Case Studies on the Value of Human Life

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# The Permission to Perform Medicine

1. Midrash Shmuel (4:1)

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| R. Ishmael and R. Akiva were once walking in the streets of Jerusalem together with a third person. A sick man met them and said, “Rabbis, tell me how I can be healed.” They replied, “Take such and such (portions) until you are healthy.” Whereupon their companion said to them, “Who afflicted him with his illness?” They said, “the Holy One, blessed be He.” Said he to them, “Then you have intruded in a matter which is none of your concern. [God] afflicted and you will heal?!” Said they to him, “What is your occupation?” He answered, “I am a farmer, and the scythe is in my hand.” They asked, “Who created the soil? Who created the vineyard?” He replied, “The Holy One, blessed be He.”  They continued, “And you intrude in a matter which is none of your concern? He created (the soil as is) and you by working it eat its fruits?” He responded: “But, do you not see the scythe in my hand? If not for the fact that I work and plow and turn the earth over and fertilize and prune, nothing would grow.” Whereupon they said to him, “Fool! Have you not learned from your occupation that ‘man’s days are as grass (Ps. 103:15)?’ Just as a tree offers nothing if it is not fertilized, pruned, and planted, and if it grows fruit but gets no water it dies, so is the human body like a tree, the medicine is like the fertilizer, and the physician is the farmer.” |

1. Talmud Bavli – Masechet Bava Kamma 85a

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| **As it is taught** in a *baraita* that **the school of Rabbi Yishmael says:** When the verse states: **“And shall cause him to be thoroughly healed [*verappo yerappe*]”** ([Exodus 21:19](/Exodus.21.19)), it is derived **from here that permission is granted to a doctor to heal,** and it is not considered to be an intervention counter to the will of God. | דתניא דבי ר' ישמעאל אומר (שמות כא, יט) ורפא ירפא מכאן שניתן רשות לרופא לרפאות |

1. Rashi (ibid.)

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| And we don’t say: “God is killing and he will heal?” | נתנה רשות לרופאים לרפאות - ולא אמרינן רחמנא מחי ואיהו מסי: |

1. Tosefot (ibid.)

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| And if you say: I could have learned this from “Rafo” alone? One would have thought these words are only for an illness from man, but for a natural illness perhaps he is contradicting the King’s decree? This teaches that even this is permitted. | שניתנה רשות לרופא לרפאות - וא"ת והא מרפא לחודיה שמעינן ליה וי"ל דה"א ה"מ מכה בידי אדם אבל חולי הבא בידי שמים כשמרפא נראה כסותר גזירת המלך קמ"ל דשרי: |

*Differences in perspective between this source for the Mitzvah vs. Devarim 22:2 “You shall surely return it to him”? Halachic Malpractice*

# Shabbat

1. Talmud Bavli – Masechet Yoma 84b-85a

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| **That was also taught** in a *baraita*: **One heats water for an ill person on Shabbat, whether to give him to drink or to wash him,** since it might help him recover. **And they did not say** it is permitted to desecrate **only** the **current Shabbat** for him, **but even a different,** future **Shabbat. And one must not say: Let us wait** and perform this labor **for him** after Shabbat, **perhaps he will get well** in the meantime. **Rather, one heats it for him immediately because any** case of **uncertainty** concerning a **life-threatening** situation **overrides Shabbat. And** this is so **not** only with regard to **uncertainty** whether his life is in danger **on the current Shabbat, but even** in a case of **uncertainty** with regard to danger **on a different Shabbat….**  **It once happened that Rabbi Yishmael, and Rabbi Akiva, and Rabbi Elazar ben Azarya** were **walking on the road, and Levi HaSadar and Rabbi Yishmael, son of Rabbi Elazar ben Azarya,** were **walking** respectfully **behind them,** since they were younger and did not walk alongside their teachers. **This question was asked before them: From where** is it derived **that saving a life overrides Shabbat?...**  **Rabbi Shimon ben Menasya said:** It is stated: **“And the children of Israel shall keep Shabbat,** to observe Shabbat” ([Exodus 31:16](/Exodus.31.16)).**The Torah said: Desecrate one Shabbat on his behalf so he will observe many *Shabbatot*. Rav Yehuda said** that **Shmuel said: If I would** have been **there** among those Sages who debated this question, **I would have said** that **my proof is preferable to theirs,** as it states: “You shall keep My statutes and My ordinances, which a person shall do **and live by them”** ([Leviticus 18:5](/Leviticus.18.5)), **and not that he** should **die by them.** In all circumstances, one must take care not to die as a result of fulfilling the mitzvot. | תניא נמי הכי מחמין חמין לחולה בשבת בין להשקותו בין להברותו ולא שבת זו בלבד אמרו אלא לשבת אחרת ואין אומרים נמתין לו שמא יבריא אלא מחמין לו מיד מפני שספק נפשות דוחה את השבת ולא ספק שבת זו אלא אפי' ספק שבת אחרת...  וכבר היה ר' ישמעאל ורבי עקיבא ורבי אלעזר בן עזריה מהלכין בדרך ולוי הסדר ורבי ישמעאל בנו של רבי אלעזר בן עזריה מהלכין אחריהן נשאלה שאלה זו בפניהם מניין לפקוח נפש שדוחה את השבת  נענה...  ר' שמעון בן מנסיא אומר (שמות לא, טז) ושמרו בני ישראל את השבת אמרה תורה חלל עליו שבת אחת כדי שישמור שבתות הרבה א"ר יהודה אמר שמואל אי הואי התם הוה אמינא דידי עדיפא מדידהו (ויקרא יח, ה) וחי בהם ולא שימות בהם |

