

THE BAIS HAVAAD

HALACHA JOURNAL

Family, Business, and Jewish Life Through the Prism of Halacha



A PUBLICATION OF THE
BAIS HAVAAD HALACHA CENTER
 105 River Ave. #301, Lakewood, NJ 08701
 1.888.485.VAAD (8223)
 www.baishavaad.org
 info@baishavaad.org
 Lakewood • Midwest • Brooklyn • South Florida

VOLUME 5780 • ISSUE IX • PARSHAS VAYAKHEL-PEKUDEI



TO JETTISON MEDICINE: MAY ONE IGNORE THE HEALTH AUTHORITIES?

The experts have spoken.
 Must we heed them?

Adapted from the writings of Dayan Yitzhak Grossman

During the fifth cholera pandemic (1881-1896), governments banned the sale of “old” meat—where too much time had elapsed since slaughter—because it was believed to pose a cholera risk. Abiding by this regulation would entail significant economic loss for Jewish butchers in the period before Rosh Hashanah, because they would be unable to dispose of the expected large volume of *treifos* on a compressed timetable.

The great Polish *gaon* R' Eliyahu Kalatzkin¹ was asked whether they were obliged to follow the

law.² He ruled unequivocally that they must. Although “the Torah spares the money of the Jewish people,” the Gemara says this does not apply in a situation of mortal danger.³ In the course of his analysis he makes a number of points that are relevant to the various currently-recommended prophylactic measures against the spread of the new coronavirus:

Although there is a dispensation to risk one's life in order to earn a livelihood (see previous issue), this only applies when one's entire livelihood requires assuming the risk. Avoiding financial loss, even great loss, isn't reason enough. Additionally, the dispensation is only to risk one's own life; there is no justification for the butchers to risk their customers' lives by selling them tainted meat in order to avoid in-

¹In the year 5688, R' Simcha Zelig Rieger, the Brisker Dayan, turned to Rav Kalatzkin with a request that he endorse a ruling of his allowing an agunah to remarry, in the course of which he explained that “it is known to his honor that the Gaon Av Bais Din (of Brisk, i.e., the Brisker Rav) does not involve himself in matters of hora'ah, no matter how trivial.” (Devarim Achadim 43)

²Imrei Shefer 63.
³Chulin 49b.

(continued on page 2)

לע"נ הרב יוסף ישראל
 ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
 Harav Yosef Grossman zt"l



Adapted from a shiur by
 Dayan Yosef Greenwald

PARSHAS HACHODESH

Man and the Moon

This month is for you the head of the months.... (Shemos 12:1)

The *mishnayos* in Rosh Hashanah describe the performance of this mitzvah during the period of *Bayis Sheini* and beyond: Witnesses came to the Sanhedrin and testified that they saw the new moon. The Sanhedrin would interrogate them and then declare “*mekudash mekudash*,” making that day Rosh Chodesh. Bonfires would be lit on a series of mountaintops to communicate the date of Rosh Chodesh to all the communities in Eretz Yisrael and Bavel. When this method was undermined by sabotage, they sent messengers to the communities. In the time of the *Amora'im*, astronomical calculations were used. When this practice, too, was subverted, Hillel Hanasi (a contemporary of Abaye and Rava) implemented the fixed calendar that we have used ever since.

Who is qualified to perform *kiddush*

(continued on page 2)

Q&A from the BAIS HAVAAD HALACHA HOTLINE

1.888.485.VAAD(8223)
 ask@baishavaad.org

CORRECTION: In last week's Q&A, a key detail of the case, one on which the halacha hinges, was inadvertently omitted from the question. The corrected exchange appears below.

The Case of the Stroller Bankroller

Q: A relative offered to buy us a certain eight-hundred-dollar stroller as a baby gift if we would like it. We researched the model and found that it had certain drawbacks that made it inferior to the top-of-the-line stroller. The relative said he had reason to think that our aunt might buy us the top-of-the-line stroller and noted that he didn't want to spend the money in that case. Eventually, unsure the aunt's gift would materialize, we gratefully accepted the bird in hand of the preferred stroller.

