



Our agenda

Jewish law relies on Rabbis to explain how its laws apply to a given situation, but the Rabbis rely on experts to define the situation itself. But in dealing with the novel coronavirus, or even more routine matters like elective surgery and end-of-life care, the medical facts are often unclear, and rabbinic guidance based on unclear data may prove dangerous. How should medical professionals respond when rabbis seek their advice regarding uncertain situations?

By the end of this session participants will:

- (1) Understand the indications for a medical or rabbinic consultation.
- (2) Appreciate the professional and personal boundaries of medical and rabbinic consultation and the definition of expertise.
- (3) Have a framework for communication around medical and halachic issues that relate to novel or unknown situations

1. *A doctor and a rabbi: Dr. Aaron E. Glatt responds to COVID-19*, Newsday, Apr 6 2020

The Torah position is exactly in accord with the medical position. Do everything possible to prevent yourself from getting sick. Because once you get sick it's much more difficult to get better...

Case #1: Correcting the Community

2. Vignette

A family practitioner becomes concerned that the personal practices of synagogue members are increasing the likelihood of their contracting COVID-19. What, if anything, should she say to the synagogue's rabbi?

3. The duty to look after the welfare of others

- ואהבת לרעך כמוך – Love your neighbour as yourself
- לא תעמוד על דם רעך – Do not stand by while others' blood is shed
- והשבבות לו – You shall restore [his property] to him
- הוכח תוכיח את עמיתך – Rebuke [or "educate"] your peer
- ולפני עור לא תתן מכשול – Do not place a stumbling block before the blind

4. Tosafot (13th century France/Germany) Shabbat 55a **ואע"ג**

היינו היכא דספק אי מקבלי כדאמר בסמוך לפנייהם מי גלוי אבל היכא דודאי לא מקבלי הנח להם מוטב שיהו שוגגין ואל יהיו מזידין
This is where one does not know whether they will accept; as the Talmud says, "Is it obvious to them [that others won't listen]?" But where they definitely will not accept, leave them; better for them to sin accidentally than intentionally.

5. Talmud, Bava Metzia 33a

"כי תראה" יכול אפילו מרחוק? תלמוד לומר "כי תפגע". אי "כי תפגע" יכול פגיעה ממש? תלמוד לומר "כי תראה", ואיזו היא ראייה שיש בה פגיעה? שיערו חכמים אחד משבע ומחצה במיל וזה הוא ריס.

"When you see" – Even from afar? It also says, "When you encounter". Does "When you encounter" limit the law to an actual encounter? It also says, "When you see." What is sight that is an encounter? The sages evaluated it as 7.5 *mil*, which is a *ris*.

6. Rabbi Yosef Karo (16th c. Israel), Rabbi Moshe Isserles (16th c. Poland), Shulchan Aruch Yoreh Deah 336:2

הרופא, אסור ליטול שכר החכמה והלימוד, אבל שכר הטורח והבטלה, מותר.
A doctor may not take payment for knowledge and teaching, but he may take payment for strain and effort.

7. Talmud, Shabbat 55a

אמרה מדת הדין לפני הקב"ה: רבונו של עולם, מה נשתנו אלו מאלו? אמר לה: הללו צדיקים גמורים, והללו רשעים גמורים. אמרה לפניו: רבונו של עולם, היה בידם למחות ולא מיחו! אמר לה: גלוי וידוע לפני, שאם מיחו בהם - לא יקבלו מהם. אמרה לפניו: רבונו של עולם, אם לפניך גלוי - להם מי גלוי?

The trait of Justice said before Gd: Master of the Universe, what is the difference between these and those?

Gd responded: These are completely righteous, those are completely wicked!

It said: Master of the Universe, they ought to have protested, and they did not do so!

Gd responded: I know clearly that had they protested, the people would not have accepted it from them.

It said: Master of the Universe, if to You it is clear, to them is it clear?

8. Re Klein and Law Society of Upper Canada Re Dvorak and Law Society of Upper Canada, 1985 CanLII 2221 (ON SC) <https://www.canlii.org/en/on/onsc/doc/1985/1985canlii2221/1985canlii2221.html>

A lawyer has a moral, civic and professional duty to speak out where he sees an injustice. Furthermore, lawyers are, by virtue of their education, training and experience, particularly well-equipped to provide information and stimulate reason, discussion and debate on important current legal issues and professional practices: see Rule 12.