1. Shulchan Aruch – Orach Chayim (328:12)

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| When we desecrate Shabbat for a sick person who is in danger, we try not to do it with a gentile nor with children or women, rather with Jews who are of age and knowledgeable. ***Rama****: There are those who say that if it is possible to act without difficulty or delay with a shinuy (change) then one should do so, and if it is possible with a gentile… and this is our tradition, but in a place where there is concern the gentile will be lazy, one should not use a gentile.* | כשמחללין שבת על חולי שיש בו סכנה משתדלין שלא לעשות ע"י עכו"ם וקטנים ונשים אלא ע"י ישראל גדולים ובני דעת*: הגה וי"א דאם אפשר לעשות בלא דיחוי ובלא איחור ע"י שינוי עושה ע"י שינוי ואם אפשר לעשותו ע"י עכו"ם בלא איחור כלל עושין ע"י עכו"ם [א"ז וש"ג ומ"מ בשם ראב"ן] וכן נוהגים אבל במקום דיש לחוש שיתעצל העכו"ם אין לעשות ע"י עכו"ם [תוספות ור"ן]:* |

The Talmudic dialectics at play:

* **Hutra**: Any medical activity can be performed without any questions asked. It is as if Shabbat has ceased to exist
* **Dechuya**: Try to minimize the activities performed on Shabbat, even for the sake of medical treatment. Shabbat is a parallel priority to saving a life.

# Cosmetic Surgery

1. Rambam / Maimonides – Laws of Damagers (Chapter 5 Halacha 1)

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| A man is forbidden to injure himself or another. Not only one who inflicts a wound, but anyone who strikes a worthy Jew, whether an adult or a minor, whether a man or a woman, breaks a prohibitive law, as it is written: "He must not lash him excessively" ([Deuteronomy 25:3](/Deuteronomy.25.3)). If the Torah has warned against excess in lashing an offender, how much more should this apply to striking an innocent man. | אָסוּר לְאָדָם לַחֲבל בֵּין בְּעַצְמוֹ בֵּין בַּחֲבֵרוֹ. וְלֹא הַחוֹבֵל בִּלְבַד אֶלָּא כָּל הַמַּכֶּה אָדָם כָּשֵׁר מִיִּשְׂרָאֵל בֵּין קָטָן בֵּין גָּדוֹל בֵּין אִישׁ בֵּין אִשָּׁה **דֶּרֶךְ נִצָּיוֹן** הֲרֵי זֶה עוֹבֵר בְּלֹא תַּעֲשֶׂה שֶׁנֶּאֱמַר (דברים כה ג) "לֹא יֹסִיף" (דברים כה ג) "לְהַכֹּתוֹ". אִם הִזְהִירָה תּוֹרָה מִלְּהוֹסִיף בְּהַכָּאַת הַחוֹטֵא קַל וָחֹמֶר לְמַכֶּה אֶת הַצַּדִּיק: |

