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## CLEAR AND PRESENT DANGER

**How imminent must a threat be to be considered *pikuach nefesh*?**

Adapted from the writings of Dayan Yitzhak Grossman

R' Asher Weiss was asked by a physician and researcher at Mount Sinai Hospital in Manhattan who was part of "a small group working tirelessly" to develop a COVID-19 vaccine and believed that his unit was close to a breakthrough that could save thousands of lives, whether he was permitted to engage in his work on Shabbos. Rav Weiss ruled that this cannot be considered a situation of *pikuach nefesh* (saving human life) and that there is therefore no basis for leniency! In this article and a follow-up, we consider the general question of whether it is permitted to violate halachic prohibitions in the course of engaging in potentially life-saving medical research and

training, before finally returning to R' Asher's conclusion.

### THE NODA BIHUDAH: THE REQUIREMENT OF "CHOLEH B'FANEINU"

The discussion begins with a ruling of the Noda Bihudah forbidding the conduct of autopsies for the purpose of furthering medical knowledge. A sufferer of kidney stones had died after a failed surgery to treat his condition, and members of the medical community wanted to perform an autopsy on his remains for the purpose of gaining a better understanding of the disease and improving their surgical technique so as to minimize the risk of harming future patients. He rules that although in a case of even *safek* (possible but uncertain) *pikuach nefesh*, the concern for human life would override the

1 R' Asher's responsum was published by Shloimy Zeibald, "Asur L'challei Shabbat K'dei L'Fateach Chisun L'korona". Kikar Shabbat, 1 Tamuz 5780 / Jun. 23, 2020 16:59. Retrieved Oct. 20, 2020 10:55 p.m. from <https://www.kikar.co.il/364927.html>

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

Dedicated in loving memory of  
 HaRav Yosef Grossman zt"l



Excerpted and adapted from a shiur by  
 Rabbi Moshe Zev Granek

### PARSHAS LECH LECHA

#### A QUALIFIED CHIDE

And there was a disagreement between the shepherds of Avraham and the shepherds of Lot.

(Bereishis 13:7)

Lot's shepherds were wicked, and they pastured their animals in fields belonging to others, so Avram's shepherds rebuked them for committing robbery."

(Rashi ibid.)

Rashi here implies that Avraham's shepherds felt the mitzvah of *tochachah* (giving rebuke to a sinner) applies even to gentile sinners. This conclusion is reflected in a few other sources as well. For example, the P'nei Yehoshua (Shabbos 55) states that Lot left Tzo'ar after fleeing there because he was afraid of being punished for not having rebuked the residents for their sins. In addition, the Perisha (C.M. 249) claims that Avraham did not accept gifts from the king of Sedom (in our *parsha*) because he would no longer be able to fulfill the mitzvah of *tochachah* with him if necessary (since Avraham would have to treat him with extra respect).

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### Forbidden Fruit

**Q** Before Sukkos, I am a seller of *arba'ah minim*. This year, a customer selected a shiny yellow esrog, brought it over to me, and took out his wallet. I examined the esrog, informed him that it was invalid, and suggested he choose another one. The man replied that he was a Reform rabbi and did not mind that it was invalid—he liked the way this esrog looked. Is there any problem of *ona'ah* (fraud) in selling an invalid esrog for \$100 to a willing buyer? And is there a problem in helping a Jew to acquire an invalid esrog, and thus fail to fulfill the mitzvah and possibly recite a *bracha levatalah* (blessing in vain) over it?

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Q&A from the  
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prohibition of *nivul hameis* (defilement of the dead), our case is not considered *pikuach nefesh*, because *pikuach nefesh* only applies when there is actually someone in danger before us (*choleh b'faneinu*), but where there is merely the possibility that such a situation will arise in the future, this does not justify the violation of any prohibition, even a rabbinic one. He proves this by a couple of reductio ad absurdum arguments: Were even a speculative future possibility of danger to human life considered *pikuach nefesh*, then all types of medical activity, such as the preparation of medicines and surgical tools, would be permitted on Shabbos, for perhaps there may develop a need for them, and if we are *chas v'shalom* lenient and allow an autopsy in the case at hand, we might as well allow the dissection of all cadavers for the purpose of studying anatomy and developing methods of healing the living!<sup>2</sup>

The Chasam Sofer cites the Noda Bihudah's position, and notes that it follows that if there actually is someone before us suffering from the same condition as the deceased and an autopsy of the latter could benefit the former, it is "nearly certain" that this would be permitted.<sup>3</sup>