9. *Doctors have been whistleblowers throughout history. They've also been silenced*, The Guardian, Apr 8 '20

Central to the art of doctoring is observation. Physicians see disease and destitution in clinics and hospitals. They interview and listen, and trace illness back to family histories and living situations and environment. They advise politicians and government agencies with data and science. For many centuries, this has led doctors to speak out against the powers that be – demanding that they treat at the source...

10. Talmud, Ketuvot 85b-86a

קריבתייה דרב נחמן זבינתה לכתובתה בטובת הנאה, איגרשה ושכיבה. אתו קא תבעי לה לברתה, אמר להו רב נחמן, "ליכא דליסבא לה עצה? תיזיל ותיחלה לכתובתה דאמה לגבי אבוה, ותירתה מיניה." שמעה, אזלה אחילתה. אמר רב נחמן, "עשינו עצמינו כעורכי הדיינין!" מעיקרא מאי סבר ולבסוף מאי סבר? מעיקרא סבר "ומבשרך לא תתעלם (ישע' נח:ז)", ולבסוף סבר אדם חשוב שאני.

Rav Nachman's relative sold an option on her *ketubah* claim. She was divorced, and then she died. They came to claim the *ketubah* from her daughter. Rav Nachman said to the sages, "Will no one counsel her? Let her go forgive her mother's *ketubah* claim to her father, and then inherit it from him!" She heard, and went and forgave it. Rav Nachman then said, "We have made ourselves as those who arrange the judges!" What did he think beforehand, and afterward what did he think? At first he thought, "Do not ignore your flesh." In the end he thought that a person of status is different.

11. Rabbi Shlomo Yitzchaki (Rashi, 11th century France), Commentary to Ketuvot 86a

אדם חשוב שאני - לפי שלמדין הימנו ויש שיעשו אף שלא לקרובים.

"A person of status is different" – Because they learn from him, and some will do this even for non-relatives.

12. Talmud, Gittin 56a

אמר, "הואיל והווי יתבי רבנן ולא מחו ביה ש"מ קא ניחא להו, איזיל איכול בהו קורצא בי מלכא!" אזל אמר ליה לקיסר, "מרדו בך יהודאי!" [Bar Kamtza] said, "Since the Sages were seated there and they did not protest, I see they are comfortable with this. I will spread negative rumours to the throne." He told the Caesar, "The Jews are rebelling against you."

13. Rabbi Shabbtai Rappaport, Psychotherapy & Judaism pg. 113, <https://www.hebpsy.net/articles.asp?id=1896>

הקשר שלו עם הזוג אינו קשר חברתי, ולכן היחס שלו אליהם אינו כיחס שאר בני הקהילה. במסגרת עבודתו המקצועית, קבלת מצב נתון כפי שהוא אינה מהווה הסכמה למציאות זו, וממילא אין קבלה זו מתפרשת כאן כאישור להתנהגות המטופל.

His connection with this couple is not a social connection, and so his relationship with them isn't like the relationship of other people. In the context of his professional work, accepting a given situation as is does not constitute agreement to the reality, and so this acceptance is not interpreted here as approval of the patient's conduct.

Case #2: Correcting the Rabbi

14. Vignette

A family practitioner becomes concerned that the personal practices of a synagogue's rabbi are increasing the likelihood of the rabbi contracting COVID-19 and communicating it to others, as well as inspiring irresponsible behaviour in others. What, if anything, should she say to the synagogue's rabbi?

15. Talmud, Moed Katan 17a

אמר רב הונא באושא התקינו אב בית דין שסרח אין מנדין אותו אלא אומר לו הכבד ושב בביתך חזר וסרח מנדין אותו מפני חילול ד'.
Rav Huna said: In Usha they enacted that if a Chief Justice goes bad, we do not ex-communicate him. We tell him, "Be honoured and remain at home." If he repeats the act, we ex-communicate him because of desecration of Gd's Name.

