

Pediatric Organ Donation

MAIMONIDES MOOT COURT COMPETITION SOURCEBOOK

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What is the Maimonides Moot Court Competition?

The Maimonides Moot Court Competition empowers students to engage with contemporary ethical questions through the lens of Jewish legal wisdom. Each competition centers on a detailed case accompanied by a sourcebook of traditional and modern Jewish texts. Students use these curated sources to craft arguments addressing the legal and ethical questions presented by the case. Recent topics have included artificial intelligence, digital privacy, and gambling.

Maimonides Moot Court Competition is a program of the Hadar Institute, a center of Jewish learning that builds vibrant, egalitarian Jewish communities around Torah study, Jewish practice, and the values of kindness and compassion.

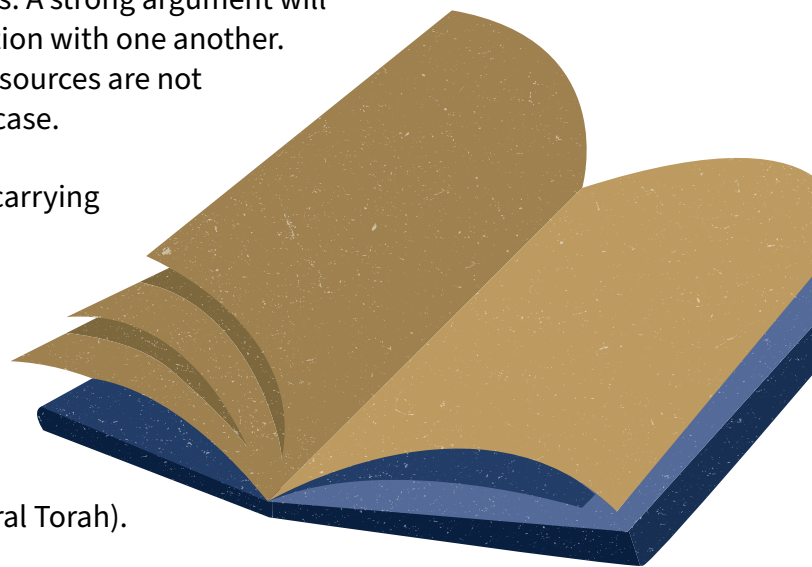
What is a Beit Din?

A Beit Din is a Jewish court of law that renders decisions in accordance with halakhah—the collective body of biblical and rabbinical law. The role of a Beit Din is to apply halakhic precedent to the particular circumstances of a case to reach a ruling.

In the Maimonides Moot Court Competition, your team takes on the role of a Beit Din. You will study the provided texts to explore how Jewish tradition has approached the legal and ethical issues presented by the case. The aim is to articulate a compelling position rooted in the provided texts. There is no single correct answer—the Talmud embraces multiple perspectives and outcomes, describing the competing opinions of Beit Hillel and Beit Shammai as “the words of the living God” (Eruvin 13b).

This sourcebook contains texts spanning the full breadth of Jewish tradition; ancient and medieval texts are juxtaposed with contemporary perspectives. A strong argument will engage these sources and bring them into conversation with one another. Likewise it may be important to explain why certain sources are not applicable or relevant to your understanding of the case.

There is a hierarchy of sources, with earlier sources carrying more weight. Sources from *תּוֹרַה שֶׁבִּכְתָּב* (*Torah she-bikhtav*, the Written Torah), or Tanakh, are the most authoritative. Typically, later sources elucidate rather than dispute earlier resources. The power of later authorities stems from interpreting and applying earlier texts, much as your team will be doing. Collectively, these post-biblical teachings are known as the *תּוֹרַה שֶׁבְּעַל פִּי* (*Torah she-be'al peh*, Oral Torah).



Introduction

Organ donation is one of modern medicine's most extraordinary achievements—a breakthrough that allows one person's generosity to save another person's life. The most recent data indicates that organ transplants saved more than 48,000 lives in the United States this past year, an increase of more than 20% since 2020. Remarkably, more than 7,000 of these transplants were from living donors who donated one of their kidneys, or a segment of their liver, or in rare cases, part of a different organ.

Yet despite its life-saving potential, organ donation raises deeply complex questions, especially in situations where it involves risk to the donor. The case this year engages a series of questions on this topic. What level of risk is a person obligated—or permitted—to take to save another? Can a teenager give informed consent to a major surgery? And how should Jewish law guide decision-making when time is short and the stakes are high?

Patient autonomy is widely regarded as the foundational principle of modern bioethics, as first articulated in the Nuremberg Code of 1947. Drafted in response to Nazi medical atrocities, the code outlines ten essential principles for ethical medical research. Its very first point declares: “The voluntary consent of the human subject is absolutely essential.” This emphasis on a patient's rights and interests echoes through later texts, including the World Medical Association's 1948 Declaration of Geneva, which affirms, “The health of my patient will be my first consideration.”

Whereas secular medical ethics discourse is centered on patient *rights*, Jewish legal discourse uses the language of obligations and duties. As we will see throughout the sourcebook, evaluating ethical questions from a halakhic perspective is challenging due to the competing tensions between various duties. It's precisely for this reason that halakhic discourse can make a unique contribution to broader debates around medical ethics.

Over the past two years, tragically, questions about the duty to risk one's life on behalf of others have been all too real for the Jewish people. Since the dark morning of October 7, we have heard countless stories of individuals who have heroically risked their lives on behalf of others in extraordinary ways, all too often paying the ultimate price. War requires individuals to take immense risks on behalf of others, and an analysis of the impossible ethical dilemmas that arise during times of war is beyond the scope of this sourcebook.¹

May our study of medical ethics help us to build a world rooted in the preservation of life; may our learning be a merit for all who have sacrificed their lives on behalf of others.

עַץ־חַיִּים הִיא לַמְחַזְקִים בָּהּ וְתַמְכִּיהָ מְאֻשָּׁר

She (the Torah) is a tree of life to those who grasp her, and those who uphold her are fortunate

Mishlei 3:18 | משלי ג:יח

¹ For example, see R. Avraham Yitzhak haKohen Kook, *Mishpat Kohen* 143; R. Eliezer Yehudah Waldenberg, *Tzitz Eliezer* 13:100

Case

The ethics committee of Beth Miriam Children’s Hospital is a multidisciplinary team of doctors, nurses, administrators, chaplains, social workers, and lawyers that meets to discuss the hospital’s most complex ethical decisions. The committee convened an emergency meeting to discuss a time-sensitive case that involves 16-year-old identical twins, Sam and Eitan, and to evaluate Eitan’s request to donate part of his liver to his brother, Sam.

Sam was diagnosed as a baby with a rare liver condition called biliary atresia, which means that there was a blockage in his bile ducts that could have been fatal if left untreated. As is typical in this situation, doctors performed a Kasai procedure when Sam was two months old, removing the blocked ducts and creating a new pathway for bile to drain from Sam’s liver.

While this procedure helped stabilize Sam for nearly 16 years, he recently began to experience a complication called cholestasis, which means that the bile in the liver does not flow properly to the intestine. This is a serious condition that could lead to progressive liver failure and gradually become life-threatening. Sam’s doctors have made it clear that he needs a liver transplant.

Sam’s doctors have also emphasized the urgency of the transplant. Tragically, the hospital recently had to take a different child off the liver transplant waitlist, after she became too sick to undergo transplant surgery. Sam’s doctors are concerned that Sam could find himself in this situation if his condition worsens.

There are currently no matches for Sam on the liver transplant waiting list. Sam’s parents and some of his closest relatives have undergone testing to see if they are viable matches, but none of them are viable donors. However, there is one possible source of a liver transplant that is available now—Sam’s identical twin, Eitan, who volunteered to be tested as a potential match. Medically, an identical twin is an ideal donor candidate. Since Sam and Eitan share the exact genetic makeup, Sam’s body is more likely to accept a liver donation from Eitan than from a typical donor. In an ideal scenario, Eitan would donate part of his liver to Sam, and both brothers could go on to live full and healthy lives.

However, the ethics committee has concerns about this prospect. Liver transplantation is a serious surgery with real risks. The chance that a liver donor dies during surgery is estimated to be between 1 in 250 and 1 in 1000. Long-term complications are also possible. For this reason, it is crucial that Eitan gives informed consent to the procedure, and that he fully understands the risks, benefits, and alternatives to a liver transplant surgery. Adult patients generally provide consent to the hospital by signing the following declaration before major treatments: “I acknowledge that I have been fully informed about the purpose, potential risks, anticipated benefits, and available alternatives to the proposed medical intervention, including the option to decline treatment, and I hereby give my voluntary and informed consent to proceed.”

At the hospital's ethics committee meeting, doctors provided the following report: Eitan underwent comprehensive testing that is required for potential liver donors, and he was deemed medically suitable for the liver donation. The doctors also emphasized the precarious and time-sensitive nature of Sam's condition; even though a different liver could theoretically become available off the transplant list in the coming months, Sam could become ineligible for a transplant at any time.

Social workers at the meeting shared that Sam and Eitan possess typical maturity for their age and generally understand the benefits and risks of a liver transplant. However, social workers expressed some concerns about whether Eitan, as a 16-year-old, could give informed consent to such a high-stakes medical procedure. Specifically, they mentioned that there are times where Eitan appears more confident about wanting to donate his liver, and other times where he shows more anxiety about going through with the procedure. Regarding parental consent, the twins' parents have repeatedly said that they will consent to whatever Eitan decides.

Lawyers advised the committee that the law generally requires a patient to be 18 in order to provide informed consent. Pediatric organ donation is very rare since minors are unable to provide informed consent, and parents can only provide consent for a medical procedure on behalf of their child when it directly benefits the child. However, there are emergency circumstances where hospitals may approve a life-saving intervention if a minor provides informed consent. The hospital's legal team feels that a compelling case can be made to proceed with the liver transplant so long as the hospital feels comfortable that they have received Eitan's informed consent.¹

Over the course of the committee's meeting, a range of opinions have emerged about how to proceed. Some believe that a 16-year-old is simply incapable of the high level of informed consent necessary for these types of procedures, and it would be best to wait until the twins are older—even if this means accepting the chance that the surgery might become impossible if Sam's condition deteriorates. Others on the committee feel that there is a fleeting opportunity to save Sam's life, and that they should move forward expeditiously with the transplant.

The ethics committee now aims to achieve two objectives. The first is to reach a consensus about how to proceed in Sam and Eitan's case. The second goal is to create a more clear hospital policy about organ donation, so that similar cases can be addressed more easily in the future.

In order to gain additional perspectives, the committee has reached out to external partners for their insights. One of these partners is the local Beit Din.

1 Beth Miriam Children's Hospital is a fictional institution. The local laws described in the case should be treated as established facts within the hypothetical scenario.

The Role of the Beit Din

The Beit Din has been invited by the Beth Miriam ethics committee to offer a halakhic approach. In particular, the committee has asked the Beit Din:

1. To guide them in this specific case: How would they recommend that the hospital respond to Eitan's request to donate part of his liver? Should they encourage Eitan to make a particular decision?
2. To offer a more broad halakhic perspective on three points related to developing hospital policy:
 - What is the minimum age that patients can give informed consent to become a living organ donor?
 - For donors of any age, are there circumstances where a potential living organ donor is halakhically obligated to donate their organs? Alternatively, would the Beit Din ever discourage someone from donating an organ? If so, when?
 - For the previous two questions: Should there be a distinction between liver transplants and kidney transplants, which have significantly lower risk? What about bone marrow donation?

In order to provide medical background to the Beit Din, the hospital has shared the following fact sheet about organ donation.





Organ and Bone Marrow Transplants

Overview

- Over 100,000 people are on organ waitlists in the United States. A new patient is added every 8 minutes.
- 13 people die in the United States each day waiting for an organ transplant.
- In 2024, there were organ transplants from approximately 7,000 living donors and 17,000 deceased donors.
- Globally, more than 170,000 organ transplants are performed each year.
- All organ donors must undergo a comprehensive medical and psychological evaluation in order to be deemed eligible.
- Living organ donors who later develop organ failure are granted priority status on the transplant waitlist.

Liver Donation

- Over 90% of liver transplants are obtained from deceased donors. Unfortunately, there are not enough deceased donor organs available for everyone who needs a transplant.
- Because of this organ shortage, patients waiting for a liver may die or become too sick to undergo a transplant. The longer they wait for a liver transplant, the sicker they become.
- Livers are allocated to patients based on how sick they are using a metric called a MELD score.
- In live-donor transplants, a portion of the donor liver is removed and grafted into a recipient. Following a successful surgery, the donor's liver will regenerate back to full size, and the recipient's new liver will grow to normal size.
- Transplants from live donors are associated with better outcomes and shorter recovery times.
- Liver transplants are major surgeries that carry risks. Research studies estimate that the likelihood of a donor dying as a result of their surgery is between 1 in 250 and 1 in 1,000.

- Research into the long-term effects of living liver donation is ongoing. Studies indicate that around 30% of donors experience minor complications, and about 1 in 10 are readmitted to the hospital to treat complications related to the surgery.
- Donors remain in the hospital for about one week, followed by a gradual recovery over the course of 2-3 months.

Kidney Donation

- Nearly 100,000 people in the United States are waiting for a kidney transplant. It is the organ with the longest waiting list to receive a transplant.
- Most people die in such a way that makes kidney donation impossible. Since people can live on one kidney, it is possible to transplant a kidney from a living donor.
- The risk of death to the donor is approximately 1 in 3,000.
- Living donation does not change the life expectancy of the donor. In general, most people with a single healthy kidney have few or no problems.
- As with any other major surgery, it involves some risk to the donor. The majority of complications following surgery are minor and may cause a longer hospitalization.
- Donors remain in the hospital for 2-3 days. Most donors can return to school or work a few weeks later.

