

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

Family, Business, & Jewish Life Through the Prism of Halacha



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## THE RIGHT OF REFUSAL

*Medical coercion in Halacha  
Mind Your Own Business!  
And When Not to*

Rav Baruch Fried

Are You Your Brother's Keeper?

Your naïve, young nephew is about to enter into a business venture that your experienced business acumen tells you is doomed to failure...

Your elderly mother-in-law would do far better in a senior care facility, but she emotionally - and, in your opinion - foolishly refuses to be transferred...

All of your well-intentioned words fall on deaf ears and your constructive advice goes unheeded...

Can you take action? Must you take action?!

1 Note that in some situations there are legal considerations as well. This article does not intend to address them.

### AN OBLIGATION TO INTRUDE:

Many people do not like to intrude in the lives of others, especially when the intrusion is unsolicited and unwelcome. But, at times, minding your own business is not a *Halachic* option.

At first glance, there are four obligations from the Torah to intervene into another Jew's affairs:

If someone is about to perform an action that is prohibited by the Torah, there is an obligation *L'Afrushe Me'Issura* - to forestall from sin.

If someone is about to do something that will lead to a loss of money, we must stop them as part of our obligation of *Hashavat Aveda*. [Although, literally, *Hashavat Aveda* means returning a lost object, the commandment

also applies to saving an individual from any type of financial loss.]

If someone is about to do something that will lead to a significant loss, physical, monetary or otherwise, we are commanded "*Lo Ta'amod Al Dam Re'echa*," do not stand by idly while your brother's blood is being spilled.

There is a general commandment of "*V'Ahavta L'Re'acha Kamocho*," to love your friend as yourself, meaning that you should not allow anything to happen to him that you would not wish upon yourself and you must save him from a situation that you would not want to be in yourself.

### WHEN TO BACK OFF:

Nevertheless, a deeper look at these obligations reveals that intruding on the affairs of others is not always the proper thing to do.

Even when you witness someone about to transgress a prohibition, there are *Poskim* who say you do not have to stop him if he is aware that he is doing an *Avera* and chooses to do it anyway.

Regarding the obligation of *Hashavat Aveda*, the Rambam<sup>1</sup> states clearly that an *Aveda MiDa'at* - one who is consciously careless with his property - does not necessitate *Hashava*. [An exception to this would be where the owner is clearly not in his right mind<sup>2</sup>.]

Regarding the prohibition of "*Lo Ta'amod Al Dam Re'echa*," the *Minhat Hinuch*<sup>3</sup> surprisingly suggests that this prohibition does not apply for one who is committing suicide, based on the above rule of *Aveda MiDa'at*. Thus, if someone is willingly and knowingly

1 Gezeza 11:11. See also Ketzot HaHoshen 261:1 and Netivot HaMishpat *ibid*.

2 See Sanhedrin 48a, Yore De'a 349:3.

3 Kometz L'Minha 237:1.

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By Rav Yehoshua Grunwald

### LABOR LAW

*Who should desecrate the Shabbat at a birth?*

ותלד רחל ותקש בלדתה.

*And Rachel gave birth, and she had difficulty in her delivery. (Bereshit 35:16)*

If there is a need on *Shabbat* for lifesaving medical care that entails *Hillul Shabbat*, should one seek a non-Jew or a minor to perform the *Melacha*?

The *Shulhan Aruch* (O.H. 328:12) rules that one should do it himself. The *Rama* argues and says that if it will cause no delay, one must use a non-Jew or do the *Melacha* with a *Shinui* (in an usual manner, thus turning it into a rabbinic prohibition).

The *Taz* (*ibid.*) objects to the *Rama's* approach, because onlookers will mistakenly conclude that saving a life doesn't override *Shabbos*, and next time they will search for a non-Jew while the patient dies.

Many *Poskim* follow the *Taz*, however, Rav

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### spotlight

*This week featured the first shiur in the Professional Halacha Shiurim Series of the Bais HaVaad Medical Halacha Center. Rabbi Eli Gewirtzman, shlit'a, one of the Senior Poskim in the Medical Halacha Center, presented the first shiur and was well received. These advanced shiurim are open to professionals in the medical community and explore contemporary medical halacha topics in depth.*

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throwing away his life, you have no responsibility to stand in his way.

