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Mr. and Mrs. Keith Wasserstrom

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TRUE TO LIFE: MAY A PERSON BE REMOVED FROM LIFE SUPPORT?

Adapted from the writings of Dayan Yitzhak Grossman

The world has recently been gripped by the heartbreaking saga of Alta Fixsler, a two-year-old Orthodox Jewish girl who sustained severe brain damage during her birth, whose doctors at England's Royal Manchester Children's Hospital have decided to remove her from life support—against her family's will and in violation of their religious convictions. In May, a British High Court endorsed this decision, asserting that it is in Alta's best interests because she has "no prospect" of recovery or ever feeling pleasure. On July 9, an appellate court refused the family's request to appeal the decision and affirmed its correctness, citing Alta's experience of pain and the likelihood that it would increase; the additional burden that the continuation of treatment would impose upon her; and her minimal awareness, due to her condition, of family and social relationships,

and her diminished or absent ability to take comfort or pleasure from those who love her or are around her.¹

Three years ago, we discussed in this forum the similar case of (non-Jewish) Alfie Evans, and we considered the question of who has the ultimate authority over a child, his parents or *bais din*. In this article, we consider the fundamental question of when it is legitimate to take into account an ailing individual's "quality of life" and the pain and suffering he is experiencing when deciding whether to allow him to die. (It goes without saying that this ques-

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¹ Katherine Fung, U.S. Grants Visa to U.K.'s Alta Fixsler, Brain-Damaged Two-Year-Old Ordered Off Life Support, Newsweek, <https://www.msn.com/en-us/news/world/us-grants-visa-to-uks-alta-fixsler-brain-damaged-2-year-old-ordered-off-life-support/ar-AALHXDY>.
 Reuven Borchardt, Judge Denies Appeal Request by Family of Alta Fixsler, Hamodia, <https://hamodia.com/2021/07/09/judge-denies-appeal-request-family-alta-fixsler/>.
 JTA and TOI staff, Fate of hospitalized British Jewish toddler to be decided Wednesday, The Times of Israel, <https://www.timesofisrael.com/fate-of-hospitalized-british-jewish-toddler-to-be-decided-wednesday/>.



PARSHAS VA'ES'CHANAN LOVING WHILE LEAVING

*Excerpted and adapted from a shiur by
 HaRav Chaim Weg*

Hear, Yisrael, Hashem is our G-d, Hashem is One.

Devarim 6:1

The Gemara in Brachos (61b) tells how Rabbi Akiva was put to death by the Romans for publicly teaching Torah. The Gemara relates that while he was being killed, Rabbi Akiva fulfilled the mitzvah of reciting Shema at the proper time. His students asked him, "*Ad kan* (until here)?"—why did he have to recite it while dying? He responded that during his lifetime, he was always pained about when he would be able to fulfill the words *bechol nafshecha*, meaning that even if Hashem takes one's life he must still love Him, and now was his opportunity.

R' Zelig Reuven Bengis wondered why the *talmidim* questioned Rabbi Akiva's decision to recite Shema. Shouldn't a person be obligated to fulfill mitzvos if he is able? R' Baruch Ber Leibowitz answered him that the *talmidim* felt Rabbi Akiva should be exempt from reciting Shema

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Cut Off Date

Q There is a date tree in my backyard, but I would prefer to use the space it occupies to enlarge my sukkah. May I cut it down?

A The Gemara (Bava Basra 26, Sukkah 50b) says it is forbidden to cut down a fruit tree that bears at least one *kav* of fruit annually, and a person that does so evokes great *sakanah*. The Rosh (*ibid.*) writes that if one needs the tree's place, it is permitted. Based on the Rosh, the Taz (Y.D. 116:6) permits cutting down a fruit tree when one needs its space for the construction of a house.

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Q&A from the
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tion is extremely complex, with the highest of stakes on both sides, and we seek only to outline some of its basic contours.)

There are numerous sources in the Gemara² and later halachic authorities that indicate that the preservation of life, although of very great importance, is not an absolute imperative. R' Yehuda Hachassid rules that at least in some contexts, "we do not cause someone to not die swiftly," and at least with regard to a *goseis* (one whose death is imminent),³ even active measures may be taken to eliminate a factor that is delaying death.⁴ This position is codified by the Rama, who explains: "This is not considered an action [that causes death] at all, but merely the removal of an impediment [to death]."⁵

In this article, we consider various rulings of R' Shlomo Zalman Auerbach regarding the withholding of medical treatment and life support from the terminally ill and suffering; in a subsequent article, we shall, *im yirtzeh* Hashem, consider the opinions of some other *poskim* on this topic.