Bone Marrow Donation

- Bone marrow is a soft tissue inside bones that produces stem cells, which develop into the blood cells the body needs to survive.
- Bone marrow donation is a medical procedure where healthy stem cells are collected from a donor to help a patient with blood diseases like leukemia, lymphoma, and sickle cell anemia, which can be life-threatening.
- The number of potential matches for a given person can vary widely based on their genetics. Some people may have few or only a single match.
- The most common method for a bone marrow donation is called a Peripheral Blood Stem Cell (PBSC) donation. It is a non-surgical procedure where stem cells are collected from the bloodstream using a process similar to donating plasma.
- Most PBSC donations take 4-8 hours.
- Serious complications are extremely rare.
- Most donors return to normal activities in a few days to a week. The body replaces the donated cells quickly, usually within a few weeks.

UNIT 1

The Value of Human Life

◦ **From Israel**

Some versions of this mishnah do not include the word מִיִּשְׂרָאֵל (from Israel). For example, see Talmud Yerushalmi Sanhedrin 4:9.

We begin with some foundational texts about the value of human life. These texts provide background for the specific circumstances our ethics committee faces, and they introduce several concepts from the Talmud about what to do in situations where protecting one person’s life may threaten someone else’s.

This mishnah contains one of the most commonly quoted lines from the Talmud—though the context may surprise you! It’s about how, in capital cases, courts would intimidate witnesses in order to discourage them from lying.

SOURCE #1

משנה סנהדרין ד:ה

כִּיצַד מְאַיְמִין אֶת הָעֵדִים עַל
עֲדֵי נַפְשׁוֹת? הֲיֵי מִכְּנִיּוּסִין אוֹתָן
וּמְאַיְמִין עֲלֵיהֶן: שָׁמָּא תֵּאמְרוּ
מֵאֵמֶד, וּמִשְׁמוּעָה, עַד מִפִּי
עַד וּמִפִּי אָדָם נֶאֱמָן שְׁמַעְנוּ.
אוּ שָׁמָּא אֵי אַתֶּם יוֹדְעִין
שְׁסוֹפְנוּ לְבַדֵּק אֶתְכֶם בְּדִרְיָשָׁה
וּבְחִקְרָה?

הֲוֹ יוֹדְעִין שְׁלֹא כְּדִינֵי מְמוֹנוֹת
דִּינֵי נַפְשׁוֹת. דִּינֵי מְמוֹנוֹת,
אָדָם נוֹתֵן מְמוֹן וּמִתְכַּפֵּר לוֹ.
דִּינֵי נַפְשׁוֹת, דָּמוֹ וְדָם זְרַעֲיוֹתָיו
תְּלוּיִין בּוֹ עַד סוֹף הָעוֹלָם...

לְפִיכֵן נִבְרָא אָדָם יְחִידִי,
לְלַמְדֵךְ שֶׁכֵּל הַמַּאֲבָד נַפֶּשׁ
אֶחָת מִיִּשְׂרָאֵל, מַעֲלָה עָלָיו

Mishnah Sanhedrin 4:5

How did they intimidate witnesses in capital cases? They would bring them in and intimidate them, saying: Perhaps you are speaking based on conjecture, or hearsay, or because you heard testimony from another witness, or from a trustworthy person. Or perhaps you did not know that we will check you with examination and inquiry?

You must understand that capital cases are not like monetary cases. In monetary cases, a witness who lies may pay money and be atoned. But if a witness lies in a capital case, the blood of the litigant and their descendants are ascribed upon the witness for eternity...

For this reason, humanity was created from a single individual, to teach you that whoever destroys a single soul from Israel,[◦] it is as if they

○ **“The world was created for my sake.”**

R. Simha Bunim of Peshischa (1765-1827) taught that everyone should keep two phrases in their pockets. In one pocket, the phrase "the world was created for my sake." And in the other pocket, the phrase "I am dust and ashes" (Bereishit 18:27).

○ **Rambam**

An acronym for Rabbi Moshe ben Maimon, who lived in Spain and Egypt (1135-1204). His most significant work is the Mishneh Torah, a comprehensive codification of Jewish law from the Talmud. In addition, Rambam wrote a commentary on the Mishnah and philosophical works, such as The Guide of the Perplexed.

הַכְּתוּב בְּאֵלוֹ אֶבֶד עוֹלָם מֵלֵא.
וְכֹל הַמְּקִיִּים נֶפֶשׁ אַחַת מִיִּשְׂרָאֵל,
מַעֲלָה עָלָיו הַכְּתוּב בְּאֵלוֹ קִיִּים
עוֹלָם מֵלֵא.

destroyed an entire world. And whoever sustains a single soul from Israel, it is as if they sustained an entire world.

...וְלַהֲגִיד גְּדֻלַּתוֹ שֶׁל הַקְּדוֹשׁ בְּרוּךְ
הוּא, שְׂאֵדָם טוֹבֵעַ בְּמָה מִטְּבָעוֹת
בְּחוֹתָם אֶחָד וְכֵלֶן דּוּמִין זֶה לְזֶה,
וּמְלֶךְ מַלְכֵי הַמְּלָכִים הַקְּדוֹשׁ
בְּרוּךְ הוּא טָבַע כָּל אָדָם בְּחוֹתָמוֹ
שֶׁל אָדָם הָרִאשׁוֹן וְאִין אֶחָד מֵהֶן
דּוּמָה לְחֵבְרוֹ. לְפִיכֵן כָּל אֶחָד
וְאֶחָד חַיֵּב לוֹמַר, “בְּשִׁבְלֵי נִבְרָא
הָעוֹלָם.”

...And to declare the greatness of the Holy Blessed One: When a person mints many coins with one stamp they all look the same, but the King of Kings, the Holy Blessed One, created every person with the stamp of the first human, and yet not one of them is like another. Therefore, every single person must say, “the world was created for my sake.”

1. How do you understand what it means for each individual person to be “an entire world”? What could be the practical implications for thinking this way about yourself or other people?
2. Why would courts remind people about this idea before they testified? How might it impact their testimony?
3. How would you make decisions if you believe that “the world was created for my sake” —while acknowledging that this is also true for all human beings?

The idea that each human being is precious appears in many places throughout rabbinic literature. It is not only an abstract concept—there are numerous practical ways that halakha prioritizes the safeguarding of life. One example is the obligation to build a **מַעֲקֵה (ma'akeh, guardrail)** on your roof, which is explained by Rambam below.



◦ Devarim 22:8

כי תבנה בית
חדש, ועשית
מעקה לגגך;
ולא-תשים דמים
בביתך, כי-יפל
הנפל ממנו

When you build a new house, you shall make a *ma'akeh* (guardrail) for your roof, so that you do not bring bloodguilt on your house if anyone should fall from it.

◦ Tefahim

A *tefah* is a standard rabbinic unit of measurement. is understood to be 3-4 inches.

◦ Threat to life

Later halakhic authorities also forbade practices that they understood to be dangerous. For example, see Shulhan Arukh, Yoreh De'ah 116:5. Rema adds that a person should be more strict about risks to their own health than about risks of violating halakhah.

SOURCE #2

משנה תורה, הלכות
רוצח ושמירת נפש י"א

(1) מצות עשה לעשות
אדם מעקה לגגו שנאמר
"ועשית מעקה לגגך"
(דברים כב:ח)...

(4) אחד הגג ואחד כל
דבר שיש בו סכנה וראוי
שיכשל בה אדם וימות.
כגון שהיתה לו באר או
בור בחצרו בין שיש בו
מים בין שאין בו מים
חייב לעשות חליא גבוהה
עשרה טפחים או לעשות
לה כסוי כדי שלא יפל
בה אדם וימות. וכן כל
מכשול שיש בו סכנת
נפשות מצות עשה להסירו
ולהשמר ממנו ולהזהר
בדבר יפה. שנאמר
"השמר לך ושמר נפשך"
(דברים ד:ט).

ואם לא הסיר והניח
המכשולות המביאין לידי
סכנה בטל מצות עשה
ועבר ב"לא תשים דמים"
(דברים כב:ח).

(5) הרבה דברים אסרו
חכמים מפני שיש בהם
סכנת נפשות. וכל העובר

Mishneh Torah, Laws of a Murderer and the
Preservation of Life, Chapter 11

(1) It is a positive commandment for a person to build a *ma'akeh* (guardrail) around their roof, as it says: "And you shall make a *ma'akeh* for your roof" (Devarim 22:8)...[◦]

(4) This requirement applies to a roof, and similarly, to any place that might present danger and cause a person to stumble and die. For example, a person with a well or a pit in their courtyard—whether it's full of water or not—must erect a sand wall 10 *tefahim*[◦] (handbreadths) high around it, or make a cover for it, so that a person will not fall in and die. Similarly, it is a positive commandment to remove any obstacle that could pose a danger to life, and to be very careful regarding these matters, as it states: "Beware for yourself; and guard your soul" (Devarim 4:9).

A person who leaves a dangerous obstacle and does not remove it misses the opportunity to perform a positive commandment, and violates the negative commandment: "Do not cause blood to be spilled" (Devarim 22:8).

(5) Our Sages forbade many matters because they involve a threat to life.[◦] Whenever a person transgresses these guidelines, saying:

○ **Rebelliousness**

Lashes were a punishment given for violations of rabbinic prohibitions.

עֲלִיָּהוּן וְאוֹמֵר הֲרִינִי מִסַּבֵּן בְּעֵצְמִי וּמָה לְאַחֲרִים עָלַי בְּכֶךְ אוֹ אֵינִי מִקְפִּיד בְּכֶךְ מִכֵּין אוֹתוֹ מִכַּת מְרֻדוֹת:	‘I will risk my life, what does this matter to others?’ or ‘I choose not to be careful about these things,’ they should be punished with lashes for rebelliousness.○
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Rambam explains that the mitzvah to build a *מַעֲקֶה* (*ma'akeh*, guardrail) on a roof is one way that the Torah obligates us to protect our lives and the lives of those around us, but there are many other ways that this protective attitude can come into play. In the continuation of this chapter, Rambam lists certain behaviors that were forbidden because, at the time, they were considered risky, such as drinking liquids that had been left uncovered and could have been contaminated by toxins.

1. What are some modern-day examples of risks that could be included in the categories described above?
2. What’s your opinion: Are there certain types of risks that a person can justify taking? How should you determine whether it’s responsible to take a risk in a given situation?
3. Do you think it matters if taking the risk might help prevent harm—either to yourself or to someone else?

We have seen how the Talmud regards each individual life as an entire world, and that there is a mitzvah to protect ourselves and the people around us from unwarranted risks. But what about when there is a tension between protecting your life and saving the life of someone else—whose life comes first? Here are three key passages in the Talmud that engage this question, with each passage rooted in a different core idea.

SOURCE #3 □

תַּמְלוּד בַּבְּלִי בְּבֵא מְצִיעָא דְּף סָב עֵמוּד א	Talmud Bavli Bava Metzia 62a
שְׁנַיִם שָׁהוּ מְהַלְכִין בְּדֶרֶךְ וּבְיַד אֶחָד מֵהֶן קִיתוֹן שֶׁל מַיִם. אִם שׁוֹתִין שְׁנֵיהֶם,	Two people were walking on a barren path and there was a jug of water in the possession of one of them. If both drink from the jug, both

○ **Vayikra 25:36**


אל-תִּזְכַּח מֵאֲתוֹ
נֶשֶׁךְ וְתִרְבִּית,
וְנִרְאִיתָ מֵאֲלֻזִּיךָ;
וְחֵי אָחִיךָ עִמָּךְ

You shall not take from them interest or increase, and you shall fear your God, and your brother shall live with you.

○ **Ben Petora**

See R. Naftali Zvi Yehuda Berlin in Ha'amek She'eilah 147 for an analysis of Ben Petorah's position.

○ **Situations**

See Peninei Halakhah, Likkutim II 11:12  for a discussion of related cases.

○ **Principle of Torah**

Sifra (Kedoshim 4:12)

מֵתִים. וְאִם שׁוֹתֵה אֶחָד
מֵהֶן, מִגִּיעַ לְיָשׁוּב.

will die. But if one of them drinks, that person will be able to reach a settled area.

דָּרַשׁ בֶּן פֶּטוּרָא: מוֹטֵב
שְׂיִשְׁתּוּ שְׁנֵיהֶם וְיָמוּתוּ,
וְאֵל יִרְאֶה אֶחָד מֵהֶם
בְּמִיתַתוֹ שֶׁל חֲבִירוֹ. עַד
שָׁבָא רַבִּי עֲקִיבָא וְלִימַד:
”וְחֵי אָחִיךָ עִמָּךְ” (וִיקְרָא
כַּהֲלוֹ)– חֲיִיךָ קוֹדְמִים
לְחַיֵּי חֲבִירֶךָ.

Ben Petora taught: It is preferable that both of them drink and die, and let neither one of them see the death of the other. Until R. Akiva came and taught the verse: “And your brother shall live with you” (Vayikra 25:36^o), indicating that your life takes precedence over the life of your fellow.

1. How do you understand the significance of the debate between Ben Petora^o and R. Akiva? What values does each of them prioritize?
2. According to your understanding of R. Akiva, is the person with the water allowed to offer the water to the second person, or are they *obligated* to drink it themselves?
3. What do you think R. Akiva would say in each of the following situations:^o
 - What if the second person said to the person with the jug, “let’s both drink a little of the water, so that we can both live a little longer and perhaps we will both be rescued.” How do you think R. Akiva would instruct the person with the water to reply?
 - In the Gemara, one of the people is already in possession of the jug of water. But what if neither of them is currently in possession of the water and then they come across a single jug while walking in the desert? Would the verse of “And your brother shall live with you” still apply in the same way? Why or why not?
4. How does this case compare to our case with a potential liver transplant? What’s similar and what’s different?
5. This is the same R. Akiva who taught that “love your neighbor as yourself” is the great principle of the Torah.^o How could he have that opinion and also rule that, if you are the one with the jug of water, you should drink it? Is there a contradiction between these two positions?

