachot* in the chapter of *HaRo'eh* (60a) and in the chapter of *Hachovel* of *Bava Kamma* (85a) that from here, permission is given to a doctor to cure...

And they said in the chapter of *Hakoneis* that if there is a plague in the city, one should gather his feet, and Rava during a time of Divine anger closed his windows, meaning during a plague... as if you don't say this, but that everything is decreed on Rosh Hashana on every individual, if so then there is nothing in the realm of possibility, and the one who is inscribed for life does not need to protect himself, and the one who is inscribed for death, protecting himself will not help, and there is no third category. If so, why were our Sages protecting themselves and instructing people to protect themselves from the plague? And our great sages would flee from it, as we have heard that Rabbeinu Nissim fled a number of times...¹⁴

שאר עניני אדם בני ומזוני בריאות וחולי ודומיהם. ואשר לא נכנס ביום הדין בחיים ובמות נשאר בחק האפשר במיתת מגפה ובמיתת מלחמה ודומיהם או מיתה טבעית על ידי רוע הנהגה, וזהו שאמר עליו החכם ויש נספה בלא משפט, וכהוא עובדא דבפ"ק דחגיגה בעובדא דמרים מגדלא נשיא ומרים מקריא דרדקי. ואותן שלא נכתבו בראש השנה בבריאות אם פשעו בעצמם יבואו לידי חולי... וכן מה שאמרו... לעולם אל יעמוד אדם במקום סכנה...

ואע"פ שנכתבה בראש השנה נפילת החרב והמגפה על הכלל, כדאמרינן... ועל המדינות בו יאמר איזו לחרב ואיזו לשלום, אבל יש יחידים שאפשר שלא נכתבו לא בחרב ולא במגפה לפי שלא היתה להם עבירה מחייבת, ולפיכך תועיל הניסה מהחרב והשמירה מהמלחמה לפי שלא נכתבו בה בראש השנה ונשאר בחק האפשר. וכן תועיל ההנהגה הטובה בשמירת הבריאות ובהסרה מן החולי, וזהו אמרם בברכות בפרק הוראה ובבבא קמא בפרק החובל מכאן שנתנה רשות לרופא לרפאות...

ואמרו ז"ל בפרק הכונס דבר בעיר כנס רגלך ורבא בעידן רתחא הוה סכר כווי, כלומר בשעת המגפה סוכר החלונות... במיתת מגפה ונשאר בחק האפשר. שאם לא תאמר כן אלא שהכל נגזר בר"ה על כל יחיד ויחיד, א"כ אין שם דבר בחק האפשר וזה שנכתב לחיים לא יצטרך לשמירה וזה שנכתב למות לא תועילנו שמירה ואין שם חלוקה שלישית, ומה זה שהיו נשמרים רבותינו ז"ל ומצווים על השמירה מהמגפה, וגדולי חכמינו ז"ל היו בורחים ממנה כמו ששמענו הרב רבינו נסים ז"ל שברח ממנה פעמים.

13. The Gemara there relates how the angel of death and his messenger mistakenly killed one Miriam instead of a different Miriam.

14. The Rashbash in the continuation also addresses the Gemara quoted earlier in *Bava Kamma* that one should not walk in the middle of the street during a plague and explains it homiletically. According to his interpretation, during times of health, a person must balance his conduct and take the middle approach concerning eating, drinking, clothing, and sleep, which is represented by walking in the middle of the street. But during times of an epidemic, one should be extra-careful to protect oneself to the extreme, such as by not eating too much, eating

והשם יתברך יחמול עלינו ועל כל עמו
 ישראל ברחמים אמן.
 And Hashem should have mercy upon us and upon his entire
 nation of Israel with compassion, Amen!

The Rashbash here presents a somewhat novel, but extremely fundamental approach. He says that many people are not specifically inscribed on Rosh Hashana for death or illness, but if they are in a dangerous place or act in an unhealthy manner or irresponsibly, they too can be affected in certain situations. He also explains numerous passages in Chazal using this principle (including the suggestions we have seen above in the Gemara in *Bava Kamma* concerning *dever*) and argues compellingly that this requires us to take precautions so as not to become ill.

A somewhat similar approach is offered by **Rav Akiva Eiger** in his commentary on the Rema cited earlier, quoting **Rabbeinu Bechayei**.

א

Rabbi Akiva Eiger, Glosses to Yoreh De'ah 116:5

Rabbeinu Bechayei writes (*Parshat Korach*) on the *pasuk* of “separate from the congregation” (*Bamidbar* 16:21) [referring to the command for *Bnei Yisrael* to distance themselves from Korach and his followers] as follows: “The fact that it needed to say to separate, even though Hashem has the power to kill and to give life, and He does not need a separation, since He can cause a large group to die and save one person among them, as it says: Two or three people cover themselves with one garment; two of them die, and the middle one is saved, as it says: One thousand will fall at your side (*Tehillim* 91:7).¹⁵ Rather, it is so that the bad air of the plague should not affect them [see *Bamidbar* 17:4], like what is said about the wife of Lot (*Bereishit* 19:26): And his wife looked behind her.¹⁶ Alternatively, [the reason for the command is] based on what they said that when the attribute of judgment is extended, it does not distinguish between the righteous and the wicked.”