R' Shlomo Zalman is reported to have distinguished between treatments that satisfy the natural needs of the patient, or are considered routine, on the one hand, and non-routine treatment on the other. Thus, a patient whose cancer has spread throughout his body and has left him close to death must still be provided oxygen and nutrition, and a diabetic, insulin, as well as any necessary medications like antibiotics, despite the fact that he is experiencing severe pain

² See, e.g., the accounts of R' Chanina ben Tradion's death in Avodah Zarah 18a and of R' Yehuda Hanasi in Kesubos 104a.

³ The exact definition of this status, and its contemporary application, are unclear. See Shu"t Igros Moshe C.M. *cheilek 2 siman 75 os 5*; Nishmas Avraham (Second Expanded Edition) Y.D. pp. 450-51; Micropedia Talmudis entry for *Goseis*, section *Mahuso: How Is a "Goseis" Defined?* Mi Yodeya.

⁴ Sefer Chassidim *siman 723*.

⁵ Hagahos HaRama to Shulchan Aruch Y.D. 339:1.

and suffering. On the other hand, there is absolutely no obligation to actively treat such a patient

when the treatments themselves will cause him additional suffering beyond that which he is already experiencing, when the treatment is outside the routine and where there is no hope of curing the fundamental illness, but only of extending his life to some extent, particularly if the patient does not consent, due to the severe pain or great suffering.⁶

Elsewhere, however, R' Shlomo Zalman adds that although he maintains that it is permitted to accede to the refusal of a *goseis* patient who is experiencing great pain and suffering (or even very severe mental anguish) to take medicines that will cause him further suffering, nevertheless, if the patient is one who fears Heaven and has not lost possession of his faculties, it is very desirable to explain to him that "one hour of repentance in this world is preferable to all the life of the World to Come."⁷ With regard to a patient suffering from amyotrophic lateral sclerosis (ALS) who is experiencing recurring respiratory infections (a common complication of the disease), R' Shlomo Zalman ruled that oral antibiotics should be administered, but with regard to injections and other painful treatments, the patient, if lucid and responsive, should be consulted, and if he declines such treatments, perhaps his wishes should be followed. When paralysis spreads to the lungs, at which point the patient will die unless connected to a ventilator, R' Shlomo Zalman ruled that it is permitted to refrain from connecting him to a ventilator.⁸

⁶ Nishmas Avraham *ibid.* p. 483.

⁷ Shu"t Minchas Shlomo *kama siman 91 os 24:2*, cited in Nishmas Avraham *ibid.* p. 485.

⁸ Nishmas Avraham *ibid.* p. 486.

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due to the principle of *osek bemitzvah patur min hamitzvah* (one who is involved with one mitzvah is exempt from another). If he is fulfilling the mitzvah of dying *al kiddush* Hashem, why interrupt to say Shema? Rabbi

Akiva responded that *kabbalas ol malchus shamayim* (accepting the yoke of the Kingdom of Heaven) through Shema is the very same mitzvah as sanctifying Hashem's name by dying *al kiddush* Hashem. Both involve sanctifying His name, which must be done both in life and in death. This was in fact Rabbi Akiva's response to the *talmidim*: He was waiting for the opportunity to be

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The Sh'eilas Ya'avetz, however, says that although there is no prohibition when one needs the space, the danger still applies, so removing the tree is ill advised. But many *Acharonim* write that there is no *sakanah* (Shu"t Chasam Sofer Y.D. 102, Chaim Sha'al 1:22-23, Binyan Tzion 61). The Divrei Chaim (2:57) writes that when it is clear that others, too, would benefit more from the destruction of the tree than from its preservation, there is no danger, but if that is true only for the owner himself, it is dangerous. In a similar vein, some *poskim* rule that the leniency for construction is limited to a permanent structure—which is of greater utility than a tree—but not for the more limited benefit of a temporary structure (like a sukkah) or extra space (Kovetz Halachos, Sukkah, p. 29).



DAYAN YEHOSHUA GRUNWALD

Some *Acharonim* permit fruit tree removal for the purpose of a mitzvah, and they point to Gemaras that discuss using the wood of fruit trees for a sukkah and for the *mizbeiach* (Panim Yafos on Devarim 20:19 and Sh'eilas Ya'avetz 1:76). And some say that in the case of a mitzvah one needn't worry about the *sakanah*, as the mitzvah affords protection (Darchei Teshuvah 116:51), but many disagree. It emerges that according to many *Acharonim*, one shouldn't cut down a fruit tree to build a sukkah.

A solution is to sell the land with the tree to a non-Jew with an agreement that if the land is cleared, you will buy it back (Maishiv Bahalacha Y.D. 26 and Kovetz Halachos, Sukkah, p. 30). Consult a competent halachic authority for guidance on exactly how to effect the *kinyan*.

mekabel ol malchus shamayim through death, so of course he should also recite Shema, through which one accepts *ol malchus shamayim*.

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