(continued on page 2)

BUSINESS
 HALACHA
 EXT. #1

(continued from front page)

Not long after we took delivery, the aunt did indeed call and offer the superior one as a gift. By then, the faults of the stroller we had already received had begun to gnaw at us. May we accept the second offer and use the first stroller only when the gift giver is around?

(continued from front page)

curing a financial loss themselves.

Chazal give credence to the opinions of medical experts and rely upon them as a basis for leniency even in areas of law as serious as *nidah*.⁴ Even the Chasam Sofer, who maintains that we do not accept experts' diagnoses in specific cases as definitive, only as possibly correct,⁵ agrees that we do accept their general scientific assertions as true.

The principle that "Hashem protects the simple,"⁶ invoked by the Gemara to justify engaging in risky behavior,⁷ only applies where it is

⁴ Nidah 22b. The interpretation of this sugya, and the resulting question of ne'emanus harof'im, are the subject of extensive debate among the poskim: Shu"t Maharik, shoresh 159; Shu"t Maharam Lublin III; Shu"t Avodas HaGershuni 22; Shu"t Chacham Tzvi 73; Shu"t Shav Yaakov Y.D. end of 42 s.v. ve'od yesh Itzareif; Shu"t Meil Tzedakah 34 s.v. v'eilchah v'ashuvah; Shu"t Kenesses Yechezkel end of 32 s.v. v'ra'nu, end of 34 s.v. amnam im harofei; Shu"t R' Chaim HaKohen Rappaport Y.D. 35 p. 66 column 2; Shu"t Maharsham cheilek 1, 13 s.v. v'hinei ru"m, s.v. v'gam matzinu, cheilek 2, 72 s.v. hinei b'guf davar zeh, 182 s.v. hinei b'guf din. Cf. Shu"t Harei Besamim mahadura tinyana end of 121 s.v. nachzor; Shu"t Bais Yitzchak E.H. cheilek 1, 182; Shu"t Emek She'eilah E.H. 11; Shu"t Teshuras Shai mahadura kama 384 and 426; Darchei Teshuvah Y.D. 187:98; Shu"t Imrei Yosher cheilek 1, 97 s.v. amnam mitzad amirash harof'im; Daas Kohan 140 and 142; Shu"t Heichal Yitzchak E.H. cheilek 1, 8; Shu"t Igros Moshe Y.D. cheilek 2, 69, cheilek 4, 17:17; Shu"t Mishneh Halachos cheilek 5, 214; Taharas Habayis cheilek 1 p. 258, Shu"t Yabia Omer cheilek 8 E.H. 41.

⁵ Shu"t Chasam Sofer Y.D. 158 s.v. umechutani hagaon, 173.

⁶ Tehillim 116:6.

⁷ Avodah Zarah 30b and numerous other places.

A: There is a story in the Gemara of two people who agreed to meet for a specific purpose. One party would need to travel a great distance, at significant expense, to attend the meeting. Upon arriving, he was chagrined to find that his counterpart was a no-show. The Gemara rules that the absentee must reimburse the other man's expenses because he caused him to waste his money. This is *garmi*, a sort of indirect causation of loss for which the perpetrator is liable.

It appears that our story is quite similar. The gift giver clearly indicated that he doesn't want to buy the stroller if the couple would then get the better one from the aunt. Understanding that, they told him to go ahead with the purchase. If they accept her stroller

impossible to avoid the risk, but here customers can, and therefore should, insist on purchasing only recently-slaughtered meat.

Dina d'malchusa dina, the idea that halacha recognizes secular law, applies here, particularly since the law is designed to promote the public welfare.⁸

Although eating on Shabbos and *Yom Tov* is a mitzvah, the principle that "one who obeys a mitzvah will know no evil"⁹ (and "those going to do a mitzvah are not harmed") is inapplicable.¹⁰ Even if the situation is not considered one in which "damage is common," one may not rely on the principle of *shomer mitzvah* when fresh meat is available.¹¹

⁸ See Shu"t Sheivet HaLevi cheilek 10, 291 on the applicability of the principle of *dina d'malchusa dina* to regulations intended to prevent traffic accidents. See Shu"t Minchas Asher cheilek 2, 123 for a discussion of the fundamental question of the extension of the principle beyond *dinei mamonos*.

