Professional Courtesy: The Authority of Experts

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 Kalatzkin[1] 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 incurring 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 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 Shabbosand *Yom Tov* is a mitzvah,the principle that “one who obeys a mitzvahwill 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] 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 yei*

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[1]In 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)

[2]*Imrei Shefer* 63.

[3]*Chulin* 49b.

[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* 111; *Shu”t Avodas HaGershuni* 22; *Shu”t Chacham Tzvi* 73; *Shu”t Shav Yaakov Y.D. end of* 42 s.v. *ve’od yesh l’tzareif*; *Shu”t Meil Tzedakah* 34 s.v. *v’eilchah*

v'ashuvah; *Shu"t Kenesses Yechezkel* end of 32 s.v. *v'ra'inu,*
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, 18:2;
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*
amiras harof'im; *Daas Kohen* 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.*
4:1.
[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.
[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
Margaliot, *Shluchei*
Mitzvah Einan Nizokin.
[11]Additionally,
S'dei Chemed (*Divrei*
Chachamim 82 s.v. *hein eme*s,
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 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
of82and Rav Margaliot ibid. *os* 7 for further discussion
of this position.