10. רבי עקיבא איגר | הגהות ליו"ד קטז:ה

בספר רבינו בחיי" (פ' קרח) כתב בפסוק
 הבדלו מתוך העדה וז"ל ומה שהצריך
 לומר הבדלו והקב"ה יש בידו להמית
 ולהחיות ולא היה צריך הבדל אצלו שהרי
 יכול הוא להמית את הרבים ולהחיות א'
 בתוכם וכמו שכתבו ז"ל ב' וג' מתכסים
 בטלית א' השנים מתים והאמצעי ניצל
 וכענין שכתוב יפול מצדך אלף אלא כדי
 שלא ידבק בהם האויר הרע שבמכת
 הדבר כענין האמור באשתו של לוט ותבט
 אשתו מאחריו או מטעם שאמרו ז"ל
 כשהמדת הדין מתוחה אינו מבחין בין
 צדיק לרשע וכו' עכ"ל.

Rabbeinu Bechayei here explains that the righteous were required to distance themselves from the wicked in the story of Korach to avoid punishment from the natural consequences of the plague that later struck many others, which caused the air to contain dangerous particles (an early understanding of germs perhaps), which apparently could strike the innocent as well. His second explanation, which focuses more on the spiritual aspect (and in fact complements the first explanation), is that once Hashem has allowed the Satan to punish, he does not necessarily distinguish between righteous and wicked, but will simply harm anyone in his path.

highly nutritious foods, increasing one's rest, and “distancing oneself from agony and increasing one's joy” (as Rav Akiva Eiger mentioned a few hundred years later, as quoted above). This is represented in the Gemara by walking on the sides of the street.

15. The footnotes on the Mosad HaRav Kook edition of Rabbeinu Bechayei state that the source of this passage is unknown.

16. Rabbeinu Bechayei is suggesting that Lot's wife died when turning around not due to divine punishment, but rather based on natural causes related to imbibing the foul air that emanated from Sodom and the other destroyed cities. This approach is also taken by the Ramban in his commentary there.

The **Gemara** in **Bava Kamma** (a few lines prior to the passage quoted above) also supports the second idea mentioned by Rabbeinu Bechayei. According to the Gemara, the reason that the Jews were not allowed to leave their homes overnight while making the first Pesach Seder in Egypt was because otherwise the *mashchit* (destroyer) who was sent out to kill the Egyptian first born might kill the Jewish ones too should they be found outside of their homes (which had the blood from the *korban Pesach* on the door for spiritual protection).

נ Masechet Bava Kamma 60a

Rav Yosef taught a *baraita*: **What** is the meaning of that **which is written** with regard to the plague of the firstborn: **“And none of you shall go out of the opening of his house until the morning”** (*Shemot* 12:22)? If the plague was not decreed upon the Jewish people, why were they not permitted to leave their homes? **Once permission** is granted **to the destroyer** to kill, **it does not distinguish between the righteous and the wicked.**

11. מסכת בבא קמא ס.

תאני רב יוסף: מאי דכתיב (שמות יב:כב) ואתם לא תצאו איש מפתח ביתו עד בקר? כיון שניתן רשות למשחית – אינו מבחין בין צדיקים לרשעים.

The **Gra** quotes this Gemara as well and elaborates (in his usual concise form) on the notion that even if one is not supposed to die yet, if one is in a situation or place of danger, one may be killed regardless.

נ Bi'ur HaGra, Yoreh De'ah 116:16

They also wrote – As it says in the sixth chapter of *Bava Kamma*, “once permission is given, etc.” as it states (*Mishlei* 13:23), “some die without judgement,” and it says in the third chapter of *Ta'anit* (21b), there is a plague in Bei Chozai, etc., there are caravans, etc. [i.e., the plague will travel from one place to another], certainly in that city [the residents may become ill]... and the same is true for other matters, as it states (*Yirmiyahu* 21:9; cf. 38:2), “whoever dwells in city [shall die by the sword, famine or plague], etc.... and it states (*Amos* 4:7) “and I will cause it to rain on one city, etc.”

12. ביאור הגר"א | יו"ד קטז:טז

עוד כתבו כו' – כמ"ש בפ"ו דב"ק (ס') כיון שניתן רשות כו' וכמ"ש (משלי י"ג) ויש נספה כו' ואמרינן בפ"ג דתענית (כ"א ב') איכא מותנא בי חוזאי כו' איכא שיירתא כו' כ"ש באותה העיר ושם איכא מותנא בחזירי כו' וכן בשאר דברים כמ"ש (ירמיה כ"א ל"ח) היושב בעיר כו' והיתה כו' ונאמר (עמוס ד') והמטרתי על עיר כו'.

The clear message from these sources seems to be that one should not assume that proper precautions to avoid infection from a disease are unnecessary. One should not assume that one will become sick or die only if Hashem decrees it upon him, and otherwise he will be immune. Rather, the Rashbash, Rav Akiva Eiger, and the Gra (among others) inform us that one may indeed be harmed (or harm others) in places where a divine decree has been given for suffering or illness to occur.