16. Talmud, Berachot 19b-20a

אמר רב יהודה אמר רב המוצא כלאים בבגדו פושטן, אפילו בשוק. מאי טעמא? אין חכמה ואין תבונה ואין עצה לנגד ד' - כל מקום שיש חלול ד' אין חולקין כבוד לרב.

Rav Yehudah said, citing Rav: One who finds shaatnez in his own garment should remove it, even in the market. "There is neither wisdom nor understanding nor counsel opposite Gd (Proverbs 21:30)" – where there is desecration of Gd, we do not give honour to the great.

17. Talmud, Menachot 99b

תלמיד חכם שסרח אין מבזין אותו בפרהסיא שנאמר "וכשלת היום וכשל גם נביא עמך לילה" - כסהו כלילה.
If a Torah scholar goes bad, we do not degrade him publicly, as Hosheia 4:5 says, "You will stumble today, and the prophet will also stumble with you at night" – cover it, like night.

18. Jerusalem Talmud, Moed Katan 3:1, as explained in Korban ha'Edah

אין מנדין זקן אלא אם כן עשה כירבעם בן נבט וחביריו.
We do not ex-communicate an elder – unless he has done as Yeravam ben Nevat and his allies.
Korban ha'Edah: Meaning, he did as Yeravam ben Nevat and his allies did, sinning and causing Israel to sin.

19. Rabbi Moses Maimonides (12th century Egypt), Mishneh Torah, Laws of Employment 10:7

הנוטע אילנות לבני המדינה שהפסיד, וכן טבח של בני העיר שנבל הבהמות, והמקיז דם שחבל, והסופר שטעה בשטרות, ומלמד תינוקות שפשע בתינוקות ולא למד או למד בטעות, וכל כיוצא באלו האומנים שאי אפשר שיחזירו ההפסד שהפסידו, מסלקין אותן בלא התראה שהן כמותרין ועומדין עד שישתדלו במלאכתן הואיל והעמידו אותן הצבור עליהם.

One who plants trees for the community and causes harm, or a municipal butcher who ruins animals, or a bloodletter who wounds, or a scribe who errs with documents, or a schoolteacher who sins with children by not teaching or teaching incorrectly, or any other such trade where one cannot restore that which has been lost, we remove him without warning. They are considered forewarned to work at their tasks, since the community appointed them.

20. Rabbi Shimon ben Tzemach Duran (14th-15th century Algiers), Tashbetz 2:9

אבל אם הדיין הזה אינו טועה מחמת חכמ' גדול' שיש בו, אלא מפני שאינו זהיר בתלמודו ושגגת תלמודו עולה זדון והרבה מדיניו היו בטעות, הי' אפשר לפסלו.

But if this judge errs not because of the great wisdom required, but because he is careless with his learning, leading to intentional harm, and many of his decisions are in error, one could disqualify him.

21. Rabbi Yosef Karo/Rabbi Moshe Isserless (16th century Israel/Poland), Shulchan Aruch Yoreh Deah 242:22

ראה רבו עובר על דברי תורה, אומר לו: למדתני רבינו כך וכך. הגה: ואם רצה לעבור רק על איסור דרבנן, אפילו הכי צריך למחות בידו. (ת"ה סימן מ"ג). הרואה רבו עושה מעשה, ויש לו להקשות על זה, אם הוא איסור דאורייתא יקשה לו קודם המעשה, ואם הוא איסור דרבנן, יניחו לעשות המעשה ואח"כ יקשה לו, הואיל ואינו יודע ודאי שעובר, אלא שיש לו להקשות על זה (תא"ו נתיב ב').

R' Karo: One who sees his Rabbi transgress the Torah should say, "Didn't you teach us, our master, such-and-such?"

R' Isserless: And if [the Rabbi] only intended to violate a rabbinic law, one still must protest.

R' Isserless: One who sees his Rabbi perform an act which he wishes to question: If it is a biblical prohibition, ask before the action. If it is a rabbinic prohibition, let him act and then ask, since one doesn't know that there is a transgression, and it is only that one has a question.

Case #3: Medical Uncertainty

22. Vignette

A synagogue rabbi asks a public health physician whether blowing a masked shofar is safe. There isn't sufficient data to provide a definitive answer. How should the physician advise the rabbi? What if local physicians are conflicted?