In the text above, R. Akiva interpreted the verse “and your brother shall live with you” to dictate that you should prioritize your own life. Here’s a different passage, from elsewhere in the Talmud, about a case where you are **not** supposed to put your own life first. In this case, a person is coerced into making one of two extreme choices—either to kill an innocent person, or to allow themselves to be killed.

SOURCE #4

<p>תלמוד בבלי סנהדרין דף עד עמוד א</p>	<p>Talmud Bavli Sanhedrin 74a</p>
<p>ורוצח גופיה מנא לן? סברא היא: דההוא דאתא לקמיה (דרבא), אמר ליה, אמר לי מרי דוראי: קטליה לפלגיא, ואי לא—קטילנא לך.</p>	<p>From where do we know that you must allow yourself to be killed rather than commit murder? It is derived through reason, as in the case of someone who came before Rava and said to him, “The master of my village said to me: Kill so-and-so, and if not—I will kill you.”</p>
<p>אמר ליה: נקטלך ולא תקטול. מאי חזית דדמא דיךך סומק טפי? דילמא דמא דההוא גברא סומק טפי!</p>	<p>Rava said to him: “Let yourself be killed rather than kill. What did you see to assume that your blood is redder? Perhaps the blood of that person is redder!”</p>

1. What do you think Rava means about not being able to assume that one person’s blood is redder than another person’s? How would you articulate this principle in your own words?
2. Are there situations where you *could* assume that one person’s blood is redder than someone else’s? Why or why not?
3. Is it possible to agree with Rava in this text **and** with R. Akiva in the previous passage, who ruled that your life comes first? In what ways are the two cases similar to or different from each other?

We conclude this unit with a third case where one person's life is threatened by another person. The Mishnah addresses a situation where a pregnant woman's life is at risk while delivering a baby. If the delivery puts the mother's life in danger, whose life should be prioritized? This mishnah explains that it depends on the stage of the birthing process.

SOURCE #5

משנה אהלות ז:

האשה שהיא מקשה לילד, מחתכין את הולד במעיה ומוציאין אותו אברים אברים, מפני שחיייה קודמין לחייו.

יצא רבו, אין נוגעין בו, שאין דוחין נפש מפני נפש.

Mishnah Oholot 7:6

If a woman is having difficulty giving birth, the child may be dismembered and removed limb by limb from her womb, because her life takes precedence over its life.

If the majority has emerged from her body, then we do not intervene, because one *nefesh* (life) is not pushed aside for another.

In the first case in the mishnah, the majority of the child is still within the mother's womb, and so the mother's life takes priority. Here's how Rashi explains this halakhah.

SOURCE #6

רש"י על סנהדרין דף עב עמוד ב

דכל זמן שלא יצא לאויר העולם לאו נפש הוא ונתן להרגו ולהציל את אמו.

Rashi on Sanhedrin 72b

For as long as the child has not emerged into the world, it is not considered a *nefesh* (life) and it is permissible to kill it in order to save its mother.

○ **“One *nefesh* (life) is not pushed aside for another.”**

Cases of self-defense are an exception to this principle. See Sanhedrin 72a, which derives this from Shemot 22:1.

In the mishnah’s first case, only the mother is considered a full-fledged **נֶפֶשׁ (nefesh, life)**. However, in the second part of the mishnah, the baby has also attained *nefesh* status, since a majority of its body has emerged. For this reason, the mishnah’s ruling is that we may not intervene—“one *nefesh* (life) is not pushed aside for another.”○



1. How do you understand this idea of “one *nefesh* (life) is not pushed aside for another?”
2. What if doctors can assess that the baby is unlikely to survive in the second case of the mishnah? Should the same principle of not favoring one life over another be upheld, or should doctors intervene to protect the mother’s life even if it means that the baby would certainly not survive? Can you argue both sides?
3. Consider this mishnah along with the previous two texts. Is there a clear principle or overarching value that runs through all three, or are they in tension with each other?

○ **Take a step back** ○

In this unit, we explored core rabbinic texts that address the value of each individual life and the difficult choices that sometimes force us to prioritize one life over another. We have seen how, in certain contexts, halakhah requires a person to put themselves first, while in other situations the opposite is true.

1. How do these initial texts shape the way that you are thinking about the case? How might you apply these texts to Sam and Eitan’s conundrum, and how might these texts guide more general hospital policy?
2. What unanswered questions do you have about how to prioritize human lives? What else does your Beit Din need to consider to reach a well-reasoned halakhic solution?

UNIT 2

The Responsibility to Intervene

o Megillat Esther

The book of Tanakh that is read on the holiday of Purim. It recounts how Esther and Mordechai saved the Jewish people from Haman's plot to destroy them.

In the previous unit we saw a prohibition against putting yourself or other people in needlessly risky situations. But what if someone is already in harm's way—is there an obligation to intervene? The Talmud's answer to this question is a resounding yes. However, it is complex to determine how and when this obligation applies. This complexity is critical to the case before the hospital's ethics committee.

Before we get to the Talmud and the debates about how to understand it, let's begin with chapter 4 of *מגילת אסתר* (*Megillat Esther*, the Book of Esther).^o At this point in the story, Haman has just convinced King Ahashveirosh to allow all of the Jews in his kingdom to be killed on the 13th of Adar. While reading chapter 4, pay special attention to Mordechai's request of Esther, and to the degree of responsibility and risk that she is being asked to take on.

SOURCE #7

אסתר פרק ד

“וּמֹרְדֵכַי יָדַע אֶת-כָּל-אֲשֶׁר
נַעֲשָׂה וַיִּקְרַע מְרֹדֵכַי אֶת-בְּגָדָיו
וַיִּלְבַּשׁ שָׁק וַאֲפֹר וַיֵּצֵא בְּתוּךְ
הָעִיר וַיִּזְעַק וַעֲקָה גְדוּלָה וּמְרָה:
יָוִיבוֹא עַד לִפְנֵי שַׁעַר-הַמֶּלֶךְ
כִּי אֵין לְבוֹא אֶל-שַׁעַר הַמֶּלֶךְ
בְּלְבוּשׁ שָׁק: יִבְכְּלוּ-מְדִינָה
וּמְדִינָה מְקוֹם אֲשֶׁר דִּבְרַה־הַמֶּלֶךְ
וְדָתוֹ מֵגִיעַ אֲבָל גְּדוֹל לִיהוּדִים
וְצוּם וּבְכִי וּמִסָּפַד שָׁק וַאֲפֹר יֵצֵעַ
לְרַבִּים: וַתְּבוֹאֲנָה נְעוּרוֹת אֶסְתֵּר
וְסָרִיסָיָהּ וַיִּגִּדוּ לָהּ וַתִּתְחַלְחַל
הַמַּלְכָּה מְאֹד וַתִּשְׁלַח בְּגָדִים

Esther Chapter 4

¹Mordechai found out everything that had happened. He tore his clothes, dressed in rags, and put ashes on himself. He went out into the city and cried a great and bitter cry. ²He went right up to the king's court, because it was not allowed to enter the king's court in rags. ³In every province, wherever the king's law reached, there was great mourning among the Jews. They fasted, cried, and grieved. Everyone put on rags. ⁴Esther's servants came and told her about Mordechai's behavior, and she was very disturbed. She sent clothes

להלביש את-מרדכי ולהסיר שקו מעליו ולא קבל: "ותקרא אסתר להתך מסריסי המלך אשר העמיד לפניך ותצוהו על-מרדכי לדעת מה-זה ועל-מה-זה: "ויצא התך אל-מרדכי אל-רחוב העיר אשר לפני שער-המלך: "ויגד-לו מרדכי את כל-אשר קרהו ואת פרשת הכסף אשר אמר המן לשקול על-גגני המלך ביהודים לאבדם: "ואת-פתשגן כתב-הדת אשר-נתן בשושן להשמידם נתן לו להראות את-אסתר ולהגיד לה ולצוות עליה לבוא אל-המלך להתחנן-לו ולבקש מלפניו על-עמה: "ויבוא התך ויגד לאסתר את דברי מרדכי: "ותאמר אסתר להתך ותצוהו אל-מרדכי: "כל-עבדי המלך ועם-מדינות המלך ידעים אשר כל-איש ואשה אשר יבוא-אל-המלך אל-החצר הפנימית אשר לא-יקרא אחת דתו להמית לבד מאשר יושיט-לו המלך את-שרביט הזהב וחייה ואני לא נקראתי לבוא אל-המלך זה שלושים יום: "ויגידו למרדכי את דברי אסתר: "ויאמר מרדכי להשיב אל-אסתר אל-תדמי בנפשך להמלט בית-המלך מכל-היהודים: "כי אם-החפש תחרישי בעת הזאת רוח והצלה יעמוד ליהודים ממקום אחר ואת ובית-אביך תאבדו ומי יודע אם-לעת כזאת הגעת למלכות: "ותאמר אסתר להשיב אל-מרדכי: "הלך בנוס את-כל-היהודים הנמצאים בשושן וצומו עלי ואל-תאכלו ואל-תשתו שלשת ימים לילה ויום גם-אני ונערתי אצום בן ובני אבוא אל-המלך אשר לא-כדת וכאשר אבדתי אבדתי: "ויעבר מרדכי ויעש ככל אשר-צוהה עליו אסתר:

for Mordekhai to wear instead of his rags, but he wouldn't accept it.⁵ Esther called her servant Hatakh and commanded him to figure out what exactly was going on with Mordekhai.⁶ Hatakh went out and found Mordekhai in the city square right in front of the king's court.⁷ Mordekhai told him about everything that happened, including the silver that Haman said he would measure out from the king's vault in order to annihilate the Jews.⁸ Mordekhai gave Hatakh the published decree that had been posted in Shushan to show it to Esther. Mordekhai sent Hatakh back to command Esther to go to the king and beg for her people.⁹ Hatakh came back and told Esther what Mordekhai said.¹⁰ Esther told Hatakh to go command Mordekhai:¹¹ "Everyone in the kingdom knows that anyone who enters the king's inner chamber without being summoned shares the same verdict: death! The only exception is if the king extends his golden scepter. And I have not been summoned to the king for 30 days."¹² They told Mordekhai what Esther said.¹³ Mordekhai sent this message back to Esther: "Don't imagine that you alone of all the Jews will be saved in the king's palace.¹⁴ If you keep silent now, the Jews will be saved another way, and you and your family will be lost. And who knows if you became queen for this very moment?"¹⁵ Esther sent this message back to Mordekhai:¹⁶ "Go gather together all the Jews of Shushan and fast for me. Don't eat or drink for three whole days. My servants and I will also fast. And so I will go to the king, breaking the law. And if I die, then I shall die."¹⁷ So Mordekhai went and did everything Esther commanded him.

o “And you shall restore it to him” (Devarim 22:2)

The context of this proof-text is a totally different topic: returning a lost animal. But the two words at the end of the verse seem extraneous, and they have a somewhat unusual grammatical formulation, so the rabbis assign them a different, more expansive meaning: “And you shall restore it—life!—to him.”

1. In verse 8, Mordekhai sends a message through Hatakh that Esther should plead with Ahashveirosh for mercy. Esther replies that coming into the king’s chambers without being called would put her life in jeopardy (verse 11). Do you think Mordekhai was aware of the risk that he was asking Esther to take on? Why or why not?
2. How do you understand what Esther means when she says in verse 16, וְכִנְאֶשֶׁר אֶבְדֶּתִי אֶבְדֶּתִי (And if I die, then I shall die)? What do you think makes Esther change her mind from the concerns that she conveyed in verse 11?
3. What lessons can we draw from this text about when it is appropriate or inappropriate to take a serious risk?

With this narrative from Esther in mind, let’s turn to the core passage in the Talmud about the obligation to intervene when you see someone in harm’s way, which is derived from a Torah verse.

SOURCE #8 ס

תלמוד בבלי סנהדרין דף עג עמוד א	Talmud Bavli Sanhedrin 73a
<p>גופא: מנין לרואה את חברו שהוא טובע בנהר, או חיה גוררתו, או לסטין באין עליו, שהוא חייב להצילו? תלמוד לומר: “לא תעמד על דם רעך” (ויקרא יט:טז).</p>	<p>From where [in the Torah] is it derived that if you see someone drowning in a river, or being dragged away by a wild animal, or being attacked by bandits, that you are obligated to save them? The verse states: “Do not stand by the blood of your fellow” (Vayikra 19:16).</p>
<p>והא מהכא נפקא? מהתם נפקא! אבדת גופו מניין? תלמוד לומר: “והשבתו לו” (דברים כב:ב).</p>	<p>But is it really derived from here? It is actually derived from there! [As it was taught elsewhere:] From where do we know to prevent loss of someone’s body? From the verse: “And you shall restore it to him” (Devarim 22:2).^o</p>
<p>אי מהתם, הנה אמינא: הני מילי בנפשיה, אבל מיטרח ומיגר אגורי –</p>	<p>If we only had the latter verse, I would have thought this obligation applies only to saving a person in danger by yourself. But to exert and</p>

UNIT 2 | The Responsibility to Intervene

○ Talmud

Yerushalmi

One of the two compilations of the Oral Torah's discussions on the Mishnah, completed in the Land of Israel around the 4th–5th century CE. It is considered less authoritative than the Talmud Bavli (Babylonian Talmud), which was the primary center of Jewish learning at the time.