The same is true with regard to the coronavirus as well, where public gatherings and exposure to others in public places can potentially be harmful. One should follow the instructions and guidelines given by health care professionals completely to ensure that one stays safe. The Gemara's understanding of the command for the Jews in Egypt to remain in their homes on that first Pesach night takes on a special significance this Pesach, where the instructions being given across the world are that everyone should remain in their homes as much as possible to avoid becoming infected by the coronavirus.

Another extremely important point that has been pointed out widely both in the medical realm as well as the halachic realm is that this disease is more dangerous for certain individuals than others, especially the elderly and those with pre-existing conditions. Thus, even if one chooses to expose oneself more than is recommended and assume one's symptoms will be light (or nonexistent, which is the case with some) even if infected, one could simultaneously cause others who are more vulnerable to be infected. This is halachically problematic as well, as one is forbidden to cause damage or harm to others. In this context, many *poskim* have recently cited a comment of **Tosafot** stating¹⁷ that one must be more careful with respect to the property and well-being of others than with respect to one's own property or well-being.¹⁸



Tosafot, Bava Kamma 23a
s.v. V'lechayev

It seems... that a person must be more careful not to harm others than not to harm himself...

13. תוספות | בבא קמא כג.
ד"ה ולחייב

ונראה... דיותר יש לאדם ליזהר עצמו שלא יזיק אחרים משלא יזיק...

Based on this, we should attempt to minimize the risk to ourselves and others as much as possible, which in the current situation means limiting one's exposure to other people outside of the house. This crisis, then, is an opportunity to fulfill the mitzva of *v'nishmartem me'od l'nafshoteichem* to its fullest simply by staying home!

Medical Professionals

One potential exception to the rule to not place oneself at risk in both the classic sources as well as in our situation now is the status of medical workers and health professionals. Since it is the job of such individuals to treat patients, in addition to the fact that they can help in the fight against the disease, many *poskim* hold that even if others should run away from an epidemic, doctors and medical workers are obligated to remain behind and treat the ill. This position has its basis in the **Maharshal**, as cited by the **Magen Avraham**, who states that when the **Shulchan Aruch** declares that one who does not share in the suffering of the community will not merit to see their consolation, it refers to those who can help, but others should preferably stay out of danger.



Shulchan Aruch, Orach Chaim 574:5

Anyone who separates himself from the community [during a time of distress] will not see in their consolation, while anyone who takes part in their time of distress will merit to see in their consolation.

14. שולחן ערוך | או"ח תקע"ה:

כל הפורש מן הצבור אינו רואה בנחמתו; וכל המצטער עמהם, זוכה ורואה בנחמתו.

17. Tosafot offer this explanation as a solution to a difficulty raised in the case in the Mishna (21b) of a cake taken by a dog together with a hot coal, which then ignited a nearby stack of grain belonging to someone else.

18. See, e.g., www.midaat.org.il/midaat/press/covid19/covid19-purim and Chief Rabbi Dovid Lau, cited in www.inn.co.il/News/News.aspx/429416.

Ⓝ Magen Avraham, Orach Chaim 574:6

One who separates himself from the community – That is true if he is capable of saving the community, either physically or financially. But if he cannot make a difference [i.e., he cannot help save lives in some way] he should not stay in a place of danger (*Yam shel Shlomo, Bava Kamma* 6:26).

15. מגן אברהם | או"ח תקע"ד:ו

הפורש מן הציבור – היינו אם יש בידו להציל הציבור בין בגופו בין בממונו אבל אי ליכא נפקותא בו אל יעמוד במקו' סכנה (יש"ש פ"ו דב"ק סכ"ו).

This concept is applied by the **Shevet HaLevi** to medical workers in our times as well.

Ⓢ Responsa Shevet HaLevi 8:251:7

Question: Concerning the obligation of a doctor, is there an obligation for a doctor to care for a sick patient with a dangerous infectious disease, and especially during the time of an epidemic, or should one flee from the city when there is a plague, as explained in *Bava Kamma* 60b?

Answer: The simple understanding is that it is forbidden for doctors who can help patients to flee and absolve themselves of their responsibility and only protect themselves as much as possible so as not to become infected. This is the protocol of medicine during these times. And my proof is from the enactment of our teacher HaGaon Rav Akiva Eiger during the time of the cholera epidemic in the city of Posen, where he writes that people who can tend to the sick should be stationed on a fixed basis in the *lazarette*,¹⁹ and he writes there that he hired these people. He also writes that they should call the doctor immediately, see there... [and it does not seem to me that he is referring specifically to people who are not Jewish].

16. שו"ת שבט הלוי ח:רנא:ז

שאלה: בענין חובת הרופא, האם יש חובת לרופא לטפל בחולה עם מחלה מדבקת מסוכנת, ובעיקר בזמן מגיפה, או שהעצה לברוח מן העיר כשיש דבר כמבואר ב"ק ס' ע"ב.

