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MED MONEY: MAY THE RICH BUY VACCINE ACCESS?

Adapted from the writings of Dayan Yitzhak Grossman

Technology executive Alan Levine has a provocative proposal:

Let the ultra-rich and influential skip the line for COVID-19 vaccines? Hear me out...Have the wealthiest and most influential Americans donate large sums of money to get to the front of the vaccine line, and use that money to fund the broader effort to vaccinate people against COVID-19...

In our first article in this series on the halachic rules governing the prioritization of scarce medical resources, we briefly mentioned R' Asher Weiss's vehement rejection of the idea that a physician may choose to save whoever promises him greater compensation.¹ In this article, we discuss his analysis in greater depth and consider its application to COVID-19 vaccine allocation.

R' Asher begins by citing the position of an anonymous *gaon* that a physician faced with two patients in need of his services may give precedence to the one prepared to pay more. In

support of this, the *gaon* adduces the assumption of R' Baruch Frankel-Teomim that a physician who has enough medicine for only one patient and is faced with two patients who need it may choose to give it to the highest bidder.²

R' Asher "cannot believe" that this is the position of "a *gaon* whom [he recognizes] as an expert *posek*," since "it is clear as the sun at noon" that when faced with two patients who are in mortal danger (*cholim sheyesh bahem sakanah*), we must follow the rules of precedence (as discussed in the first article in this series). Rav Frankel-Teomim's comments must therefore be limited to patients who are not in mortal danger (*cholim she'ein bahem sakanah*), where none of the rules of precedence apply:

To give precedence to a patient in exchange for the payment of money is a hideous thing, "for the bribe will blind the eyes of the wise and make just words crooked,"³ and it is likely that due to his avarice, he will be entirely unable to

² Imrei Baruch Y.D. 336:3.

³ Devarim 16:19.

¹ Shu"t Minchas Asher cheilek 2 siman 126.

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Dedicated in loving memory of
 HaRav Yosef Grossman zt"l



PARSHAS BO FIRST TO FAST

Excerpted and adapted from a shiur by
 Rav Moshe Yitzchok Weg

And every firstborn in the land of Egypt
 shall die...

Shemos 11:5

It is customary for firstborns to fast on Erev Pesach. The Tur says the reason is because Hashem saved Jewish firstborns during *makas bechoros*, when the Egyptian firstborns died.

The Shulchan Aruch cites one opinion that female firstborns should fast on Erev Pesach. The Rama says our custom is that they don't. The Shulchan Aruch's source is a Midrash (Shemos Rabbah 12:28) that says female firstborns in Egypt died along with the males. Why does the Rama reject the Shulchan Aruch's view?

The Biur HaGra answers that the fast was instituted only for those firstborns who have "*kedushas bechorah*." Since females do not have the halachic status of *bechor*, they aren't subject to the fast.

The Levush offers another answer. He notes that the Midrash says that in houses with no firstborn, the oldest child died. If so, in a home today where no *bechor* resides, why doesn't the eldest fast?

He answers that though female firstborns and eldest household members died, the

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Seizure Salad

Q In my yeshiva, lunch is served after Mincha. My Shemoneh Esrei tends to run long, and some of the lunch items are often gone by the time I arrive. May I have a friend who gets to lunch on time set some salad aside for me, even though this may leave other latecomers without?

A The Gemara says that a third party may not seize property on behalf of a creditor if doing so will cause a loss to someone else. An exception to this, says the Gemara, is where he had the right to seize (continued on page 2)

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exercise appropriate judgment (regarding prioritization of treatment), and there is no contempt for (the imperative of) lifesaving (*pikuach nefesh*) greater than this.

A careful reading of this wording indicates that although it may seem inherently unfair for the wealthy to be able to pay to obtain lifesaving treatment ahead of the poor, there may actually be nothing wrong with that *per se*, and the only objection R' Asher can raise is the impossibility of the physician exercising appropriate judgment with regard to the rules of prioritization when financial remuneration is at stake.⁴ In a case where the two patients are identical from a medical perspective, such as two candidates for the COVID-19 vaccine who meet the identical criteria for vaccine allocation, and there is no further room for physician discretion, there might be nothing wrong with prioritizing the highest bidder.