23. Rabbi Avraham Yitzchak Kook (20th century Israel), Daat Kohen 140

ופשטם של דברי חז"ל (ב"ק פ"ה), ורפא ירפא מכאן שנתנה תורה רשות לרופא לרפאות, מורה כן, שעיקר הרפואה מצד חכמתה מסופקת היא, שאם הי' דבר ברור איך יעלה עה"ד שלא יהי' מחויב לרפאות, וכי אין עובר על לא תעמוד על דם ריעך על כל צרה שבאה עליו אפי' מן השמים, וארי' בידי שמים הוא (כדאי' כתובות ד' למד /ל') ומ"מ הרי אנו מצווים להצילו, ואין חשש רחמנא מחי וכו', וה"נ דכותה.

The simple explanation of the words of the Sages, "And he shall heal" – From this we see that the Torah permitted a doctor to heal," indicates that the knowledge involved in medicine is uncertain. Were it clear, how could anyone think there was no obligation to heal? Would one not be violating, 'Do not stand by while others' blood is shed' for [not intervening to prevent] any trouble which befell a person, even trouble from Heaven! Even a lion is from heaven, and yet we are instructed to save people from lions and there is no concern of "G-d strikes; how may I heal?" So, too, in medical treatment.

24. Rabbi Yosef Karo (16th century Israel), Shulchan Aruch Yoreh Deah 336:1

לא יתעסק ברפואה אא"כ הוא בקי, ולא יהא שם גדול ממנו, שאם לא כן, הרי זה שופך דמים.

One should not attempt to heal unless he is expert, and no one greater is present. Otherwise, he sheds blood.

25. Rabbi Yaakov Reischer (17th century Prague), Responsa Shevut Yaakov 3:75

בנדון זה, כיון שודאי ימות מניחין הודאי ותופסין הספק, אולי יתרפא. ומ"מ אין לעשות הרופא כפשוטו כן, רק צריך להיות מתון מאוד בדבר לפקח עם רופאין מומחין שבעיר ע"פ רוב דיעות, דהיינו רובא דמינכר שהוא כפל, לפי שיש לחוש לקלי דעת. ע"כ יעשה ע"פ רוב דיעות הרופאים והסכמת החכם שבעיר

In this case, since he will certainly die [without the treatment], we leave the certainty and take the possibility; he might be healed. Still, the doctor should not simply proceed with this; he must be very patient, checking with local expert doctors and deciding based on the majority of views, meaning a recognizable majority – which is double – for there is concern regarding frivolous people. Therefore, he should follow the majority of medical opinions, and the agreement of the leading local authority.

26. Rabbi Eliezer Waldenberg (20th century Israel), Tzitz Eliezer 14:85:3

כל שלא סיפק בידי הרופא היותר גדול לטפל בכל החולים שבעיר, או שאין בידי החולה להגיע אליו בגלל חוסר אמצעים כספיים דאזי מותר לטפל בזה כל רופא מדופלם שקיבל כתב-הסמכה וניתן לו הרשות לרפאות במקצועו, הגם שיש יותר גדול ממנו בעיר, ובפרט על סוגי מחלות ידועות אשר דרך רפואתם מפורסמת ומקובלת...

As long as the greater doctor does not have the ability to treat every local patient, or the patient lacks the financial means of reaching him, any doctor with a diploma – who has received certification and permission to treat professionally – may treat, even though there is a greater doctor in the city. This is especially true for known illnesses, with well-known and accepted modes of treatment...

Case #4: Competing Imperatives

27. Vignette

An epidemiologist is appointed to lead a synagogue's COVID response team. She feels that the synagogue should err on the side of caution, cancelling all communal events and admonishing synagogue members to avoid in-person contact with others. The rabbi raises concerns about the mental health of congregants who are more isolated. How should the doctor and rabbi resolve questions when all results entail risk?

28. Rabbi Chaim Ozer (Early 20th century Poland), Achiezer 1:23

ועכצ"ל דזהו באמת חשש רחוק ומיעוט שאינו מצוי דלא חיישי רבנן להאי ועל זה יש לסמוך משום שומר פתאים.