תשובה: פשוטם של דברים שאסור לרופאים שיכולים להועיל לחולים לברוח לסלק מתפקידם רק ישמרו עצמם ככל האפשר שלא להתדבק כתקנת הרפואה בעתים הללו, וראיה לי מתקנת רבינו הגרעק"א זי"ע בשעת מגיפת הכולירע בעיר פוזן שכ' שאנשים שיכולים לשמש החולים האלה יהיו באופן קבוע בחדר הלאצארעט, וכ' שם שהוא שכר האנשים האלה, וכן כ' שם שיקראו מיד לרופא יע"ש... [ואינו משמע לי שידבר דוקא מאנשים אשר לא מבני ישראל המה].

FURTHER IYUN

For further *iyun* concerning halachic perspectives on placing oneself at risk during the current period of the coronavirus as well as the role of medical professionals, see the essay on page 20.²⁰

19. This word refers to a leper colony or type of quarantine area. See en.wikipedia.org/wiki/Leper_colony.

20. Another halachic dimension to the issue of an epidemic involves the rabbinic enactment to fast and cry out. The details of what constitutes *dever* and illness in this context (specifically the percentage of the population that must die to qualify) are discussed in the third chapter of *Masechet Ta'anit* and in the *Shulchan Aruch* (*siman* 576). Regardless of whether our current coronavirus pandemic is included in these categories, certainly prayer and other forms of *teshuvah* are important spiritual responses, as noted by Rav Akiva Eiger in his letter and as noted by many *rabbanim* now. In addition, a number of recent pamphlets have been written in Hebrew concerning various halachic ramifications, such as whether one can fulfill certain mitzvot via video conferencing and the Zoom platform, whether individuals separated by a barrier or fence can join for a *minyan*, and whether an employer must continue to pay an employee in such situations according to the halacha. See, e.g., www.beinenu.com/sites/default/files/alonim/390_59_80.pdf and www.beinenu.com/sites/default/files/alonim/412_69_80.pdf.

We will conclude by noting that aside from the important halachot and issues discussed above, any global calamity of this magnitude is certainly also an opportunity for additional *tefillot* as well as introspection and *teshuva* on the part of the Jewish people.²¹ We should pray to Hashem that we all merit the *beracha* of מקרבך, "I will remove illness from your midst," in the very near future!

21. Some of the suggested spiritual responses to epidemics in classic Torah sources include reciting *pitum haketoret* (since incense was used to stop plagues in the Torah), avoiding *lashon hara* (the punishment of which was isolation), and being careful to recite one hundred *berachot* a day (a halacha quoted in the *Shulchan Aruch* that according to the Geonim was instituted in order to stop a plague in the time of King David). Every tragedy, of course, can also offer its own particular opportunities for improvement, though the decision of which specific matters to focus on should be evaluated very carefully by each individual as well as by the community as a whole.

FURTHER IYUN

Balancing Risk and Reward: A Halachic Perspective on Societal Restrictions and COVID-19

Rav Sam Millunchick (Participant, the Manhigut Toranit program)

With the threat of COVID-19 bearing down upon humankind, people are wondering how to properly relate to this unseen danger. Many claim that the virus does not endanger the lives of most people, and therefore conclude that the international response is overblown. Indeed, this was the initial response of the UK,¹ essentially relying on this fact in its response to the virus. Others insist that even if the virus is deadly for only a minority of people, combatting it through extreme measures is worth the enormous economic and social cost those measures will inevitably demand.

As Jews, we ask ourselves another, more fundamental question – how would God want us to relate to this pandemic? How must we, as those who use the halachic process to live God's will on Earth, personally act during this time? In this essay, we will discuss some of the halachic issues relating to placing oneself in danger and



attempt to see how the halacha directs us to act in this situation.

The Prohibition of Endangering Oneself

The Torah writes:² “When you build a new house, you should put up a fence around your roof, and make sure that you do not bring blood into your home, for a person could fall from it.” The **Rambam**³ derives from here that there are two mitzvot *de’oraita* to prevent dangerous situations from occurring. The **Rabbeinu Bechayei**⁴ understands that these directives apply to a person not placing himself in danger as well.

The **Gemara**⁵ finds a source for protecting oneself from danger in two other *pesukim*: “But beware and watch yourself very well”⁶ and “And you shall watch yourselves very well...”⁷,⁸ The **Rambam**⁹ and the **Shulchan Aruch**¹⁰ both identify these *pesukim* (specifically the first one), as

1. www.theguardian.com/commentisfree/2020/mar/15/epidemiologist-britain-herd-immunity-coronavirus-covid-19

2. *Devarim* 22:8

3. *Sefer HaMitzvot, Lo Ta'aseh* 298, *Aseh* 184

4. *Rabbeinu Bechayei, Devarim* 22:8

5. *Berachot* 32b

6. *Devarim* 4:9

7. *Devarim* 4:15

8. It is worth noting that in their original context, neither of these verses are referring to one's physical welfare. Many *Acharonim* have attempted to answer the question of why they are applied in this manner; see, for example, *He'arot of Rav Eliashiv, Berachot* 32b, and *Emet Lyaakov, Devarim Achadim*.