While many *Rishonim* and *Aharonim* disagree<sup>4</sup> with this ruling, they do not disagree with his reasoning. Rather, they list three reasons why the reasoning of *Aveda MiDa'at* does not apply:

The victim is also transgressing a prohibition of *Lo Tirtzah*, murder, and one must step in to save someone from being murdered.

The victim does not "own" his life and has no right to terminate it. Therefore, his conscious decision to kill himself is not valid.

We must assume that the victim is not in his right mind and did not make this decision rationally.

Consequently, in other instances where these three arguments do not apply, even if the repercussions may be significant, it is likely that all opinions would agree that one does not have to prevent someone from suffering a severe loss if he made a knowing decision to that effect.

Concerning the *Mitzvah* of "*V'Ahavta L'Re'acha Kamocha*", there are various factors that have to be considered. The rule is that before we jump to the conclusion that we would certainly want to be "saved" if we were in our friend's situation, we must introspect and ask ourselves if this really true.

Would we really want some well-meaning friend or relative intervene against our will just because they are convinced that they know what is good for us better than ourselves?

Based on the above, it would seem that this very *Mitzvah* of loving our friend as ourselves should *prevent* us from intervening. We certainly would want others to make every effort to explain to us why they feel we are mistaken, but ultimately, we would like to choose our own destiny and not be pushed to act against our will.

On the flip side, if the individual cannot execute his 'poor' decision alone, you certainly may not help him. That would be a flagrant violation of the prohibition of "*Lifne Iver Lo Titen Michshol*" – placing a "stumbling block" before a blind man.

**REFUSING TREATMENT:**

There is a fascinating ruling from Rav Moshe Feinstein *zt"l*<sup>5</sup>.

Rav Moshe was asked about a patient who refused to undergo a treatment that his doctors felt would be beneficial to his health. Rav Moshe ruled that if the patient refuses to go through with it because of the momentary pain or has simply given up on life, then his refusal is considered infantile and irrational and may be coerced. If the patient is of the opinion that the doctors are incorrect, then they must attempt to find someone that will convince him otherwise.

If, however, there is any danger involved in the procedure, even if medically it appears the lesser of two evils, the patient has the right to opt out and may not be coerced.

As always, a competent *Posek* should be contacted in each particular case.

<sup>4</sup> See Igrot Moshe, Yore De'a 2, Siman 174, and Kli Hemda, Parashat Ki Tetze.

<sup>5</sup> *Hoshen Mishpat 2, Siman 73.*

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Shlomo Zalman Auerbach in *Minhat Shelomo* says (and so it is reported in the name of Rav Moshe Feinstein) that this is limited to actual medical treatment, but an-

cillary processes (e.g., turning on lights) should optimally be done in a way that lessens the violation.

Strangely, although a woman in labor is considered a *Hole Sh'Yesh Bo Sakana*, a sick person with a life-threatening condition, even *Maran* agrees (ibid. 330:1) that a *Shinui* should be

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Bring the Daf to Life!

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**This Week's Topics**

**RAV SHMUEL YESHAYA YOFFE,  
ROSH CHABURA BAIS MEDRASH  
GOVOHA**

- דף ק"ה Monetary Mitzvos: To Pay or Not to Pay?
- דף ק"ו When is a Bittul Not a Bittul?
- דף ק"ז Was There a Shabbos Crew at the Bais HaMikdash?
- דף ק"ח Chopped & Diced: Issurei Hana'a and Tum'as Ochlin
- דף ק"ט Condemned to Fire
- דף ק"י Dedicating Korbanos Today
- דף כ' Measuring Liquids vs. Solids

employed where possible. Why the difference? The *Mishna Berura* (ibid.) answers that childbirth is less of a worry because it is a natural process and very rarely dangerous. Nevertheless, where using a *Shinui* or finding a non-Jew would cause a delay, a Jew must act himself.



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