1. Devarim / Deuteronomy – Chapter 4 Verse 15

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| For your own sake, therefore, be most careful—since you saw no shape when the LORD your God spoke to you at Horeb out of the fire— | וְנִשְׁמַרְתֶּם מְאֹד לְנַפְשֹׁתֵיכֶם כִּי לֹא רְאִיתֶם כָּל־תְּמוּנָה בְּיוֹם דִּבֶּר ה' אֲלֵיכֶם בְּחֹרֵב מִתּוֹךְ הָאֵשׁ׃ |

1. Kitzur Shulchan Aruch – 32:1

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| Because the maintenance of a complete and healthy body is a G-dly path—since it is impossible to understand or apprehend any knowledge of the Creator when one is sick—therefore you must keep away from things that damage the body, and develop habits that improve the body and heal it. Similarly, it is said: “You shall guard yourselves very well.” | הוֹאִיל וֶהֱיוֹת הַגוּף בָּרִיא וְֹשָלֵם מִדַּרְכֵי הַֹשֵם הוּא, שֶׁהֲרֵי אִי אֶפשַׁר שֶׁיָבִין אוֹ יֵדַע דָּבָר מִידִיעַת הַבּוֹרֵא וְהוּא חוֹלֶה, לְפִיכָךְ צָרִיךְ הָאָדָם לְהַרְחִיק אֶת עַצְמוֹ מִדְּבָרִים הַמְאַבְּדִין אֶת הַגוּף, וּלְהַנְהִיג אֶת עַצְמוֹ בִּדְבָרִים הַמַבְרִין וְהַמַחֲלִימִים אֶת הַגוּף. וְכֵן הוּא אוֹמֵר, וְנִֹשְמַרְתֶּם מְאִד לְנַפְשׁוֹתֵיכֶם. |

1. Talmud Bavli – Masechet Ta’anit 20a-b

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| **The Sages** further **taught** in praise of the reed: **A person should always be soft like a reed, and he should not be stiff like a cedar. An incident** occurred in **which Rabbi Elazar, son of Rabbi Shimon, came from Migdal Gedor, from his rabbi’s house, and he was riding on a donkey and strolling on the bank of the river. And he was very happy, and his head was swollen with pride because he had studied much Torah.**  **He happened** upon **an exceedingly ugly person,** who **said to him: Greetings to you, my rabbi, but** Rabbi Elazar **did not return** his greeting. Instead, Rabbi Elazar **said to him: Worthless [*reika*]** person, **how ugly is that man. Are all the people of your city as ugly as you?** The man **said to him: I do not know, but you** should **go and say to the Craftsman Who made me: How ugly is the vessel you made. When** Rabbi Elazar **realized that he** had **sinned** and insulted this man merely on account of his appearance, **he descended from his donkey and prostrated himself before him, and he said to** the man: **I have sinned against you; forgive me.** The man **said to him: I will not forgive you go until you go to the Craftsman Who made me and say: How ugly is the vessel you made.**  **He walked behind** the man, trying to appease him, **until they reached** Rabbi Elazar’s **city. The people of his city came out to greet him, saying to him: Greetings to you, my rabbi, my rabbi, my master, my master.** The man **said to them: Who are you calling my rabbi, my rabbi? They said to him: To this man, who is walking behind you. He said to them: If this** man **is a rabbi, may there not be many like him among the Jewish people. They asked him: For what** reason do you say this? He **said to them: He did such and such to me. They said to him: Even so,** forgive him, **as he is a great Torah scholar.**  **He said to them: For your sakes I forgive him, provided that** he accepts upon himself **not to become accustomed to behave like this. Immediately, Rabbi Elazar, son of Rabbi Shimon, entered the study hall and taught: A person should always be soft like a reed and he should not be stiff like a cedar,** as one who is proud like a cedar is likely to sin. **And therefore,** due to its gentle qualities, the **reed merited** that **a quill is taken from it to write with it a Torah scroll, phylacteries, and *mezuzot*.** | תנו רבנן לעולם יהא אדם רך כקנה ואל יהא קשה כארז מעשה שבא רבי אלעזר (בן ר') שמעון ממגדל גדור מבית רבו והיה רכוב על החמור ומטייל על שפת נהר ושמח שמחה גדולה והיתה דעתו גסה עליו מפני שלמד תורה הרבה נזדמן לו אדם אחד שהיה מכוער ביותר אמר לו שלום עליך רבי ולא החזיר לו אמר לו ריקה כמה מכוער אותו האיש שמא כל בני עירך מכוערין כמותך אמר לו איני יודע אלא לך ואמור לאומן שעשאני כמה מכוער כלי זה שעשית כיון שידע בעצמו שחטא ירד מן החמור ונשתטח לפניו ואמר לו נעניתי לך מחול לי אמר לו איני מוחל לך עד שתלך לאומן שעשאני ואמור לו כמה מכוער כלי זה שעשית  היה מטייל אחריו עד שהגיע לעירו יצאו בני עירו לקראתו והיו אומרים לו שלום עליך רבי רבי מורי מורי אמר להם למי אתם קורין רבי רבי אמרו לו לזה שמטייל אחריך אמר להם אם זה רבי אל ירבו כמותו בישראל אמרו לו מפני מה אמר להם כך וכך עשה לי אמרו לו אעפ"כ מחול לו שאדם גדול בתורה הוא  אמר להם בשבילכם הריני מוחל לו ובלבד שלא יהא רגיל לעשות כן מיד נכנס רבי אלעזר בן רבי שמעון ודרש לעולם יהא אדם רך כקנה ואל יהא קשה כארז ולפיכך זכה קנה ליטול הימנה קולמוס לכתוב בו ספר תורה תפילין ומזוזות: |