9. *Rotze'ach V'shemirat HaNefesh* 11:4

10. *Choshen Mishpat* 427:8

well as those previously cited, as the source for the mitzvot to prevent oneself or others from coming to harm.

In *Masechet Chullin*¹¹ the **Gemara** presents an important halachic concept regarding dangerous situations. While halachic decision in cases of uncertainty often follow the majority of cases, when it comes to situations which may be dangerous, we err on the side of caution and take even a minority of cases into account – *chamirah sakanta me'issura*. The **Maharitz Chayut**¹² underscores that this concern for the minority concerning potentially dangerous cases is a Torah law. The logic for this is simple, says the **Chatam Sofer**.¹³ He explains that the halacha is a system of rules that are superimposed upon our lives from above, through the Torah. When it comes to those halachot, the self-same Torah that presents them also lays out a set of rules as to when and how to apply them to one's life. Therefore, if the Torah states that the rules do not apply in a given situation, then the act is permitted. If, for example, a drop of milk falls into a pot where there is more than sixty times its volume, it is *batel* and the mixture is permitted to eat – there is simply no *issur*. However, when it comes to the objective world, where dangerous situations can lead to death, one must be concerned even about the minority of cases.

The question we need to ask ourselves, therefore, is what constitutes a dangerous situation?

Dangerous Situations – Towards a Definition

Rashi,¹⁴ commenting on the Gemara we quoted previously of *chamira sakanta me'issura*, writes

simply that one must be concerned about the minority of cases. The **Maharitz Chayut** attempts to quantify the level of doubt about which one must be concerned. He compares the principle of *chamira sakanta* to a situation of life-threatening danger on Shabbat. In that case, the Torah allows one to violate Shabbat even if a very slim chance exists that one's life is in danger. If we apply this understanding to our issue, it appears that one needs to be concerned about minuscule amounts of danger. Thus, the **Maharitz Chayut** seems to be establishing that if something is objectively dangerous – in a way that one would need to violate Shabbat to be saved from such a situation – it would be forbidden to place oneself into such a circumstance.

This definition can be sharpened by examining the following statement of the **Sefer HaChinuch**.¹⁵ *The Sefer HaChinuch* states that one must be concerned about things that are *normally* dangerous. Since God has placed us in a world that works according to natural processes, we must take those processes into account and refrain from doing anything that could *normally* dangerous. For this purpose, it seems that we could utilize statistical probabilities to decide whether or not a particular action is prohibited.

May Someone Place Themselves Into a Dangerous Situation?

If we have determined that a situation is dangerous, or *potentially* dangerous, is there any situation where one is allowed to purposefully place themselves in such a circumstance? Through an analysis of two stories in the **Gemara**,¹⁶ we can draw a distinction between

11. 9b

12. Commentary to *Chullin* 9b

13. *Chullin* 9b

14. *Chullin* 9b s.v. "ואין דרכן לכסות"

15. Mitzva 546

16. *Taanit* 20b

those instances where something is *objectively* dangerous and where someone has a *subjective* fear of the situation. In the first story, Rav and Shmuel were reticent to pass underneath a particular wall in Nehardea – which had been standing until that point for thirteen years – for fear that it would collapse on them. Rav Ada bar Ahava then entered and walked under the wall without a second thought. Rav and Shmuel walked with Rav Ada, trusting in him that the wall would not fall on them. In the second story, brought immediately after the first, we learn about Rav Huna's wine, which was trapped in a dilapidated house. Rav Huna, knowing of Rav Ada's merits, tricks Rav Ada into walking into the house with him, allowing him to retrieve his wine. Immediately after they leave the house, it collapses. Needless to say, Rav Ada is nonplussed. The Gemara explains that Rav Ada was angry because one must never place oneself in danger and rely on a miracle.

If we compare these two stories, we can discern a few differences between them that can explain Rav Ada seemingly incongruous actions. In the first story, the wall that Rav and Shmuel were afraid of had been standing for thirteen years. To that point, it had shown itself not to be dangerous. Nevertheless, Rav and Shmuel were presumably concerned about the *beraita* in ***Masechet Rosh HaShana***:¹⁷ “Three things cause the sins of a man to be weighed: A dilapidated wall...” Rav Ada, who was unafraid, had no problem passing under the wall. In the second story, however, the building was *objectively* dangerous. Rav Ada did not want to rely on a miracle, and was thus upset when his merits

were used to protect him from a situation that he never should have been in in the first place.

We can conclude, therefore, that the difference between these two cases is both the feeling of security in a subjectively dangerous situation, as well as the objective amount of danger. One may put themselves in a subjectively dangerous situation if they are not afraid (the first case); if the situation is objectively dangerous, one must refrain from being there in the first place (the second case).

Rav Nachum Rabinovitch¹⁸ makes a similar point in his analysis of a **Gemara** in ***Bava Metzia***.¹⁹ The Gemara states that one must pay workers on time because among other reasons, they are risking their lives doing dangerous work for this pay. Rav Rabinovitch points out that none of the *poskim* write that it is *assur* for such a worker to be in that situation in the first place. Rather, he writes that it is dependent on the worker's subjective assessment of the situation – if he feels that it's an acceptable risk and that he is not in real danger, it is permissible to for him to work in such circumstances. It is important to add that it seems that the case in the Gemara is not talking about an objectively dangerous profession.²⁰ Rather, the examples in the Gemara are of those where the work is potentially dangerous, but if done in a safe manner need not be life-threatening. In such a case, one may rely on his subjective assessment of the situational danger.