⁹ Koheles 8:5.

¹⁰ Pesachim 8b. Cf. R' Avraham Tzvi Margalio, Shluchei Mitzvah Einar Nizokin.

¹¹ Additionally, S'dei Chemed (Divrei Chachamim 82 s.v. hein emes, and cf. cheilek 4 klalim ma'areches hashin klal 58 and klal 100:5) suggests that the principle of *shomer mitzvah* only applies to danger of a *segulah* nature, as opposed to natural danger. In fact, Rav Kalatzkin himself

and don't use his regularly, they are causing him to have wasted his money and they may be obliged to reimburse him for this indirect loss.

Another example, perhaps even more similar, is the Rambam's opinion about a broken engagement: If one commits to a *shidduch* and the other side makes a *se'udah* and then the first party backs out, he must pay for the *se'udah*, because he caused his would-be *mechutan* to have wasted his money. The Ra'avad disagrees, but *poskim* lean toward the Rambam.

It would seem that the best way forward would be to stick with the stroller they've got, imperfect though it may be, and enjoy it.

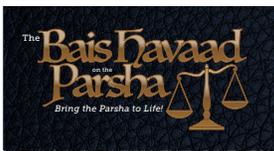
To the best of modern scientific knowledge, cholera is not actually transmitted through spoiled meat, but usually through the fecal-oral route, where food and water contaminated with sewage that harbors cholera bacteria are ingested. Nevertheless, it seems obvious that Rav Kalatzkin's basic points all remain valid, and that he would still argue that the consensus recommendations and regulations of experts and government should be followed.

May fulfilling our obligations earn us the protections of *shomer mitzvah lo yeida davar ra*.

makes this distinction elsewhere (Even HaRoshah 14, as cited in S'dei Chemed klal 100), although his justification seems to be that natural danger is automatically considered common, a somewhat puzzling assumption. It seems likely that he only means that the particular natural danger that he was considering there is common. In yet another discussion, he invokes *shomer mitzvah* in the context of cousin marriage (at least in the Talmudic era, when people acted with purer intentions than they do today), despite the fact that it entails natural danger, since the danger is "not that common."

The assumption of Rav Kalatzkin alluded to above that the principle of *shomer mitzvah* only applies to one acting with pure and unselfish intentions would seem to constitute another argument against the principle's applicability to our case. Cf. S'dei Chemed Divrei Chachamim beginning of 82 and Rav Margalio *ibid.* os 7 for further discussion of this position.

(continued from front page)



Hamitzvos, Asei 153), it is the province of the

hachodesh? According to the Rambam (*Hilchos Kiddush Hachodesh* 5:1; *Sefer*

Sanhedrin, but they can authorize another *bais din* in Eretz Yisrael to perform it. It seems that the Rambam holds *kiddush hachodesh* is not a *p'sak din*; rather, *Klal Yisrael*, represented by the Sanhedrin, chooses when the month will begin. This can be done by any *bais din* in Eretz Yisrael when needed, and

when there is none, *Klal Yisrael* themselves can do it.

The Ramban (*Hasagos on Sefer Hamitzvos*) argues that declaring "*mekudash mekudash*" is a *p'sak din* that may be issued by any *bais din* of *semuchin*. Hillel Hanasi was *mekadesh*, in advance, every future Rosh Chodesh.



Business Halacha Services



Bais Din and Dispute Resolution



Zichron Gershon Kollel for Dayanus



Medical Halacha Center



Kehilla and Bais Din Primacy Initiative



Halachic Awareness and Education

Scan here to receive the weekly email version of the Halacha Journal or sign up at www.BHHJ.org



Elevate your inbox.

לענ"ר דוד ב"ר משה גרוסמן ז"ל

NAFTALI
www.naftaliinc.com

To become a corporate sponsor of the BHHJ or disseminate in memory or zechus of a loved one, email info@baishavaad.org