Contemporary Poskim:

* Rav Moshe Feinstein (Igerot Moshe CM 2:66): permitted cosmetic surgery for a young woman struggling to find a suitable marriage
  + Pointed out the crucial words in the Rambam (Derech Bizayon/Nitzayon) only prohibits certain forms of injury.
  + Further cited proofs in the Talmud that a son can injure his father in order to do bloodletting, and instances in Tanach and the Talmud where righteous figures caused themselves harm under certain circumstances.
* Rav Eliezer Waldenberg (Tzitz Eliezer 11:41): forbade all forms of cosmetic surgery: both for doctors and patients.
  + Based on the Talmud / Tosefot’s statement that “permission” is granted to doctors – but this is only in order to heal. Otherwise we are forbidden to go against the “decree of the King.”
  + Similarly ruled that all forms of elective surgeries are forbidden.
* General practice:
  + Cases are dealt with halachically on a case-by-case basis, with the main factors at hand being:
    - Level of risk in the procedure
    - Level of psychological or physical pain and distress for not having the surgery

# Vaccination and Immunization

Shulchan Aruch – Yoreh De’ah 116 forbids the following activities based on סכנה (danger):

* Water left uncovered overnight (lest a snake have poisoned it)
* Eating meat and fish together
* Licking the sweat of people (סם המות)
* Putting coins into one’s mouth
* Foods that came in contact with feces or other disgusting things

*What is the Biblical origin for these restrictions?*

*Is there a Halachic obligation to proactively prevent illness as opposed to treating it?*

1. Devarim / Deuteronomy – Chapter 22 Verse 8

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| When you build a new house, you shall make a parapet for your roof, so that you do not bring bloodguilt on your house if anyone should fall from it. | כִּי תִבְנֶה בַּיִת חָדָשׁ וְעָשִׂיתָ מַעֲקֶה לְגַגֶּךָ וְלֹא־תָשִׂים דָּמִים בְּבֵיתֶךָ כִּי־יִפֹּל הַנֹּפֵל מִמֶּנּוּ׃ |

* *The minimum height of a house obligated in such a parapet: 10 Tefachim.*
* *As well as: “You shall carefully guard your souls” as we saw earlier.*

It used to be a much more difficult question: when in the 18th and 19th centuries inoculation could incur a risk of death for a small percentage of the population.

Tombstone in Long Island, NY:

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| In Memory of Peleg,  Son of Thomas and Mary Conklin, who died of the smallpox inoculation  Jan. 27th, 1788, aged 17 years |

* Despite this concern, the majority of Poskim permitted these risks, and certain Poskim even found leniencies to permit receiving the inoculations on Shabbat (when surgeons were only in town for a few hours).

Contemporary Poskim:

* The overwhelming majority of Poskim strongly urge parents to vaccinate their children, though many of them state that one cannot force parents to vaccinate their children for a risk of infection that is extremely low.
* However, most Poskim similarly acknowledge that schools and shuls have the right to set policies forbidding entry to adults or children who have not been vaccinated.
* Rav Shlomo Zalman Auerbach permitted getting vaccinated on Shabbat when there was no opportunity to do so any other time.