What is the halacha when the danger is objectively present? Is one permitted to work in such situations? With regard to this question, there are a number of other relevant sources. The **Gemara** in ***Bava Kamma***²¹ says that where there

17. 16b

18. *Siach Nachum*, y.d. 89

19. 111b

20. See *Igrot Moshe*, c.m. 1:104, where it seems that Rav Feinstein arrived at a similar conclusion.

21. 60b

is a plague in one's city, one should remain at home. The **Maharshal**²² challenges this conclusion and argues based on many other sources that if one believes that fleeing will save his life, one should do so. He continues, however, that if one has the ability to help save lives but instead chooses to run away, he is "removing himself from the community and will not merit to see the redemption." In other words, it seems that the Maharshal allows a person to *remain* in an objectively dangerous place, even though he could potentially save himself, in order to help other people. This seems to be our first clear indication that one may put oneself into an *objectively* dangerous situation under certain circumstances.

We find another potential source for this position in the **Gemara in Berachot**.²³ The Gemara tells us that one who was in a dangerous situation and emerges alive must publicly thank God. Some of the examples of dangerous situations that the Gemara provides are ones in which a person places themselves there of their own free will – traveling over the ocean or in the desert. If it were forbidden to place oneself in danger, how could one find themselves in such a position in the first place? It therefore appears from here as well that it is permitted to enter into situations of danger in certain cases.

We can conclude thus far that a person is permitted to evaluate a subjectively dangerous situation for themselves and decide whether or not it is worth the risk to enter into such circumstances. Concerning more clear-cut danger, it seems that one may remain in such a situation if one finds oneself there already and there is good reason to stay, and it may even be permitted to

place oneself in such situations – we'll explore this concept more fully in a later section.

“God Protects the Foolish”: What Does This Mean and When Can We Rely on It?

The **Gemara in Masechet Yevamot**²⁴ writes that one should not perform a circumcision on a cloudy day. But since it has already become common practice to do this, **דשו ביה רביים**, one is allowed to perform a circumcision and rely on heavenly protection, **שומר** 'פתאים ה', "God protects the foolish." The **Ritva**²⁵ writes that one need not rely on this dispensation of **שומר פתאים ה'** and may refrain from performing a circumcision on such a day. The **Shulchan Aruch**, however, does not bring the discussion at all, ruling that one must perform the circumcision on the eighth day, regardless of weather conditions.

The commentaries grapple with the parameters of this dispensation – when do we say *shomer petayim Hashem*, and when not? Regarding the issue of an *isha katlanit*, a woman who has been widowed twice, the **Gemara**²⁶ writes that she should not marry a third person.²⁷ The **Terumat HaDeshen**²⁸ writes that since today no one is careful about this and it is classified as **דשו ביה רביים**, one may rely on the principle of *shomer petayim Hashem* and marry a third husband. The **Shulchan Aruch**, however, does not rely on *shomer petayim*, and instead rules that she is forbidden to marry after being widowed twice.

22. *Yam shel Shlomo, Bava Kamma* 6:26

23. 54b

24. 71b–72a

25. *Ibid.*

26. *Yevamot* 64b

27. See the Rambam's opinion on an *isha katlanit* in his responsa (*siman* 218).

28. *Siman* 211

The **Chida**²⁹ notes the contradiction in the *Shulchan Aruch*: In *Hilchot Mila*, he has no problem relying on the dispensation of *shomer petayim*, but regarding the *isha katlanit*, he rules that one must be strict and not rely on *shomer petayim*. He arrives at the conclusion that we can only apply the principle of *shomer petayim* when the Sages applied it in the Gemara. But beyond that, we may not apply this principle out of our own judgement. This is the opinion of the **Chelkat Yaalkov**³⁰ as well, although he extends the dispensation to the words of the *Rishonim* as well.

The **Binyan Tzion** discusses another **Gemara**³¹ regarding when women may use barrier methods of birth control, and develops a distinction that may be useful in understanding when a person may put themselves in a dangerous situation. He writes that there is a difference between a situation that is *currently* dangerous, which one would need to avoid, and a situation that could *potentially* be dangerous, with which one would not necessarily need to be concerned. In such cases where the danger is unclear to begin with, one may rely on *shomer petayim*. This is the reason that one may embark on a trip that will potentially be life-threatening, such as going on a boat or crossing the desert: At the moment, there is no danger to his life, and therefore it is permitted. The **Achiezer**³² takes this principle a step further and writes that the potential danger must be extremely unlikely in order to rely on *shomer petayim*.

If we apply this principle to COVID-19, it seems that one would not be allowed to rely on *shomer petayim* and continue to go about one's

daily life as normal. The virus absolutely poses a danger that is real and present, at least for some, and is therefore more similar to a situation that is currently dangerous, rather than one which could potentially be so, a point we will explore more fully in the next section.