אימא לא. קא משמע לן.

hire workers, I would have thought that was unnecessary. Therefore, the verse “Do not stand by the blood of your fellow” teaches us that you must even hire workers.

The phrase **לֹא תֵעָמַד עַל דַּם רֵעֶךָ** (*lo ta'amod al dam rei'ekha*, do not stand by the blood of your fellow) is a bit difficult to understand. If you look it up (Vayikra 19:16), you can see that the context doesn't necessarily give a lot of clues! The Talmud interprets the phrase as an articulation of an obligation to intervene in a situation where someone's life is in danger.



The Talmud also mentions another potential proof-text for this obligation, **וְהֵשִׁבְתוּ לוֹ** (And you shall restore it to him). You can see in the Talmud that the first proof-text, **לֹא תֵעָמַד עַל דַּם רֵעֶךָ** (do not stand by the blood of your fellow), is considered the stronger one.

1. Based on this text from the Gemara, how would you describe the obligation of **לֹא תֵעָמַד עַל דַּם רֵעֶךָ** (do not stand by the blood of your fellow)? How exactly are you required to intervene? Are there limits?
2. From the examples listed in this passage, does the principle of **לֹא תֵעָמַד עַל דַּם רֵעֶךָ** (do not stand by the blood of your fellow) apply to situations where intervening would require you to place yourself in danger? How do you know?

The answer to this last question is highly contested. The remainder of this unit features texts which indicate that **לֹא תֵעָמַד עַל דַּם רֵעֶךָ** (do not stand by the blood of your fellow) **does** apply when intervening would put your own life in danger. In Unit 3, we will see a range of opinions which take the other side of this debate and argue that halakhah does **not** require a person to risk their life in order to save someone else.

SOURCE #9

תלמוד ירושלמי תרומות ח:ד

Talmud Yerushalmi Terumot 8:4^o

רבי איסי איתציד בספסופה.

R. Issi was captured by bandits.

○ Hagahot

Maimoniyot

A 13th-century commentary on the Rambam's Mishneh Torah written by R. Meir HaKohen of Rothenburg.

○ Beit Yosef

A halakhic commentary on the Tur (14th century), published by R. Yosef Karo (1488-1575). It is a precursor to R. Yosef Karo's most influential text, the Shulhan Arukh. The Shulhan Arukh remains the most widely accepted compilation of halakhah. It is often the first source that is consulted when delving into a halakhic question.

אָמַר רַבִּי יוֹנָתָן יִכְרֹךְ הַמֶּת
בְּסִדְּוֹ. אָמַר רַבִּי שְׁמַעוֹן בֶּן
לֵקִישׁ עַד דְּאַנָּא קְטִיל וְאַנָּא
מִיתְקַטִּיל אֲנָא אִיזִיל וּמְשִׁיב
לִיה בְּחַיִּילָא.

R. Yohanan said: Prepare his shrouds to bury him. R. Shimon ben Lakish said: Even if I should kill or be killed, I shall go and save him by force.

1. How would you explain R. Shimon ben Lakish's position—does he think that risking his life is an obligation, or simply the right thing to do? Is it clear one way or the other?
2. How is R. Shimon ben Lakish's position similar or different from Esther's?

Some halakhic authorities view this passage in the Talmud Yerushalmi as a source of the obligation to intervene to save someone's life—even if it would put your own life at risk. For example, this is the position of the Hagahot Maimoniyot^o and later, the Beit Yosef.^o

SOURCE #10 ס

<p style="text-align: center;">בית יוסף חושן משפט סימן תכו</p> <p>וּכְתָבוּ הַגְּהוֹת מִיְמוֹנִיּוֹת עֵבֶר עַל לֹא תַעֲמֹד וְכוּ' בִּירוּשָׁלַיִם מִסִּיק אֶפְלוּ לְהַכְנִים עֲצָמוֹ בְּסַפֵּק סָבְנָה חַיִּב עַד כָּאן. וְנִרְאָה שֶׁהַשַּׁעַם מִפְּנֵי שְׁהִלָּה וְדַאי וְהוּא סַפֵּק. וְכָל הַמְקִים נֶפֶשׁ אַחַת מִיִּשְׂרָאֵל כְּאֵלוֹ קַיִם עוֹלָם מְלֵא.</p>	<p>Beit Yosef, Hoshen Mishpat 426</p> <p>It is written in Hagahot Maimoniyot: the Talmud Yerushalmi concludes that a person is obligated to intervene on behalf of another person, even if it requires entering a situation of possible danger. Otherwise they would be in violation of “do not stand by the blood of your fellow.” It appears that the reason for this is because the other person is in certain danger (<i>vadai sakanah</i>) while the rescuer is only in possible danger (<i>sfeik sakanah</i>). And whoever sustains a single soul from Israel, it is as if they sustained an entire world.</p>
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○ **Nefesh HaRav**

A collection of R. Joseph B. Soloveitchik's (1903-1993) personal customs, halakhic rulings, and philosophical insights, compiled by his student R. Hershel Schachter.

○ **R. Hayyim Soloveitchik**

A Lithuanian rabbi who is most well known for developing an analytical approach to Talmud study known as the "Brisker method" (1853-1918).

According to the Hagahot Maimoniyot and the Beit Yosef, R. Shimon ben Lakish saw himself as obligated to try to rescue R. Issi because R. Shimon ben Lakish had a status of **סְפִיק סַכָּנָה** (*sfeik sakanah*, possible danger). If he were to intervene, he might be endangered. However, R. Issi was certainly in a position of serious harm.

1. How do you understand the categories of **וַדַּאי סַכָּנָה** (*vadai sakanah*, certain danger) and **סְפִיק סַכָּנָה** (*sfeik sakanah*, possible danger)? Is it always clear which category a person belongs in? Try to come up with some examples where these terms could be applied.
2. Can these categories be applied to Eitan and Sam? Why or why not?

KEY TERM

The position of the Hagahot Maimoniyot and the Beit Yosef is not necessarily the majority opinion among halakhic authorities (as we will see in the next unit). However, there are some rabbis who have relied on this position when facing similar circumstances. Here's one example.

SOURCE #11

נפש הרב קסו-קסו

פַּעַם הִיְתָה בְּבְרִיֶּסְק מַגַּפַּת חוֹלֵרָע. וְלִמְרוֹת שְׁהִיא מַחֲלָה הַמְדַבֶּקֶת מְאוֹד, הוֹרָה רַב חַיִּים סוֹלוֹוֵיִצְיִיק שְׁהַכֵּל מְחַיְבִים לַעֲזוֹר לְאֵלוּ שְׁהַתְּעַלְפוּ בְּרַחוּבוֹת מַחֲלֵשֶׁת הַמַּחֲלָה, וְלִסְיַעַם בְּכָל מָה שְׁאֵפְשֶׁר. דָּאֵלוּ שְׁהַתְּעַלְפוּ הֵם בְּבַחֲיִנַּת וַדַּאי סַכָּנָה, וְהִבָּא לְסִיַּע רַק מְכַנִּים אֶת עַצְמוֹ לְכָלֵּל סַפֵּק סַכָּנָה. וְהָיָה סְבוֹר כְּדַעַת הַגְּהוֹת מִיְמוֹנִיּוֹת בְּשֵׁם הִירוּשָׁלְמִי דְבָכָל כִּי הָאִי גִּוְנָא מְחַיְב הָאָדָם לְהַכְנִס אִישׁ בְּסַפֵּק סַכָּנָה

Nefesh HaRav, p. 166-167

There was once a cholera epidemic in Brisk. Although it is a highly contagious disease, R. Hayyim Soloveitchik ruled that everyone was obligated to help those who had collapsed in the streets from the weakness caused by the illness, and to assist them in every possible way. He explained that those who had collapsed were in the category of *vadai sakanah* (certain danger), while people coming to help were only placing themselves in a situation of *sfeik sakanah* (possible danger). He followed the opinion of the Hagahot Maimoniyot quoting the Talmud Yerushalmi that in this type of case, a person is obligated to enter into a situation of *sfeik sakanah* to rescue the

בְּכַדִּי לְהַצִּיל אֶת חֲבֵרוֹ מִוַּדַּי סָכָנָה.

וּפְעַם אֶף הִסִּיר אֶת הַמְּעִיל שֶׁלוֹ
אֶף עַל פִּי שְׁעַל יְדֵי כֵּן הִסְתַּכֵּן קֶצֶת
בְּעֵצְמוֹ פֶּן בְּחַלְיִשׁוֹת גּוֹפּוֹ מִכַּח הַקּוֹר
תִּדְבֹּק בּוֹ מַחְלַת הַחוֹלִירָע, בְּכַדִּי
לְכַסּוֹת בּוֹ אֶחָד מֵהַחוֹלִים הַמְּסֻכָּנִים
עַד שֶׁהִכְנִסוּהוּ לְבֵיתוֹ. הִגְאֹזן רַב
חַיִּים לֹא נִחְלוּ בְּזֶה, אֲךָ כְּמָה
מֵהַמְּסִיעִים הָאֲחֵרִים כֵּן נִחְלוּ וְאֶף
מֵתוּ.

other person from *vadai sakanah*.

On one occasion, he even removed his own coat—
despite the fact that doing so posed some risk to himself,
as the cold could weaken his body and increase the
chance of contracting cholera—in order to cover one
of the critically ill patients until they could be brought
indoors. R. Hayyim did not become ill from this, but
several of the others who assisted did fall ill, and some
even died.

1. Do you agree with R. Soloveitchik's application of the Hagahot Maimoniyot, which is based on the Talmud Yerushalmi?
2. How much risk would he claim that a person is obligated to assume in order to try saving someone else? Is there a limit?
3. In what way is this case similar to or different from Source 3? (The case of the two people traveling in the desert, where R. Akiva ruled that the person with the water does not need to sacrifice their own life for someone else's.)

○ Take a step back ○

In this unit, we explored the obligation to intervene on behalf of someone else, rooted in the Torah's prohibition: לֹא תֵעָמַד עַל דַּם רֵעֶךָ (do not stand by the blood of your fellow). Furthermore, we saw halakhic authorities who concluded from the Talmud Yerushalmi that this prohibition applies to situations where intervening would put the rescuer in danger. Which of these examples are most relevant to the circumstances of our case? Are there any texts which you feel should **not** be applied to our case, and if so, why not?

UNIT 3

Hasid Shoteh: The Pious Fool

◦ Radbaz

R. David ben Solomon ibn Zimra was a 15th-16th century halakhic authority and kabbalist known for his thousands of responsa. He was born in Spain, and after his family was expelled in 1492, he lived in Israel, Egypt, and Morocco.

In the last unit, we saw that there might be an obligation to intervene when someone is in harm's way, even at the cost of putting your own life at risk. This was based on a strict interpretation of *לֹא תַעֲמֹד עַל דַּם רֵעֶךָ* (do not stand by the blood of your fellow), and on a narrative in the Talmud Yerushalmi where R. Shimon ben Lakish risks his life to save R. Issi (or at least he says would be willing to do so!).

However, numerous halakhic authorities argue to the contrary—that *לֹא תַעֲמֹד עַל דַּם רֵעֶךָ* (do not stand by the blood of your fellow) does **not** extend to situations that would endanger the rescuer.

For example, Radbaz[◦] was asked about a deeply challenging scenario:

SOURCE #12

תשובות הרדב"ז
חלק ג:תרכ"ז

Responsa of R. David ibn Zimra (Radbaz)
3:627

שאלת ממני אודיעך דעתי על
מה שראית כתוב אם אמר
השלטון לישראל הנה לי לקצץ
אבר אחד שאינך מת ממנו או
אמית ישראל חבדך. יש אומרים
שחייב להניח לקצץ האבר הואיל
ואינו מת...

You asked for my opinion regarding a case you had read: If a ruler tells a Jew, "Let me amputate one of your limbs—which will not kill you—or else I will kill your fellow Jew." There are those who claim that a person is obligated to have their limb cut off, since it would not lead to their death...

○ **Mishlei 3:17**

דְּרָכֶיהָ דְּרָכֵי נֵעִם
וְכָל נְתִיבוֹתֶיהָ
שְׁלוֹם

Her ways
are ways of
pleasantness,
and all her paths,
peaceful.

Radbaz rejects this claim in a long reply. Here are some key points from his response:

דִּלְמָא עַל יְדֵי חֲתִיכַת אַבְרָא אַף עַל
פִּי שְׂאִין הַנְּשָׁמָה תְּלוּיָהּ בּוֹ שְׂמָא
יֵצֵא מִמֶּנּוּ דָּם הַרְבֵּה וְיָמוּת. וּמֵאֵי
חֲזִית דְּדָם חֲבֵרוֹ סַמֵּק טַפֵּי? דִּלְמָא
דְּמָא דִּידָהּ סַמֵּק טַפֵּי. וְאַנִּי רְאִיתִי
אַחַד שְׂמַת עַל יְדֵי שְׂסָרְטוֹ אֶת
אַזְנוֹ שְׂרִיטוֹת דְּקוֹת לְהוֹצִיא מֵהֶם
דָּם וְיֵצֵא כָּל כֶּךָ עַד שְׂמַת. וְהָרִי
אִין לָךְ בְּאַדָּם אַבְרָא קַל כְּאַזְן וְכָל
שְׂכֵן אִם יַחֲתִכוּ אוֹתוֹ!

...ותו דכתיב דרביה דרבי נעם
וצריך שמשפטי תורתנו יהיו
מסכימים אל השכל והסברא.
ואיך יעלה על דעתנו שיניח אדם
לסמא את עינו או לחתך את
ידו או רגלו כדי שלא ימיתו את
חברו? הלכך איני רואה טעם לדון
זה אלא מדת חסידות ואשרי
חלקו מי שיוכל לעמד בזה.