R' Yehudah Leib Graubart takes this line of reasoning a step further, arguing that in the Noda Bihudah's time, autopsies were not widespread and there was only a remote possibility of encountering a sufferer of the same illness, but in his own time,<sup>4</sup> when autopsies were a daily occurrence and a crucial component of medical research, and

patients needing the surgery in question were very common, "it is obvious that an autopsy is literally *pikuach nefesh*, and if they will not do autopsies they will cause many deaths."<sup>5</sup>

R' Moshe Feinstein goes even further and argues that the Noda Bihudah's premise is unpersuasive even with regard to his own era, since there do generally exist sick people somewhere in the world, and certainly does not hold today, where information about patients suffering from the disease in question in "all the hospitals of the world" is readily available, and it would likewise be easy to rapidly deliver to these patients any therapy derived from an autopsy. (He does, however, agree with the Noda Bihudah's basic holding prohibiting autopsies, as we shall discuss below).<sup>6</sup>

Similarly, R' Asher suggests that our case of the COVID-19 worldwide pandemic, where hundreds of thousands of people around the world, including thousands of Jews, have already died, and even the healthy are in presumptive danger, may be considered *choleh b'faneinu*.

R' Avraham Sofer-Abraham, however, argues that (in general) even the existence of modern telecommunications technology does not render the entire world "*b'faneinu*," since the above premise is simply incorrect: "We have never heard of a single case where immediately following an autopsy, all hospitals worldwide were contacted to inform them of the results, and even the most innovative and important results are published in medical journals only after the passage of a year or more."<sup>7</sup>

2 Shu"t Noda Bihudah Tinyana Y.D. siman 210. Cf. Shu"t Machaneh Chaim cheilek 2 Y.D. siman 60 s.v. Mikol makom and R' Asher ibid. s.v. Uv'shu"t Machaneh Chaim.

3 Shu"t Chasam Sofer Y.D. siman 336.

4 The context of the teshuvah and its publication date indicate that it was composed in the 5680s (1920s).

5 Shu"t Chavalim Ban'imim cheilek 3 siman 64 s.v. Aval nireh.

6 Shu"t Igros Moshe Y.D. cheilek 2 siman 151 s.v. V'lachein.

7 Nishmas Avraham Y.D. (Second Expanded Edition) p. 519 #3.

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of *tochachah* applies only to "*amisecha* (your fellow)" (Vayikra 19:19), meaning another Jew. Rashi (Sanhedrin 75a) also states explicitly that

This is difficult to understand, though, because the Torah states that the mitzvah

the mitzvah of *tochachah* does not apply to gentiles.

Perhaps the question can be resolved based on a comment of the Sefer Chasidim (Siman 1124) that it is a mitzvah to give *tochachah* to non-Jews, as evident from the fact that Hashem commanded Yonah to instruct the city of Nineveh to do *teshuvah*. Although the Sefer

In the follow-up to this article, we consider the Chazon Ish and R' Moshe Feinstein's positions in this area, as well as R' Asher's conclusion.

Chasidim does not invoke the actual Torah obligation of *hochaiach tochi'ach*, he seems to hold that it is important to prevent even *goyim* from transgressing *aveiros* whenever possible. Some *Acharonim* suggest that this directive may be classified as a *midas chasidus*. Thus, perhaps Avraham's shepherds were fulfilling this dimension of the mitzvah of *tochachah*.

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With regard to your first question, *ona'ah* only applies with an observant Jewish customer. It is possible that a Jew who was not raised observant (a *tinok shenishbah*) and did not know any better might have a different status with regard to this halacha, but that is likely not the case here. Therefore, it would be permitted to sell him the *esrog* at an inflated price if he desires to pay that much and does not understand that its invalid status makes it worth very little.



DAYAN DANIEL DOMBROFF

A *mekach ta'us*, a sale based on a mistaken understanding, is invalid. In this case, though, it would seem that the sale is still valid despite the exorbitant price paid, because the customer was told that the *esrog* was invalid and he was still willing to purchase it for \$100.

With regard to the issue of causing the man to fail to fulfill the mitzvah and to make a *bracha levatalah*, R' Moshe Feinstein writes that if a person rejects Hashem and his Torah, any *bracha* he recites is not a *bracha*, because a *bracha* must be rooted in belief in Hashem. Likewise, it would seem that any mitzvah performed by such a person is also not considered a mitzvah for the same reason. Therefore, there should not be a problem with assisting such a customer in purchasing an invalid *esrog*.



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