Communal Danger

In dealing with various aspects of running a country, the *poskim* of the nascent state of Israel wrote about “פיקוח נפש ציבורי – communal danger” and how it differs from the danger which any one person may be exposed to. One of the sources brought in this context is the **Gemara** in **Masechet Shabbat**³³ quoting Shmuel that one may extinguish a burning coal in a public area. The **Ramban**³⁴ explains that this is because Shmuel understands that any potential danger in a public area is equivalent to a danger to life and thus necessitates violation of Shabbat to avoid that said danger. It seems from this Gemara that there is a *qualitative* difference between danger to an individual and danger to a collective.

Rav Shaul Yisraeli³⁵ explains the distinction between the public and private realm regarding danger to life in the context of the ability of a Jewish army to go to war for financial or territorial gain (מלחמת רשות). He writes that when viewing a group of people together, one ceases to see individual persons; instead, the public becomes a single, collective body. In order to understand how this collective works, one must apply statistical probabilities. Since in any given public, a certain number of people will be harmed by hunger or financial

29. *Chayim Sha'al* 1:59

30. Responsa *Chelkat Ya'akov*, y.d. 39

31. *Yevamot* 12b

32. Vol. 1, *Even Ha'Ezer* 23

33. 42b

34. *Ibid.*

35. *Amud HaYemini* pp. 214–215

destitution in such a way that it will threaten their lives, such wars become a matter of life or death. **Rav Shlomo Zalman Auerbach**³⁶ similarly uses statistical probabilities to large groups to apply the principle of *pikuach nefesh* on a communal level. **Rav Goren**³⁷ goes a step further, writing that with regard to the Jewish state, one could look at population-level concerns when creating policy on issues like autopsies for medical research.

We can apply the above reasoning to our predicament as well. Even though any particular person might not be at risk of death from COVID-19, given the way that the disease spreads throughout a population,³⁸ anyone – even a person who will never develop symptoms – may serve as a node in a network of infection. At a population-level, this will result, and unfortunately already has, in many deaths,³⁹ and therefore is certainly a matter of communal danger, and each person must do their utmost to prevent the spread of the disease.

Towards a Halachic Response to COVID-19

We have seen that there are biblical prohibitions involved in endangering one's life, or the life of another. While it is true that the exact definition of a dangerous situation changes based upon many different factors, including a person including a person's personal feeling of security, there also seem to be minimal objective boundaries. If we take the *Maharitz Chayut's* opinion as our guideline, one is not allowed to knowingly place oneself in a situation where one would be required to violate Shabbat due to the danger involved.

Would displaying a cavalier attitude towards COVID-19 qualify as knowingly placing oneself in

an objectively dangerous situation? The answer might depend on what sector of the population one was classified (young, over sixty, etc.), if one had any pre-existing medical conditions, and other factors affecting one's health apart from the coronavirus. In other words, it is difficult to pinpoint the exact status of any individual person in this context.

It is important to point out though that those activities that are potentially dangerous but are nonetheless allowed – like crossing a desert or traveling on a ship – are actions that have a significant impact upon the way that society operates. Without the ability to travel long distances, trade would be impossible; without the ability to place oneself in a potentially dangerous situation like roofing, the physical structures of our cities and towns would be vastly altered. However, when it comes to the COVID-19 restrictions, they are hopefully temporary ones that have been set in place to protect lives at the current time only, and therefore those dispensations for dangerous situations are not applicable.

In addition, we have seen that individual circumstance does not come into play when discussing a case of communal danger. We must remember that the biblical imperatives to keep out of harm do not apply only to an individual. As discussed above, one must do what they can to prevent *others* from coming to harm as well. As in any society where there are those who are sick, old, or otherwise infirm, the question becomes broader than simply the level of danger to oneself.

Distinct from the common flu, the COVID-19 virus is ruthless, and can spread among a given population in a very short amount of time. One of the only steps that can slow the spread of the virus, thus alleviating pressure on a potentially

36. *Assia* 53–54, p. 100

37. *Torat HaRefua*, p. 80

38. www.washingtonpost.com/graphics/2020/world/corona-simulator

39. "Coronavirus: Why You Must Act Now" by Tomas Peyo. www.medium.com/@tomaspueyo/coronavirus-act-today-or-people-will-die-f4d3d9cd99ca

overworked healthcare system, is social distancing. Indeed, in countries where extreme social distancing practices were put in place in a timely fashion, the death rate for the disease is 0.9%.⁴⁰ In those countries where early and stringent measures were not put in place, the death rate can reach up to 4%.⁴¹ Those percentage points literally represent thousands, if not millions of lives. Even if one doesn't feel sick, one can still spread the disease without knowing it, potential endangering many people.⁴² Thus, it seems clear that society on the whole must do everything possible to stop the spread of the disease. This imperative also relates to a different prohibition in the Torah,⁴³ *lo ta'amod al dam rei'echa*, "you shall not stand by your fellow's blood"; endangering others by not following the recommended guidelines is an absolute violation of this *mitzva*.