ואם יש ספק סכנת נפשות הרי זה
חסיד שוטה דספיקא דידה עדיף
מונדאי דחברה.

Even though the limb itself may not be life-sustaining, cutting it off might cause heavy bleeding and result in death. What did you see to assume that your fellow’s blood is redder? Perhaps your own blood is redder! I once saw a person die after his ear was scratched in order to draw blood. The ear is among the least vital of limbs—how much more so if it were cut entirely!



...Furthermore, Scripture states, “Her ways are ways of pleasantness” (Mishlei 3:17^o)—our Torah laws must align with logic and human reason. How can it be that a person should permit their eye to be blinded, or their hand or foot to be cut off to save another’s life? Therefore, I do not see any obligatory basis for this, only an act of extraordinary piety. Fortunate is the one who can withstand such a test!

But if there is even a possibility of danger to life, then one would be a *hasid shoteh* (pious fool), because your possible danger takes precedence over your fellow’s certain danger.

Radbaz first advises not to underestimate the risks involved in losing a limb, which may become life-threatening. Second, he writes that it is inconceivable

that the Torah would mandate for a person to undergo such a traumatic experience. While it is commendable to do so, there is no obligation. Third, Radbaz holds that if there is even a possibility of life-threatening danger, a person who risks their life would be a  **חַסִּיד שׁוֹטֵה** (*hasid shoteh*, pious fool).  KEY TERM

1. What does Radbaz mean by the phrase, “perhaps your own blood is redder”? How is this similar to or different from the way that this phrase is used in Source 4?
2. How does Radbaz apply the verse of “her ways are ways of pleasantness” to this case? What does that tell you about how he understands the meaning of this verse?
3. What do you think Radbaz means by saying that a person would be a *hasid shoteh* (pious fool) by consenting to having their limb removed?
4. Based on your reading of this passage, can you choose to be a *hasid shoteh*, if you want to try rescuing another person, or is it prohibited?
5. Returning to our case, could Eitan be considered a *hasid shoteh* by attempting to donate his liver to his brother? Why or why not?

Radbaz is not the only halakhic authority to maintain this position. The next source is a halakhah that appears regarding an accidental killer in an  **עִיר מִקְלָט** (*ir miklat*, city of refuge).  KEY TERM

Some background: The Torah (Bemidbar 35) details the mitzvah to establish six cities of refuge. If a person killed someone else unintentionally, they could seek asylum in one of these cities, called an *ir miklat*. There, the accidental killer was protected from the relatives of the deceased, who had the legal authority to take vengeance on the killer in any other location. After the death of the **כֹּהֵן גָּדוֹל** (*kohen gadol*, high priest), the accidental killer would be allowed to move out of the *ir miklat* and reintegrate into society without fear of reprisal.

Since it was dangerous for an accidental killer to leave the *ir miklat*, they would remain there until the *kohen gadol* died. But what if the accidental killer had the opportunity to save someone’s life? Should they leave the *ir miklat*—which would endanger their own life? Or should they stay put in their place of safety?

○ **Yoav ben Tzeruyah**

The general of King David's army.

○ **Ohr Sameah**

A major commentary on the Mishneh Torah, written by R. Meir Simhah of Dvinsk (1843–1926). He was a leading Lithuanian rabbi and halakhic authority of his time.

Here's Rambam's ruling:

SOURCE #13 ☞

משנה תורה,
הלכות רוצח
ושמירת נפש ז:ח

הגולה אינו יוצא מעיר
מקלטו לעולם, ואפלו לדבר
מצוה או לעדות בין עדות
ממון בין עדות נפשות.
ואפלו להציל נפש בעדותו
או להציל מיד העובד
כוכבים או מיד הנהר או
מיד הדלקה ומן המפלת.
ואפלו כל ישראל צריכין
לתשועתו כיוצא בן צרויה
אינו יוצא משם לעולם עד
מות הכהן הגדול. ואם יצא
התיר עצמו למיתה כמו
שבארנו.

**Mishneh Torah,
Laws of a Murderer
and the Preservation of Life 7:8**

A person who was exiled to a city of refuge should never leave their *ir miklat*, not even to perform a mitzvah or to deliver testimony—neither testimony involving monetary matters, nor testimony involving a capital case. They should not leave even if they could save a life by delivering testimony, or even if they could save a person from gentiles, from a river, from a fire, or from an avalanche. This applies even if they are a person like Yoav ben Tzeruyah,^o upon whom the salvation of the entire Jewish people may depend. They should never leave the *ir miklat* until the death of the *kohen gadol*. Leaving (the *ir miklat*) means allowing your own death, as explained.

Rambam rules that the accidental killer should remain in the *ir miklat*, even if they have the potential to save multiple lives by leaving! But why? Shouldn't the obligation to save lives override the requirement to remain in the *ir miklat*? Here is how the Ohr Sameah commentary explains Rambam's position.

SOURCE #14 ☞

אור שמח על משנה תורה,
הלכות רוצח ושמירת נפש ז:ח
למה אינו יוצא? הלא פקוח

**Ohr Sameah on Mishneh Torah, Laws of a
Murderer and the Preservation of Life 7:8**
Why should one not leave the city of refuge

נפש דוחה כל מצות שבתורה
ומכל שכן פקוח נפש דכל ישראל
ואסתר תוכיח.

רק דנגד השבע אין לנו להוסיף
אחרי מצות יוצר השבע, חוקר
בליות ולב. הוא אומר כי אם יחס
לבב הגואל להרגו אין לו משפט
מות, תו אין יכולים בית דין
להמיתו.

וכיון שהתר דמו לגואל הדם אין
לו להכניס עצמו בספק סכנה
עבור הצלת חברו מסכנה ונדאית,
בן נראה.

in this case? After all, doesn't *pikuah nefesh* (saving a life) override all the commandments in the Torah? And certainly the saving of all of Israel, and Esther, is proof of that.

However, when it comes to things that are against our nature, we are not permitted to go beyond the commandments of the Creator of nature, the One Who examines the heart and mind. God is the One Who said that if the heart of the avenger becomes heated to kill the accidental killer, then the avenger would have no liability for the death penalty. The court would not be able to execute the avenger.

Since the avenger is permitted to kill, the accidental killer is not obligated to get into a dangerous situation in order to save someone else from certain danger. This is what appears to me.

According to the Ohr Sameah, Rambam's position is based on the notion that an accidental killer is not obligated to put their own life at risk in order to rescue others.

- » Compare and contrast this position of the Ohr Sameah with the position of R. Hayyim Soloveitchik (source 11), who lived at the same time. Is it possible to reconcile their positions? Why or why not?

As further proof that there is no obligation to risk your life in order to save others—even if you would be in the position to save many lives—the Ohr Sameah brings a close reading of a Torah verse. This verse is from the beginning of the story of the Exodus from Egypt, when God tells Moshe to return to Egypt from Midian in order to liberate *Benei Yisrael* (the Israelites).

SOURCE #15

שמות ד:יט

Shemot 4:19

ויאמר ה' אל-משה במדין לך שב מצרים כי-
מתו כל-האנשים המבקשים את-נפשך:

God said to Moshe in Midian: Go back to Egypt, for all those who sought to kill you are dead.

The person who sought to kill Moshe was Pharaoh, who had heard about Moshe killing an Egyptian (Shemot 2:11-15). This was the reason that Moshe had fled to Midian. In his commentary on the Torah, called the *Meshekh Hokhmah*, the author of the *Ohr Sameah* writes as follows:

SOURCE #16

משך חכמה, שמות ד:יט

”לך שב מצרים כי מתו כל האנשים
המבקשים את נפשך—מוכח דאם היו חיים
המבקשים את נפשו לא היה צריך לילך
להוציא בני ישראל ממצרים. אף על פי שכל
ישראל צריכים אליו אינו צריך להכניס עצמו
בסכנה.

ומזה יצא לרבנו במשנה שהגולה לעיר מקלט
אפלו כל ישראל צריכים אליו ביואב בן
צרויה אינו יוצא ועין אור שמח הלכות רוצח
בזה.

Meshekh Hokhmah on Shemot 4:19

“Go back to Egypt, for all those who sought to kill you are dead”—this proves that if those who sought his life were still alive, he would not have been required to go to take *Benei Yisrael* (the Israelites) out of Egypt. Even though all of Israel needed him, he was not obligated to put himself in danger.

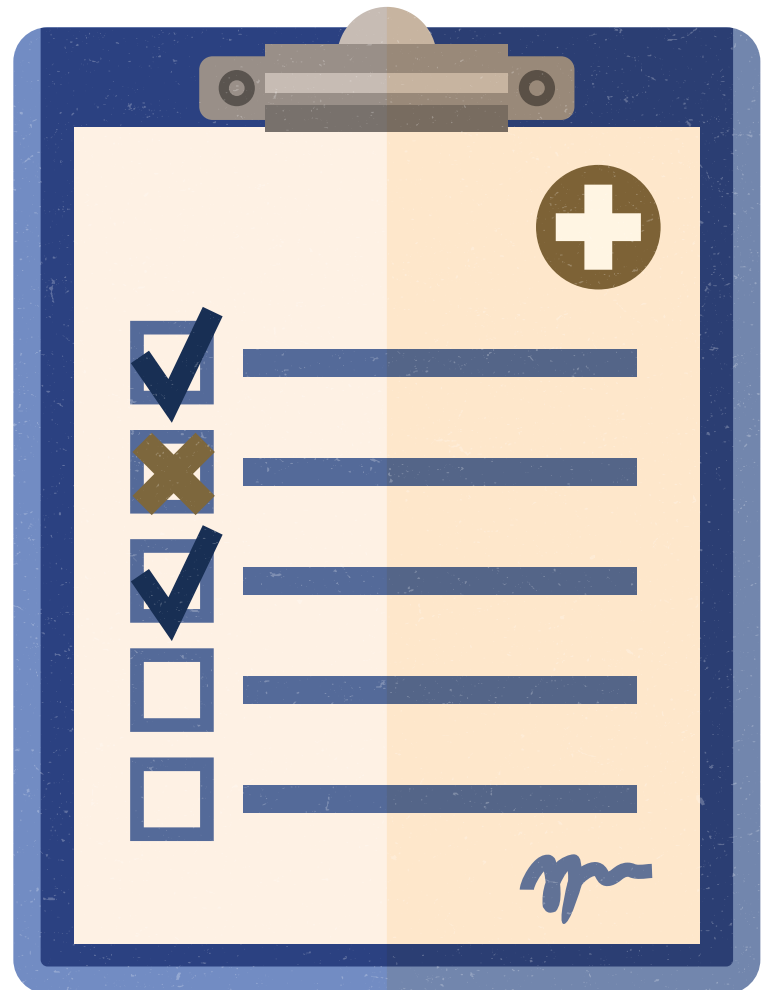
From this, our teacher (Rambam) derived that one who is exiled to an *ir miklat* (city of refuge)—even if all of Israel needs him, like Yoav ben Tzeruyah—should not leave. See the commentary of *Ohr Sameah* on the *Laws of a Murderer* regarding this (Source 14).

The commentary focuses on God’s exact language in Shemot 4:19, highlighting that the **reason** God instructs Moshe to return to Egypt is that Egypt is no longer dangerous for Moshe. The implication is that, if it were still dangerous, Moshe would have had no obligation to return, even if it meant being unable to help liberate all of *Benei Yisrael*!

1. Do you agree with this reading of the verse? Would Moshe really not have needed to go to Egypt if it would have endangered his life?
2. What if Moshe had wanted to return even though it would have been dangerous for him—could he have chosen to do so?
3. When you read the narrative in Shemot, is it true that Moshe was not endangering his life by pleading on behalf of Benei Yisrael before Pharaoh? Why or why not?

○ Take a step back ○

In this unit, we have seen several opinions that limit the obligation to intervene on behalf of other people, in cases that would endanger the intervener's life. Compare and contrast these perspectives with the sources in the previous unit. Which arguments are more convincing in general, and which seem most applicable to the specific circumstances of our case?



UNIT 4

Risk Assessment

◦ Arukh HaShulhan

A work of halakhah authored by R. Yehiel Mikhel Epstein (1829-1908), a leading rabbinic authority in Lithuania. R. Epstein was known for his deep consideration of human needs when issuing halakhic rulings.

◦ Rishonim

The major sages who lived roughly between the 11th and 15th centuries CE, after the Geonic period and before the era of the Aharonim. They are considered authoritative interpreters of halakhah, and their works form the basis for later rabbinic thought (singular: Rishon).

In the previous two units, we have seen contrasting viewpoints about how to balance the responsibility to save others' lives when it comes into tension with protecting your own life. On the one hand, we saw a perspective that is traced back to the Talmud Yerushalmi which argues that the obligation to try to save someone's life applies even if doing so would endanger your own life. On the other hand, we have also seen authorities that reject this position, even referring to such a person as a *hasid shoteh* (pious fool).

Perhaps it depends on the degree of the risk. If so, what type of risk is tolerable? In this section, we'll see several perspectives from halakhic authorities during the 19th and 20th centuries who attempt to answer this question. We'll begin with the Arukh HaShulhan.◦

SOURCE #17 ס

ערוך השולחן
חושן משפט סימן תכ"ד:

הפוסקים הביאו בשם
ירושלמי דחייב אדם להכניס
את עצמו לספק סכנה כדי
להציל חבירו. והראשונים
השמיטו זה מפני שבש"ס
שלנו מוכח שאינו חייב
להכניס את עצמו.