One must conclude that [conception] is very unlikely to be a concern, a rare minority of cases, and the sages weren't concerned for this. For this, one may rely upon "Guards the fools."

29. Rabbi Aryeh Lipschitz (19th century Vilna), Shem Aryeh 27

לפרוש לים הגדול לשוט, היינו כדי לשוטט בעולם ולראות דברים חדשים... מהראוי להרחיק מזה, רק לצורך מזונות או לסחורה...

To go to sea in the Mediterranean, meaning to wander the world and see new things... It would be appropriate to avoid this, but only to go for livelihood or trade...

30. Rabbi Yaakov Ettlinger (19th century Germany), Binyan Tzion 137

אף על גב דכלל בידינו דאין לך דבר עומד בפני פקוח נפש ואין הולכין בפ"נ אחר הרוב זה דוקא ביש ודאי סכנת נפש לפנינו כגון בנפל עליו הגל דאז חוששין אפילו למיעוטא דמיעוטא אבל בשעתה אין כאן פקוח נפש רק שיש לחוש לסכנה הבאה בזה אזלינן בתר רובא כמו לענין איסורא דאל"כ איך מותר לירד לים ולצאת למדבר שהם מהדברים שצריכין להודות על שנצולו

Even though we have a principle that nothing stands before guarding a life, and we do not follow the majority in matters of guarding a life, that is only where there is a definite threat to life before us. For example, this is where someone is beneath a ruin, and we are concerned for even a tiny minority [possibility that he yet lives]. But where there is no need to guard a life right now, but only to be concerned for a future danger, we follow the majority as we do regarding prohibitions. Otherwise, how could one enter the sea, or go into the wilderness, activities for which we thank Gd when we are saved!

31. Rambam (12th century Egypt), Commentary to Avot 1:5

ויהיו עניים בני ביתך - יאמר, שראוי שיהיו משמשיך הדלים והעניים...

"Paupers should be members of your household" – Your servants should come from the poor and indigent...

32. Rabbi Menachem Mendel Krochmal (17th century Poland), Tzemach Tzedek (Kadmon) 6

למה יתחייב הבה"ב השוכר את הפועל? ואלו ה' הוא הגורם, ראוי לכל ישראל שלא לשכור פועל ישראל כיון דמצוי הוא שיגרום מיתה לחבירו, ובפ' א' דאבות תנן "ויהיו עניים בני ביתך" ופירש הר"מ והר"ב שצריך שיהיו שמשים בביתו עניים ולא עבדים! והיאך ילמדו חכמינו ז"ל מוסר לאדם במה שיהיה לו לתקלה ח"ו?

Why should the employer who hires a worker be liable? If he would be considered the cause, then no Jew should hire a Jewish worker, since it would be common for him to cause the death of his friend – but the first chapter of Avot teaches, "Paupers should be members of your household," and Rambam and Rabbi Ovadia of Bartanura explain that one's domestic workers should be paupers, and not slaves! How could our sages instruct people to do something which would become a cause for catastrophe, G-d forbid?!

Question #5: Helping a rabbi

33. Vignette

Public health officials place a community in lockdown due to increased occurrence of COVID-19. Predictably, some members of the community are ignoring restrictions, and others are panicking. What advice should a psychologist offer the rabbi for guiding the community?

Review Questions

- 1) How do we know that the Torah imposes a duty to rescue on everyone – professional and layperson alike? (#3)
- 2) What two factors limit the duty to rescue? (#4-5)
- 3) How do we know that a medical professional has a special duty to use her medical knowledge to aid others? (#6)
- 4) What three stories teach that Judaism recognizes a special responsibility for role models? (#7, 10-12)
- 5) How can the doctor and rabbi work together on this problem?
- 6) What is the legal basis for overriding rabbinic honour where the rabbi sins personally? (#16)
- 7) Under what circumstances would a rabbinical court ex-communicate a rabbi who sinned? (#18)
- 8) What are three tips to correcting a rabbi regarding COVID protections? (#21)
- 9) Does Halachah respect a medical opinion expressed with 70% certainty? (#23)
- 10) What does Halachah look for, if the experts are conflicted? (#24-26)
- 11) In cases of competing risks, how does Halachah decide which risk to accept? (#28-30)