



Halachic Principles of *Pikuach Nefesh*

לעילוי נשמת
יואל אפרים בן אברהם עוזיאל זלצמן ז"ל

Introduction: Over the past few weeks, we have on our minds the precious need to save lives, including by “pushing off” Shabbat to enable this. We will now present some of the halachic and practical underpinnings of the laws that *pikuach nefesh* (saving a life) takes precedence over almost all of the Torah’s *mitzvot* and prohibitions.

Principles: While the *gemara* (Yoma 85a-b) cites several possible derivations that *pikuach nefesh* supersedes Shabbat and by extension other prohibitions, the most accepted one is general: the statutes of the Torah are “to live with them” (Vayikra 18:5) and not to die due to them. The nature of the derivation makes the *halacha* broad, conceptually and practically, including when the need or chance of saving is not definite (*ibid.*; see Be’ur Halacha to OC 329:4).

The most important thing needed to make a determination of when *pikuach nefesh* allowances apply is expertise in evaluating the danger. Special weight is given to people whose expertise is professionally recognized, e.g., doctors (see Shulchan Aruch, OC 328:10). However, many times a rabbi,

parent, or bystander will have to make a determination; knowledge and wisdom are helpful, but it is better that he err on the side of concern for life.

There are not clear statistical guidelines as to what counts as danger. Rabbi Akiva Eiger (Shut I:60) mentions in passing that a one thousandth chance of death is not halachic danger. Rav Neuwirth (Shemirat Shabbat K’hilchata 32:2) presents an appealing approach in the name of Rav Auerbach. Danger is not measured actuarially. Rather, just as regarding when one is permitted to enter danger, what society considers dangerous is impactful (see Yevamot 72a), so too *pikuach nefesh* applies to situations that normal people consider life-threatening. This approach explains a limitation important *Acharonim* (see Pitchei Teshuva, Yoreh Deah 363:5; Chazon Ish, Ohalot 22:32) put on life-saving needs – danger must be one that is felt in the short-term (there are likely exceptions). The logic is that it is not normal to look well into the future, and therefore it is not justifiable to violate prohibitions over things that people usually ignore.

A major question involves steps one should take to lessen prohibitions, which we find regarding eating on Yom Kippur (Shulchan Aruch, OC 618:7), eating

The Orthodox Union - via its website - fields questions of all types in areas of kashrut, Jewish law and values. Some of them are answered by Eretz Hemdah, the Institute for Advanced Jewish Studies, Jerusalem, headed by Rav Yosef Carmel and Rav Moshe Ehrenreich, founded by HaRav Shaul Yisraeli zt"l, to prepare rabbanim and dayanim to serve the National Religious community in Israel and abroad. Ask the Rabbi is a joint venture of the OU, Yerushalayim Network, Eretz Hemdah... and OU Israel's Torah Tidbits.



non-kosher foods (ibid. 9) and *melacha* on Shabbat (ibid. 32:15-16). The Kiryat Sefer (Ma'achalot Assurot 14) posits that the requirement to minimize violations is only Rabbinic. Many, not all, agree (see Yechaveh Da'at IV:30; Minchat Shlomo I:7). In any case, the *gemara* (Yoma 84b) limits efforts to minimize violations, saying that saving lives on Shabbat should be carried out by adult Jews, as opposed to having a non-Jew do it. (The latter option is often used when there is great but not life-saving need (see Shulchan Aruch, OC 328:17).) *Rishonim* present two reasons for this exceptional *halacha* (see Beit Yosef, OC 328): 1. Perhaps the non-Jew will not be diligent enough, thus increasing danger. 2. If people get used to looking for a non-Jew, if one is not readily available, they may miss the opportunity to save time. Despite the *gemara*, the Rama (OC 328:12) cites an opinion that we prefer a non-Jew who will do the job well. The Taz (ad loc. 5) disagrees due to the *gemara*, and the Mishna Berura (328:37) is inconclusive.

Practice (in places such as Sha'arei Tzedek Hospital) is that a Jewish doctor will take overall responsibility for orchestrating and doing the saving, but when there is time for a non-Jew to do simple actions, e.g., turning on lights, that is preferred. The Rama (ibid.) likewise adds that one should try to do what he can *b'shinuy* (in an unusual way), to lessen Shabbat violation. On this point, there is less

opposition, which makes sense according to our distinction between the macro and the micro of the efforts to save. The ability to violate Shabbat with a *shinuy* is valuable for encouraging a G-d-fearer who is reticent to violate Shabbat when **he** is not convinced of its pressing nature. ■

Having a dispute?



For a Din Torah in English or Hebrew contact 'Eretz Hemdah - Gazit' Rabbinical Court:
077-215-8-215 • fax: (02) 537-9626
beitdin@eretzhemdah.org

In view of the current situation,
The Weekly Podcast

WHAT DOES JUDAISM SAY ABOUT....?



by

Rabbi Dr. Nachum Amsel

will change its order, and discuss each week an issue about the war that people are asking about

This Week's Podcast:

Dilemma: Pay Money or Terrorists in Exchange for Kidnapped Hostages - or Not?

You can find the podcast on Apple, Spotify or Yutorah.org

For questions, write whatdoesjudaismsayabout@gmail.com