ומיהו הכל לפי הענין, ויש
לשקל הענין בפלס ולא
לשמור את עצמו יותר
מדאי. ובזה נאמר "וְשֵׁם

Arukh HaShulhan,
Hoshen Mishpat 426:4

There are halakhic authorities that bring the Talmud Yerushalmi to argue that a person is obligated to place themselves in possible danger in order to save someone else. However, the Rishonim◦ omitted this because in the Talmud Bavli it is evident that one is not obligated to intervene in these circumstances.

Nevertheless, everything depends on the circumstances, and one must weigh the matter carefully, and not be overly protective of oneself. Regarding this it is said: "I will

○ **Mishnah Berurah**

Written by R. Yisrael Meir Kagan (Belarus, 1838-1933), the Mishnah Berurah is a commentary on the Shulhan Arukh. R. Kagan also wrote Hafetz Hayyim (literally: “one who desires life”) which is viewed authoritatively on matters of proper speech.

אֲרָאנוּ בְּיַשַׁע אֱלֹקִים—זֶהוּ
שָׁשׂם אֹרְחוֹתָיו. וְכָל הַמְּקִים
נַפְשׁ מִיִּשְׂרָאֵל כְּאִלוֹ קַיִם
עוֹלָם מְלֵא.

show him the salvation of God” (Tehillim 50:23)—this refers to a person who sets their path upright. And whoever sustains a single soul from Israel, it is as if they sustained an entire world.

According to the Arukh HaShulhan, the position of the Talmud Yerushalmi is rejected by the Talmud Bavli. For this reason, there is no explicit mention in the Talmud Bavli of such an obligation. At the same time, the Arukh HaShulhan issues an important warning not to take this conclusion too far. It might be true that you do not need to intervene if it would endanger your life, but don’t exaggerate the degree of risk that you face in a given situation.

1. What do you think is behind the statement of the Arukh HaShulhan that a person should not be overly self-protective?
2. How would you apply this line of thinking? How would you determine what qualifies as overly protective?
3. Why does the Arukh HaShulhan invoke the line from the very first source in Section 1—“whoever sustains a single soul from Israel, it is as if they sustained an entire world”?
4. How would you apply the reasoning of the Arukh HaShulhan to our case? Would it be overly protective not to consent to a liver transplant?

The Mishnah Berurah^o has a similar approach.

SOURCE #18 □

משנה ברורה סימן
שכט:ט

אם יש סכנה להמציל
אינו מחיב דחיו קודם
לחיי חברו. ואפלו ספק
סכנה נמי עדיף ספקו
דידה מנדאי דחברו.

Mishnah Berurah 329:19

If saving someone requires taking on a life-threatening danger, one is not obligated to do so, since your life comes before the other person’s. Even if it’s only *sfeik sakanah* (possible danger), your possible danger takes precedence over the other person’s certain danger.

○ R. Ovadiah Yosef

The Sephardi Chief Rabbi of Israel from 1973 to 1983 and one of the most impactful halakhic authorities of the 20th century (1920-2013). In addition to his spiritual leadership, he had significant political influence in Israel as a founder of the Shas party.

אולם צריך לשקל הדברים
 היטב אם יש בו ספק סכנה.
 ולא לדקדק ביותר באותה
 שאמרו המדקדק עצמו בכך
 בא לידי כך.

However, one must consider the matter well to determine whether there is truly a possibility of danger. One should not be overly careful, as others have said, since a person who is overly careful will come to have the same fate.

1. Based on the language of this passage, what degree of risk would a person be obligated to take on behalf of someone else?
2. How do you interpret the final line in the Mishnah Berurah that one who is overly careful could experience the same fate? What does he mean by this?
3. Can this perspective be applied to our case? Why or why not?

In contrast to the previous two sources, the next text addresses this question through the lens of a specific case. R. Ovadiah Yosef^o was asked about the permissibility of donating a kidney in order to help save someone’s life. It is important to note that this response was written in the 1970s when kidney transplantation from live donors was considered generally safe, but not as safe as it is today.

SOURCE #19

שו"ת יחווה דעת
 חלק ג סימן פד

Rav Ovadia Yosef,
 Yehaveh Da'at 3:84

שאלה: חולה בליות באפן רציני
 עד שנשקפת סכנה לחייו, האם
 רשאי חבר או קרוב משפחה
 לתרום לו בליה אחת מבליותיו
 כדי להציל חיי חברו? או מבין
 שאפשר שיש בזה קצת סכנה
 לתורם, אין לו להכניס עצמו
 בספק סכנה אפלו על מנת
 להציל את חברו מודאי סכנה?

Question: A person with serious kidney failure whose life is in grave danger, is it permissible for a friend or relative to donate a kidney to save the person’s life? Or, since there is a small risk to donate, a person should not enter a situation of *sfeik sakanah* (possible danger) even in order to save someone from *vadai sakanah* (certain danger)?

o **The Smah**

Sefer Me'irat Einayim (often abbreviated as Smah) analyzes the rulings of the Shulhan Arukh. It was published by R. Yehoshua Falk (1555-1614, Poland).

תשובה: עצם הדין אם רשאי
אדם או חייב להכניס בספק
סכנה כדי להציל את חברו
מונדאי סכנה, שנוי במחלוקת
הפוסקים...

שו"ת יחיה דעת חלק ג סימן
פד כי מרן הבית יוסף בחשן
משפט (סימן תכ"ו) הביא מה
שכתבו בהגהות מימוניות
בשם הירושלמי, שחייב אדם
להכניס את עצמו בספק סכנה
כדי להציל את חברו מנדאי
סכנה. והסביר מרן השעם,
מפני שחברו בנדאי סכנה והוא
בספק...

אולם הסמ"ע בחשן משפט שם
העיר שמרן המחבר והרמ"א
השמיטו דין זה מהשלחן ערוך,
וטעמם, לפי שגדולי הפוסקים,
הרי"ף והרמב"ם והרא"ש
השמיטו דברי הירושלמי
מפסקיהם, לכן השמיטוהו גם
הם מהשלחן ערוך ע"כ....

על יסוד הדברים הנ"ל, דן
הגאון רבי יצחק יעקב ויס,
ראש אב בית דין העדה
החרדית בירושלים, בספרו
שו"ת מנחת יצחק חלק ו' (סימן
ק"ג) לאסור לתרם בליה לחולה
בליות שנשקפת לו סכנה,

Answer: The essential question is whether a person is permitted or obligated to enter into *sfeik sakanah* (possible danger) in order to save another who is in *vadai sakanah* (certain danger). This is a matter of dispute among halakhic authorities...

Our teacher, the Beit Yosef in Hoshen Mishpat, Siman 426 (Source 10) cites the Hagahot Maimoniyot in the name of the Talmud Yerushalmi, stating that a person is obligated to enter into *sfeik sakanah* to save someone in *vadai sakanah*. Our teacher (Beit Yosef) explains that this is since the other person's danger is certain and the rescuer's danger is only a possibility...

However, the Smah^o writes that this halakhah was omitted from the Shulhan Arukh and by Rema, and their rationale was that the earlier major halakhic authorities—Rif, Rambam, and Rosh—do not mention the Talmud Yerushalmi's position. Therefore, they also excluded it from the Shulhan Arukh...

Based on this foundation, R. Yitzchok Yaakov Weiss, leader of the Rabbis of the Edah HaChareidis in Yerushalayim, wrote to forbid kidney donation even to someone gravely ill, since the surgery presents the possibility of grave danger to the healthy donor, and also it is

שהואיל וקִימַת אֶפְשָׁרוֹת שֶׁל סִכְנָה
בְּמַעֲשֵׂה הַנְּתוּחַ שֶׁל הַתּוֹרֵם הַבְּרִיא,
וְכֵן יָכוֹל לִהְיוֹת שֶׁבְּעֵתִיד יָבוֹא הַתּוֹרֵם
לְיַדֵי סִכְנָה בְּשַׁחֲסָרָה לֹא אַחַת מִכְּלִיזוֹתָיו,
וְנִמְצָא שֶׁהַתּוֹרֵם מִכְּנִיִּים עֲצָמוֹ לְסַפֵּק
סִכְנָה וְכֵן לֹא יַעֲשֶׂה לְדַעַת הַרַדְבָּז״ו
וְסִיעָתוֹ ע״כ.

וְכֵן הֶעֱלָה הַגָּאוֹן רַבֵּי אֱלִיעֶזֶר יְהוּדָה
וְלַדְּנַבְרָג אֲבֵי בֵּית דִּין יְרוּשָׁלַיִם, בְּסִפְרוֹ
שׁו״ת צִיץ אֱלִיעֶזֶר חֶלֶק ט׳ (סִימָן מ״ה),
עַל יְסוּד דְּבָרֵי הַפּוֹסְקִים הַנֶּ״ל, וְעַל סִמְךָ
דְּבָרֵי הַרּוֹפְאִים שֶׁאִמְרוּ לֹא שֶׁמַּעֲשֵׂה
הַוּצָאת כְּלִיָּה אַחַת מִכְּלִיזוֹתָיו שֶׁל
הַתּוֹרֵם כְּרוֹךְ בְּסִכְנַת נַפְשׁוֹת, לְכֵן הֶעֱלָה
שָׂאִין לַעֲשׂוֹת כֵּן, אֲלֵא אִם כֵּן יַחְלִיט סִגְל
שֶׁל רּוֹפְאִים מְמַחִים אַחֲרֵי עֵיוֹן מְדַקְדֵּק
שֶׁהַדְּבָר אֵינוֹ כְּרוֹךְ בְּסַפֵּק סִכְנַת נַפְשׁוֹת
לַתּוֹרֵם. וְכוּלֵי הַאי וְאוּלַי ע״כ.

אוּלַם בְּאַמַּת שֶׁנִּמְסַר לָנוּ מִפִּי רּוֹפְאִים
מְמַחִים וְיִרְאֵי שְׂמִיִּם שֶׁדַּרְגַּת הַסִּכּוֹן
בְּהוּצָאת הַכְּלִיָּה לְאָדָם הַתּוֹרֵם, הִיא
מוֹעֵטָה מְאֹד, וְכַתְּשָׁעִים וְתִשְׁעָה אַחֻוּזִים
מִהַתּוֹרְמִים חוֹזְרִים לְבְּרִיאוּתָם הַתְּקִינָה.

וּלְפִי זֶה הָרִי כָּל מַה שֶׁהַסִּכְּמִיּוֹ הַפּוֹסְקִים
הַנֶּ״ל שֶׁאִסּוּר לְהַכְּנִיִּים עֲצָמוֹ בְּסַפֵּק סִכְנָה,
זֶהוּ רַק בְּסַפֵּק הַשְּׁקוּל, מַה שָׂאִין כֵּן
בְּנִדּוֹן שֶׁלָּנוּ שֶׁבּוֹדָאֵי שְׂמִצְוָה הִיא לְתָרֵם
כְּדֵי לְהַצִּיל אֶת חֲבֵרוֹ מִמּוֹת בְּטוּחַ.

possible that in the future the donor will be in danger because of their lack of a kidney. It appeared [to R. Weiss] that the donor would be putting themselves in the status of *sfeik sakanah*, and that such an act should not be done according to the view of the Radbaz and those who follow his position.

Similarly, R. Eliezer Yehuda Waldenberg, head of the rabbinical court of Jerusalem, ruled in his Responsa Tzitz Eliezer, Vol. 9 (Siman 45), based on the opinions of the aforementioned halakhic authorities and based on medical testimony he received stating that kidney removal entails life-threatening risk, that it is prohibited to perform such a donation—unless a team of expert physicians, after careful review, determine that there is no possible danger to the donor’s life. Even then, his conclusion is only perhaps [and not that a potential kidney donor should or must proceed with the transplant].

However, in truth we have received from God fearing, expert physicians, that the level of risk for the donor in kidney donations is exceedingly small, and approximately 99 percent of donors return to their full health.

Even according to those authorities who rule that a person should not risk their own life by entering *sfeik sakanah* (possible danger) in order to save someone else, that is referring to a balanced uncertainty (50-50 odds). But in our situation, it is certainly a mitzvah to donate a kidney in order to save someone from certain death.

○ **Think about these activities in this way**

The World Health Organization estimates that 1.19 million people die each year as a result of road traffic crashes.

○ **R. Yehezkel Landau**

A rabbi in Prague and one of the leading halakhic authorities of his generation (1713-1793). *Noda Biyehudah*, a collection of halakhic responsa, is his most famous work.

1. This responsa includes the opinions of three 20th century rabbis: R. Weiss, R. Waldenberg, and R. Ovadiah Yosef himself. How do you understand the nature of their debate?
2. Over the past several decades, kidney transplant surgeries have become significantly safer. (See the fact sheet at the beginning of the sourcebook for recent statistics.) Do you think that number would impact any of the positions recorded in this passage? Why or why not?
3. R. Ovadiah Yosef argues that even according to the positions who argue that one should **not** risk their life to save others, that is referring to a case where the risk is 50-50. But if there is only a small chance of harm coming your way, then everyone agrees it is a mitzvah to intervene. Is this your understanding of the sources in Unit 3?
4. This passage discusses kidney donation. How might the argument apply in similar or different ways to a case of liver donation?

We conclude this unit on evaluating risk with an important caveat: The reality is that our daily lives always involve taking **some** risks. Even routine activities like driving in a car, going swimming, or riding a bike come with some degree of risk and tragically lead to many deaths each year, even if we don't usually think about these activities in this way. ○

Below, we will see one final passage on this topic. The question posed to R. Yehezkel Landau ○ was about the permissibility of hunting. R. Landau first addresses the prohibitions of *bal tash'hit* ("do not destroy") and *tza'ar ba'alei hayyim* (causing pain to animals), and he ultimately rules that hunting is prohibited. However, he makes an important exception, as we will see below.