Health Workers: Potential vs. Certain Life-Threatening Danger

Regarding health workers, the picture looks a bit different. As we saw above, it is *mutar* for a person to place themselves in danger to earn a livelihood; all the more so to save lives. Indeed, the *Imrei Eish*⁴⁴ writes that one may place themselves into danger equivalent to that of a war for this purpose (roughly a one in six chance of dying in his opinion). The *Noda Biyehuda*⁴⁵ also writes that one may place themselves in danger in order to earn a profit, and certainly for

a basic livelihood. When it comes to saving lives, there seems to be no doubt that it is permitted as well. This is the conclusion arrived at by **Rav Yitzchak Zilberstein**,⁴⁶ who allows a demolitions expert to defuse explosives, even though there is a significant risk to his life.

Though there is no absolute obligation to risk one's life for another, there does seem to be a strong preference among the *poskim* for one to remain in potentially life threatening situations in order to save lives. True, the **Gemara**⁴⁷ cites the opinion of Rabbi Akiva that one's own life precedes the life of another. But the **Chavot Yair**⁴⁸ explains that this is the case only with regard to a certainty that it is one life or the other. However, with regard to a situation where there is only a potential danger – *ספק פיקוח נפש* – he says that one *must* try and help the other. As we saw above, this is the opinion of the Maharshal as well.

The **Rambam**⁴⁹ writes "that anyone who can save a life and does not do so violates the biblical injunction of "do not stand over your brother's blood." He writes that this is the case even when there is a certain amount of danger inherent in the situation, such as when bandits are present or the person is drowning. Based on a *teshuva* of the **Radbaz** concerning this Rambam, **Rav Ovadia Yosef**⁵⁰ writes that one is *obligated* to put oneself in a potentially dangerous situation to save the life of another where there is a greater chance that the person will be saved than that the rescuer will die.

Even were we to determine that it is

40. Ibid.

41. Ibid.

42. www.usatoday.com/story/sports/nba/jazz/2020/03/12/rudy-gobert-apologizes-being-careless-coronavirus-outbreak/5035579002

43. *Vayikra* 19:16

44. Y.D. 52

45. *Tanyana*, Y.D.10

46. *Shiurei Torah L'Rofim* 2:113

47. *Bava Metzia* 62a

48. *Siman* 146

49. *Hilchot Rotzeach V'Shmirat HaNefesh* 1:14

50. *Yechaveh Da'at* 5:84

objectively dangerous to be infected by COVID-19 for any given individual, if that person were able to be of help in some way to others who were sick, that person should absolutely continue to help unless his or her own life was in immediate danger, and even then, there are those who would allow this, and may even require it.⁵¹ In the words of the Maharshah, one who does not help the community in its time of need “removes himself from the community, and will not merit to see the redemption.” When it comes specifically to doctors and nurses, **Rav Eliezer Melamed**⁵² is of the opinion that they *must* continue to treat patients with infectious diseases. He argues that, in part, this is because otherwise such patients would be left to die, an untenable option. In fact, he relates that great *rabbanim* themselves would lead teams of people during the cholera outbreak in the nineteenth century to treat the ill.

It seems clear, then, that those on the front lines of the fight against the virus, the doctors, nurses, and other medical workers in the hospitals, as well as those caring for sick individuals in the home, should continue their holy work.

Final Thoughts

Just like it is forbidden to eat non-Kosher, or to violate Shabbat, it is forbidden from the Torah to be cavalier about COVID-19. Instead, one must exercise the utmost caution, listen to the most updated guidelines from one’s local health organization, and do their best to stay safe and keep others safe. As we struggle with this virus and its immediate ramifications for our lives, we can internalize a renewed sense of the sanctity of human life and the incredible way we are all interconnected. May we all merit to see a speedy recovery for humanity.

51. For a further discussion of putting oneself in potential danger to save another person, see *Beit Yosef* (C.M. 426), *Shulchan Aruch* and *Sma* (C.M. 426), and *Milundeil Milchama* by Rav Nachum Rabinovitch, pp. 5–7.

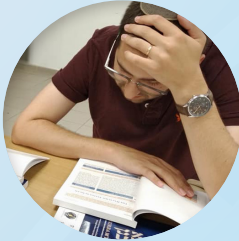
52. www.ph.yhb.org.il/08-11-05



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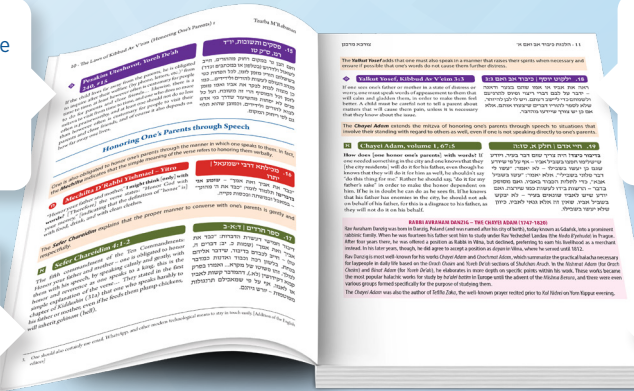
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