R' Asher offers no explanation or source for his assertion that the halachic rules of precedence apply only to *cholim she'yesh bahem sakanah* but not to *cholim she'ein bahem sakanah*. Insofar as we accept this distinction, however, it follows that offering a COVID-19 vaccine to the highest bidder should depend on whether COVID-19 vaccination is considered a matter of *pikuach nefesh*. *Poskim* have expressed conflicting opinions on whether the vaccine may be administered on Shabbos. Some have allowed it, on the grounds that even Biblically prohibited work may be performed on Shabbos in a case of even possible *pikuach nefesh*,⁵ while others have prohibited it, arguing that if we really considered it a matter of *pikuach nefesh*, we would be administering vaccines nonstop, day and night.⁶ R' Asher himself has ruled that

[It] is obvious that there is no basis to permit Biblically prohibited work in order to receive a vaccine, nor even Rabbinically prohibited work... [I]t is difficult to categorize the receiving of the vaccine as *pikuach nefesh* or even possible *pikuach nefesh* in order to justify the performance of Biblically prohibited work or even Rabbinically prohibited activity, given that when people properly follow safety precautions, the chance of falling ill is remote, and particularly since those not vaccinated now will be able to be vaccinated shortly.

Rav Weiss nevertheless proceeds to allow vaccination (at least for a *choleh*, even *she'ein bo sakanah*) on the grounds that it does not involve any clear-cut Shabbos violation at all, even a Rabbinic one.⁷

Perhaps, then, according to R' Asher's own logic, it would be permitted to sell vaccine allocation to the highest bidder, since it is not a matter of *pikuach nefesh*. It is possible, however, that even if vaccination is not considered *pikuach nefesh* in the context of overriding the prohibitions of Shabbos, nevertheless, since it is certainly the case that from a statistical perspective, vaccination will save lives, the rules of precedence do apply.

R' Asher then proceeds to distinguish (seemingly referring to *cholim she'ein bahem sakanah*, although this is not entirely clear) between a private physician, who "obviously" may sell his services to the highest bidder, "like anyone who provides a service in exchange for compensation," and one working in a hospital or emergency department, who is absolutely prohibited from giving precedence in exchange for financial compensation, "due to his responsibilities to the patients as well as a concern for the prohibition of theft." According to this distinction, an independent health-care worker, or, presumably, a private institution, would be permitted to offer vaccination services to the highest bidder, although a health-

4 Cf. a similar discussion regarding an officer in charge of charitable funds who agrees to disburse them to a particular individual in exchange for personal gain in Shu"t Divrei Malkiel *cheilek 5 siman 212* s.v. *Vod yesh ladun*.

5 HaRav Dr. Ratzon Arusi: *Mutar Lekabel Chisun L'corona Gam b'Shabbat*. Arutz 7.

6 HaRishon L'Tzion Hagoan R' Shlomo Amar *Pasak: "Asur Lechasein B'Shabbat"*. Kikar Shabbat.

7 B'inyan Hachisun Hechadash L'corona. Cf. Hagoan R' David Lau: "Eshkol Lehatir Chisun L'corona B'Shabbat, Rak Im Yochach Shezeh Dachuf." Kikar Shabbat; Rabbanim: *Lishkol Chisun Rofim V'chusiyot B'Sikin B'Shabbat*. Yisrael Hayom.

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fact that only they are mentioned in the Torah, and only the primary targets have the custom

primary target of the plague was male firstborns, as is evident from the

to fast on Erev Pesach.

If a non-Jewish firstborn son converts to Judaism, should he fast on Erev Pesach? The question may hinge on the above dispute: According to the Gra, only people with *kedushas bechorah* fast, and a convert doesn't have *kedushas bechorah*. But according to the Le-

vush, the fast is for people who would have been primary targets of the plague in Egypt, and he is in that group.

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it for himself but chose to take it for his friend instead. In your case, your friend has the right to take food for himself and is doing so. May he take more for you and cause others to lose?



DAYAN DANIEL DOMBROFF

The *poskim* debate this question; the Sma and Nesivos *Hamishpat* say no, the Shach and Bais Yosef say yes. (The Ketzos *Hachoshen* appears to lean toward the latter view.)

In business matters where the halacha is subject to a dispute among the *poskim*, the defendant may say he maintains—*kim li*—that the view that favors his position is correct, and follow it. May your friend say *kim li* that the Shach and Bais Yosef are right and make you a plate?

In the famous *sugya* of *takfo* kohein, the Shach rules that one may use *kim li* to seize something for his friend to the detriment of others. The Nesivos agrees, provided he understands the issues and can explain why he believes those on his side of the debate are in the right. If your friend can do that, he may take food for you. He should make a plate for the two of you and then split the food.

There may be another reason to allow it: perhaps one could assume that the yeshiva leadership, owner of the food, would favor your davening at a deliberate pace and therefore approve of putting food aside for you.

care worker employed by an organization would not.

R' Asher finally suggests that Rav Frankel-Teomim is referring to a physician in possession of medicine, who has the right to sell it to the highest bidder, "like anyone who sells merchandise in his possession," as opposed to a physician who is merely providing medical services. According to this distinction, institutions or individuals that own vaccines would have the right to sell them to the highest bidder.