SOURCE #20 □

נודע ביהודה מהדורא תנינא,
יורה דעה י'

ועד כאן דברתי מצד ישר
ההנהגה שראוי לאדם להרחיק
מזה. ועכשו אני אומר אפלו
אסורא איבא שיהי כל
העוסקים בזה צריכין להכנס
ביערות ולהכניס עצמם בסכנות

**Noda Biyehudah II,
Yoreh Deah 10**

Until now, I have spoken from the perspective of proper conduct, that a person should distance themselves from this. But now I say that there is even a prohibition involved, for all those engaged in this activity must enter

גדולות במקום גדודי חיות. ורחמנא אמר
 "ונשמרתם מאוד לנפשותיכם" (דברים
 ד:טו)...

ומעתה איך יכניס עצמו איש יהודי
 למקום גדודי חיות רעות? ואף גם בנה
 מי שהוא עני ועושה זו למחיתו לזה
 התורה התירה, כמו כל סוחרים ימים
 מעבר לים, שכל מה שהוא לצורך מחיתו
 ופרנסתו אין ברכה. והתורה אמרה
 "ואליו הוא נשא את נפשו" (דברים
 כד:טו)...

אבל מי שאין עקר בונתו למחיתו,
 ומתאנות לבו הוא הולך אל מקום גדודי
 חיות ומכניס עצמו בסכנה הרי זה עובר
 על "ונשמרתם מאוד" כו'.

forests and expose themselves to great dangers in
 places where there are packs of wild animals. And
 the Merciful One said: "You shall greatly safeguard
 your lives" (Devarim 4:15)...

Given this, how can a Jewish person place themselves
 in a location of wild animal packs? However, in
 the case of someone who is poor and does this for
 his livelihood, the Torah permits it—just as with
 merchants who travel overseas, for all matters
 necessary for one's livelihood and sustenance leave
 no choice. And the Torah said: "To it he entrusts his
 life" (Devarim 24:15)...

But one whose primary intent is not for livelihood,
 and out of the desire of his heart he goes to a place
 of wild animals and endangers himself—such a
 person is transgressing the commandment "You shall
 greatly safeguard your lives."

R. Landau rules that hunting involves an unwarranted risk, which is a violation of the Torah's requirement: ונשמרתם מאוד לנפשותיכם (You shall greatly safeguard your lives). The exception is if it's necessary to take a risk for your livelihood.

1. Why do you think that R. Landau permits exceptions to be made if it is for a person's livelihood? What might this tell us about the ways that we approach risk-taking in our daily lives?
2. How does the exception for making a living impact the way you relate to our case?

○ Take a step back ○

In this unit, we explored a number of perspectives on risk-taking. Returning back to the circumstances of our case, what conclusions can you make from these perspectives? Should liver transplants be permitted or encouraged according to halakhah? What about kidney donations or bone marrow donations? Why or why not?

UNIT 5

The Age of Informed Consent

◦ Pirkei Avot (Ethics of the Fathers)

A compilation of wisdom and ethics included in the Mishnah. It is the only tractate of the Mishnah which is primarily concerned with morality and wisdom, in contrast with most tractates that address primarily legal matters.

◦ At 15 the study of Talmud

This is not describing what we refer to today as the Talmud, which was compiled in the centuries following the Mishnah. Rather, Talmud here refers to analyzing the laws of the Torah in the style of Mishnah.

The sources we've seen so far, related to the value of human life, evaluating risks, and determining the limits of our responsibility to intervene, all help inform our understanding of organ transplantation in general. But the specific circumstances of Eitan and Sam's case require a deep understanding of informed consent, particularly the age that informed consent can be given.

Sam and Eitan are 16 years old. Is that an age at which Eitan can consent to a liver transplant? Should Eitan be discouraged from risking his life to save his brother, or encouraged to do so? In this final unit, we will engage these questions from a number of perspectives so that the Beit Din can give a complete halakhic recommendation to the Beth Miriam ethics committee.

The first source is a mishnah in Pirkei Avot^o which lists the age at which people are expected to reach certain milestones or stages in life.

SOURCE #21

משנה אבות ה:כא

הוא הִזָּה אומר, בן חמש שנים
למקרא, בן עשר למשנה, בן
שלש עשרה למצות, בן חמש
עשרה לתלמוד, בן שמונה
עשרה לחפה, בן עשרים לרדף,
בן שלשים לבח, בן ארבעים
לבינה, בן חמשים לעצה,
בן ששים לזקנה, בן שבעים
לשיבה, בן שמונים לגבורה, בן
תשעים לשוח, בן מאה כאלו
מת ועבר ונטל מן העולם:

Mishnah Avot 5:21

[Yehudah ben Tema] used to say: At five years of age the study of Scripture; At 10 the study of Mishnah; At 13 the commandments; At 15 the study of Talmud;^o At 18 the wedding canopy; At 20 for pursuit [of livelihood]; At 30 the peak of strength; At 40 wisdom; At 50 the ability to give counsel; At 60 old age; At 70 fullness of years; At 80 the age of “strength”; At 90 a bent body; At 100, considered as dead and passed from the world.

○ Passage in the Talmud
Yevamot 114a

1. Are the ages listed in this mishnah for these various milestones helpful for us in our modern day? Why or why not?
2. To what extent is it useful to have an objective benchmark, rather than having these stages depend on the needs and abilities of each particular person?

The mishnah above is one of the earliest sources that the obligation in mitzvot begins at age 13. The Talmud subsequently distinguishes between boys, who become obligated in mitzvot at age 13, and girls, whose obligation begins at 12. Until the age of 12/13, a child is not obligated in mitzvot like an adult, and this has ramifications throughout the Talmud. For example, what happens if you see a child younger than 12/13 violating the Torah? Do you need to intervene? Here's Rambam's answer, based on a passage in the Talmud.○

SOURCE #22 □

משנה תורה,
הלכות מאכלות אסורות יז:כו



קטן שאכל אחד ממאכלות
אסורות. או שעשה מלאכה
בשבת. אין בית דין מצוין עליו
להפרישו לפי שאינו בן דעת.

במה דברים אמורים בשעשה
מעצמו. אבל להאכילו בידים
אסור ואפלו דברים שאסורן
מדברי סופרים.

**Mishneh Torah,
Laws of Forbidden Foods, 17:27**

When a child eats forbidden foods or performs forbidden labor on Shabbat, a Beit Din is not commanded to make him stop, because he does not have *da'at* (intellectual capability).

When does the above apply? When the child acts on his own initiative. However it is forbidden to give a child forbidden food, even foods forbidden by Rabbinic decree.

Rambam posits that you cannot actively aid a child in transgressing halakhah, but there is no obligation to compel a child to stop doing so. This is because a child does not have  דעת (*da'at*, intellectual capability)  and is not considered to be obligated in mitzvot.



○ **Neder**

See Mishneh Torah, Nedarim, 1:1-2 for examples of standard vows.

○ **Consecrated**

If one made a vow to dedicate something to the Temple, such as a sacrifice.

1. How do you understand the principle that a minor does not have *da'at*?
2. What is the connection between a lack of *da'at* and a person's obligation in mitzvot?
3. Could a person without *da'at* give informed consent for a medical procedure like an organ transplant? Why or why not?

The ages of 12/13 also come up in context of another halakhic question: At what age can a person make a נִדְרָא (*neder, vow*) that is legally binding? ○



SOURCE #23 □

משנה נדה ה:

בת אחת עשרה שנה ויום אחד, נדריה נבדקין. בת שתים עשרה שנה ויום אחד, נדריה קימין. ובדקין כל שתים עשרה.

בן שתים עשרה שנה ויום אחד, נדריו נבדקים. בן שלש עשרה שנה ויום אחד, נדריו קימין. ובדקין כל שלש עשרה.

קדם לזמן הזה, אף על פי שאמרו יודעין אנו לשם מי נדרנו, לשם מי הקדשנו, אין נדריהם נדר ואין הקדשן הקדש.

לאחר הזמן הזה, אף על פי שאמרו אין אנו יודעין לשם מי נדרנו, לשם מי הקדשנו, נדרן נדר והקדשן הקדש.

Mishnah Niddah 5:6

The *nedarim* (vows) of a girl who is 11 years and one day are examined. At the age of 12 years and one day, her *nedarim* are binding. And examination continues throughout her twelfth year.

The *nedarim* of a boy who is 12 years and one day are examined. At 13 years and one day, his *nedarim* are binding. And examination continues throughout his thirteenth year.

Before this age, even if they say, 'We knew for Whom we made the *neder*, we knew for Whom we consecrated[○] it,' their *nedarim* are not valid and their consecrations are not effective.

After this age, even if they say, 'We do not know for Whom we made the *neder*, we do not know for Whom we consecrated it,' their *neder* is valid and their consecration is effective.

○ R. Ovadiah ben Avraham of Bartenura

A leader of the Jewish communities of Italy and later in Israel (1455-1520). His most enduring work is his commentary on the Mishnah, which to this day remains one of its most popular commentaries.

What does it mean that we “examine” the *nedarim* of an 11- or 12-year-old? R. Ovadiah ben Avraham of Bartenura[○] explains:

SOURCE #24 □

<p>ברטנורא</p> <p>נְדָרֶיהָ נִבְדָּקִים—אִם יָדְעָה לְשֵׁם מִי נְדָרָהּ, לְשֵׁם מִי הִקְדִּישָׁהּ, נְדָרָהּ נָדָר.</p>	<p>Bartenura on Mishnah Niddah 5:6</p> <p>Her <i>nedarim</i> (vows) are examined—If she understands to Whom she made the <i>neder</i>, and for Whom she consecrated it, then her <i>neder</i> is valid.</p>
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1. How would you confirm that a child understood the seriousness of their *neder*?
2. Would you say that an 11- or 12-year-old today generally has the maturity to understand the seriousness of a vow? Why or why not?

The Gemara asks why this mishnah needed to list multiple cases:

SOURCE #25 □

<p>תלמוד בבלי</p> <p>נדה דף מה עמוד ב</p> <p>וְכֵן דִּתְנָא בְּתַא אַחַת עֲשָׂרָה שָׁנָה וַיּוֹם א' נְדָרֶיהָ נִבְדָּקִין— בְּתַא י"ב שָׁנָה וַיּוֹם א' נְדָרֶיהָ קִיּוּמִין לְמָה לִי?</p> <p>סְלֵקָא דְעֵתְךָ אֲמִינָא בוֹדְקִין לְעוֹלָם קָא מְשַׁמְע לָן.</p>	<p>Talmud Bavli</p> <p>Niddah 45b</p> <p>Since the mishnah already taught: ‘The <i>nedarim</i> (vows) of a girl who is 11 years and one day are examined’—why does it also need to mention that “At the age of 12 years and one day, her <i>nedarim</i> are binding”?</p> <p>You might have thought that we would examine her <i>nedarim</i> forever. Therefore the mishnah teaches us that this is not so.</p>
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The Talmud clarifies that the reason our mishnah spells out that a 12-year-old girl’s *nedarim* are valid without being examined is that a person might have thought the process of examining *nedarim*, as one would do for an 11-year-old,

UNIT 5 | The Age of Informed Consent

continues even as she gets older. Therefore the mishnah clarifies that once she turns 12, her *nedarim* are considered binding even if they were not examined by a Beit Din.

1. Why might we have thought that, at any age, it was required to examine someone's *nedarim* (vows) before they are accepted as legally binding?
2. Why do you think this position is ultimately rejected, and that there is no need to examine a girl's *nedarim* from the age of 12 (or a boy's vows from the age of 13)?
3. Why is the *neder* of someone younger than 11/12 not accepted, even if the child claims to understand its significance?
4. Should the age at which a person can make a valid *neder* have any bearing on our case? To what extent is the question of donating an organ similar to or different from making a *neder*?

As we have seen, the pivotal age for obligation in mitzvot, acquiring *da'at* (intellectual capability), and the ability to make *nedarim* (vows) is 12-13. However, when it comes to transactions such as buying and selling, there are different age standards depending on the type of transaction. For example, the Mishnah says that children are allowed to buy and sell certain objects.





SOURCE #26

משנה גיטין ה:ז

הפְּעוּטוֹת, מְקַחֵן מִקָּח וּמִמְכָּרֵן מִמְכָּר, בְּמִשְׁלֵטֵינָן.

Mishnah Gittin 5:7

Regarding children, their purchases are valid and their sales are valid, with regards to *metaltelin* (moveable objects).

The mishnah is talking about selling  **מְטַלְטְלִין** (*metaltelin*, moveable objects),  as opposed to  **קַרְכָּע** (*karka*, land).  While children are empowered to buy or sell objects, there is no allowance made for children to buy or sell land.

KEY
TERM

- » Why do you think the mishnah allows children to sell objects but not land? What's the difference between the two?

o **Beraita**

A teaching of halakhah from the time of the Mishnah that was not included in the Mishnah itself. These teachings often resemble those in the Mishnah (literally: outside teaching).

Commenting on this mishnah, the Gemara asks for clarification about how young of a child this mishnah is referring to.

SOURCE #27 

<p>תלמוד בבלי גיטין דף נט עמוד א הפעוטות מקחן מקח וממכרן ממכר, במטלטלין. ועד כמה? מחוי רב יהודה לרב יצחק בריה: כבר שית כבר שב. רב כהנא אמר: כבר שב כבר תמני. במתניתא תנא: כבר תשע כבר עשר. ולא פליגי; כל חד וחד לפי חורפיה. וטעמא מאי? אמר רבי אבא בר יעקב אמר רבי יוחנן: משום כדי חייו.</p>	<p>Talmud Bavli Gittin 59a Regarding children, their purchases are valid and their sales are valid, with regards to <i>metaltelin</i> (moveable objects). From what age is this true? Rav Yehuda pointed to Rav Yitzhak, his son: From the age of about six or seven. Rav Kahana said: From the age of about seven or eight. It was taught in a <i>beraita</i>:^o From the age of about nine or 10. And there is no disagreement between these opinions—each child according to their sharpness. What is the reason [that they are allowed to make these transactions]? R. Abba bar Ya’akov says that R. Yohanan says: In order to provide for their livelihood.</p>
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1. Are you surprised by the ages listed in this passage? Why or why not?
2. Why do you think that children as young as six or seven are empowered to buy or sell objects, but these same children need to be several years older to make a neder or to be obligated in mitzvot?

While the mishnah above addresses selling *metaltelin* (movable objects), a higher standard is put in place when it comes to selling or gifting *karka* (land), particularly inherited land. We will see the halakhot related to minors selling property below, in the Mishneh Torah. (This passage is based on Talmud Bavli, Bava Batra 155a-156a, if you would like to see Rambam’s primary source.)

SOURCE #28 

משנה תורה, הלכות מכירה כ"ט

(6) קטן עד שש שנים אין הקנייתו לאחרים כלום. ומשש שנים עד שיגדיל אם יודע בטיב משא ומתן מקחו וממכרו ומתנתו ומתנתו קימת. בין בדבר מרובה בין בדבר מועט בין במתנת בריא בין במתנת שכיב מרע. ודבר זה מדברי חכמים כמו שבארנו כדי שלא יבטל ולא ימצא מי שימכר לו ולא יקח ממנו. והכל במטלטלין אבל בקרקע אינו מוכר ולא נותן עד שיגדיל.

(12) קטן שהגדיל והביא הזכר שתי שערות אחר שלש עשרה שנה והבת אחר שתים עשרה אף על פי שאינו יודע בטיב משא ומתן מקחו וממכרו ומתנתו ומתנתו מתנה במטלטלין. אבל בקרקע אין מעשיו קימין עד שיהיה יודע בטיב משא ומתן אחר שהגדיל.

(13) במה דברים אמורים? בקרקע שלו. אבל קרקע שירש מאבותיו או משאר מורישיו אין ממכרו וממכר עד שיהיה בן עשרים שנה אף על פי שהביא שתי שערות ויודע בטיב משא ומתן. שמא ימכר בזול מפני שדעתו נוטה אחר המעות ועדין לא נתישבה דעתו בדרכי העולם.

Mishneh Torah, Laws of Sales 29

(6) The following rules apply to a minor: Until six years old, a child may not transfer property to others at all. From the age of six until growing up, the child should be tested. If the child understands the nature of financial transactions, then the child's purchases, sales, and gifts are binding. This applies whether a large matter or a small matter is involved, whether they are healthy or very ill. As we have explained, this is a Rabbinic decree instituted so that the minor will not be forced to remain idle, without finding anyone to sell to or buy from. This applies only with regard to *metaltelin* (movable property). With regard to *karka* (land), a minor cannot sell or give property away until the minor grows up.

(12) When a minor has physical signs of maturity after the age of 12 or 13, even if they do not possess an understanding of the nature of business transactions, their purchases, sales, and gifts are legally binding. This is true regarding *metaltelin*. With regards to *karka*, their actions are not legally binding until they have an understanding of business, even after they have reached the age of maturity.

(13) When does the above apply? With the child's own *karka*. But *karka* that the child inherited from their parents, their sales are not valid until they have reached the age of 20, even if they understand the nature of business and have physically matured. This is because of a concern that the child will sell the land cheaply due to a temptation to receive the money, and their understanding of the ways of the world has not yet settled.

○ **Listened to**

The formulation in the Talmud is that minors were empowered to give gifts so that other people would be more likely to do favors for them.

(14) מִתְּנָתוֹ בְּשָׂהוּא פְּחוֹת
מִבֶּן עֶשְׂרִים בֵּין מִתְּנַת בְּרִיא
בֵּין מִתְּנַת שְׂכִיב מֵרַע הָרִי
זוֹ קִיָּמָת. שְׂאֵלוֹ לֹא הִגִּיעַ לוֹ
הַנְּיָה גְדוּלָה לֹא נָתַן. וְהוּא
דָּבָר שְׂאִינוֹ מְצוּי תָּמִיד.
וְאָמְרוּ חֲכָמִים תִּתְקִים מִתְּנָתוֹ
כִּדְּבִי שִׁיִּהְיוּ דְּבָרָיו נִשְׁמָעִין.

(14) Any gift given by a child less than 20 years old is binding, whether they are healthy or very ill, since if they were not receiving some type of benefit, they would not have gifted it. Moreover, this is a rare occurrence. And our Sages have said we should allow their gifts to endure, so that their words are listened to.○

To summarize Rambam’s parameters, there are three basic stages regarding the ability of a child to make transactions.

Age six: *Metaltelin* (movable objects) can be bought or sold once the child understands the nature of business. However, *karka* (land) cannot be purchased or sold at this age.

Age 12-13: They are empowered to buy or sell *metaltelin*, even if they lack an understanding of business. They can buy or sell *karka* at this stage, but only if they understand business. However, they are not able to sell *karka* that they inherited, even if they have an understanding of business. At this stage, their gifts are valid.

Age 20: They can sell inherited land.

1. How do you understand the principle that inherited property cannot be sold until an individual is 20 years old? If the person has an understanding of business, why should this type of property be treated any differently than property that they acquired on their own?
2. How are gifts treated differently than buying and selling? Why do you think that is?
3. Which of these stages in the development of a child corresponds most closely to the circumstances of our case? How so?

Our final source about age and decision-making is from a halakhic commentary called Be'er Sheva, published in the early 17th century. The author, R. Yissakhar Eilenburg, was asked about the ability of daughters to sell a store that they inherited after their father's death. If the daughters are not yet 20 years old, can the rights to the store be sold?

SOURCE #29

באר שבע ל

ובפרט בנדון דידן לענין מכירה
לא עלה ולא יעלה על דעת
שום אדם בעולם שיהיה לה דין
משלטלין, הואיל שאין לנו בזמן
הזה שדות וכרמים ועקר עסקנו
במעוות להלוותם ברבית. אם כן
חשוב חזקה זו בזמן הזה כמו קרקע
בזמן חכמי הגמרא כמו שבארנו
לעיל בארך. וכבר נתבאר דבקרקע
שירשו מאביהם אין ממכרן ממכר
עד שיהו בנות עשרים שנה. ודבר
ברור לבעלי עינים בשמש בחצי
השמים.

Be'er Sheva, 30

Especially in our case, regarding a sale—it would never occur to anyone in the world to consider the store as *metaltelin* (movable objects), since in our time we no longer have fields and vineyards, and our main business involves money, and lending it with interest. Therefore, this type of possession in our time should be considered like *karka* (land) was in the time of the Sages of the Gemara, as we explained above at length. And it has already been clarified that with land inherited from their father, their sale is not legally valid until they are 20 years old. And this matter is as clear to those with eyes to see as the sun at midday.

The Be'er Sheva argues that the rights to a store should be considered as a transaction involving *karka* (land), and for this reason the store cannot be sold until the daughters are 20 years old.

1. Why does the Be'er Sheva view the inherited store as *karka* (land) as opposed to *metaltelin* (moveable objects)? How might he define *karka*?
2. Should the bar for selling rights to a store be higher or lower than the bar for donating a liver? Why?

○ Take a step back ○

In this unit, we have seen that while a child becomes obligated in mitzvot at the age of 12 or 13, this is not the only significant milestone that halakhah recognizes in the transition to adulthood. There are privileges that even a younger child has under certain conditions, while there are other capabilities that people do not receive until the age of 20. Given these various stages in a person's development, which stage corresponds most closely with the maturity required to give informed consent in our case?

APPENDIX

Contemporary Perspectives

Throughout the sourcebook we have seen multiple perspectives about how to understand the Torah's prohibition of *לא תעמד על דם רעך* (do not stand by the blood of your fellow). This conversation continues through modern times—in 1998, Israel's Knesset passed a law to formally enshrine this Jewish value into Israeli law. While this text is not a halakhic source (and should not feature in your arguments in that way), it is a fascinating example of how halakhic discourse can shape contemporary perspectives.

SOURCE I

חוק לא תעמוד על דם רעך,
תשנ"ח

חובת הצלה והושטת עזרה:

(א1) חובה על אדם להושיט עזרה לאדם הנמצא לנגד עיניו, עקב ארוע פתאומי, בסכנה חמורה ומידית לחייו, לשלמות גופו או לבריאותו, באשר לאל-ידו להושיט את העזרה, מבלי להסתכן או לסכן את זו.

(ב1) המודיע לרשויות או המזעיק אדם אחר היכול להושיט את העזרה הנדרשת, יראוהו כמי שהושיט עזרה לענין חק זה; בסעיף זה, "רשויות" – משטרת ישראל, מגן דוד אדם ושרות הכבאות.

(ב2) בית המשפט רשאי לחייב את מי

Do Not Stand By the Blood of Your Fellow Law, 1998

The Obligation to Rescue and Provide Assistance:

(1A) A person is obligated to provide assistance to someone before their eyes who, due to a sudden event, is in serious and immediate danger to their life, physical integrity, or health—provided that the person is capable of offering such assistance without endangering themselves or others.

(1B) One who notifies the authorities or calls upon another person who is capable of providing the required assistance shall be regarded as having rendered aid for the purposes of this law. In this section, "authorities" refers to: the Israel Police, Magen David Adom (emergency medical services), and the Fire Department.

(2B) The court may require the person who caused

שגַרם לַסִּכָּנָה שֶׁהִנְצוּל נִקְלַע אֵלֶיהָ,
 לְרַבּוֹת אֶת הַנְּצוּל עֲצָמוֹ אִם גָּרַם
 לַסִּכָּנָה זֶה, לְשִׁפּוֹת אֶת מִי שֶׁהוֹשִׁיט
 עֲזָרָה בְּהִתְאֵם לְחֻבָּתוֹ לְפִי הוֹרָאוֹת
 סְעִיף 1 עַל הַהוֹצָאוֹת וְהַתְּשׁוּלוּמִים
 הַסְּבִירִים שֶׁהוֹצִיא.

(4) הָעוֹבֵר עַל הוֹרָאוֹת סְעִיף 1 לְחַק
 זֶה, דִּינּוֹ – קֶנֶס.

the danger into which the victim fell—including the victim themselves, if they were the one who caused the danger—to reimburse the person who provided assistance, in accordance with their obligation under Section 1, for reasonable expenses and payments incurred while rendering that assistance.

(4) Anyone who violates the provisions of Section 1 of this law is subject to a fine.

In secular legal discourse, the responsibility to intervene on behalf of someone else is called a “duty to rescue.” In many legal systems, including in most states within the U.S., there is no duty to rescue parallel to the Israeli Do Not Stand By the Blood of Your Fellow Law. So in most American states, if you were to come across someone in need of emergency assistance, there is no legal obligation to call for help.

However, there are often exceptions for people who have a special personal or professional relationship with the person in danger, like parents, doctors, and lifeguards, or for the person who caused the danger.

Similarly, certain professions are called “mandated reporters,” which means that they are legally obligated to report suspected abuse or neglect to the authorities. Teachers, childcare providers, healthcare professionals, social workers, clergy, and law enforcement are typically mandated reporters.

Even in situations where the “duty to rescue” does not apply, a person who chooses to intervene does have certain legal protections if the rescue inadvertently causes harm. These are called “Good Samaritan” laws, and they protect the rescuer from being sued if they provided emergency assistance in good faith.

1. What might be the practical differences between having a “duty to rescue” law (like in Israel) vs. having laws specific to mandated reporters and Good Samaritan laws (like in most parts of the United States)?
2. Do you think these different laws convey different visions for society?

Our final text is an article that describes a real-life parallel to the circumstances of our case: a story about a brother who donated part of his liver to his identical twin. While the brothers were significantly older than Eitan and Sam—so there wasn't a challenge of providing informed consent—the similarities in the cases can help us appreciate the stakes of these situations.

SOURCE II

Unbreakable Bond: A Twin Donates a Part of His Liver to His Brother

New York Presbyterian; April 10, 2024

When Ethan Besas needed a transplant following a lifetime of battling a rare liver disease, his twin, Allen, did not hesitate to be his living donor. Twin brothers Ethan and Allen Besas danced down the aisle in unison, sliding and spinning to cheers from relatives and friends as they waited to walk their sister, Ella, to the altar.

The wedding was a momentous occasion for the Besas family—it was not only the start of a new life for Ella and her husband, but it was also the start of a new chapter for the twins. Just a few months earlier, Ethan had received a life-saving liver transplant from Allen.

In January 2023, Allen donated a portion of his liver to Ethan, who had been diagnosed in childhood with biliary atresia, a rare liver disease of the bile ducts that affects newborn infants. It was Ethan's second liver transplant after he experienced rejection from an initial transplant he received in 2014, and the journey had been a long one for the family.

"I cried to myself thinking of the possibility of losing my twin brother," Allen says. "And I wasn't ready for that to be a reality. Whatever I could do, I was going to do it."

'A Second Birthday'

Growing up, Ethan and Allen were inseparable, wearing matching outfits as toddlers, laughing at the same jokes, and trading late-night stories in their shared room until their paths diverged when they went to different universities.

Ethan had struggled with liver issues since infancy. Biliary atresia is a disease of the bile ducts in which a portion is damaged or missing, causing bile, a fluid essential for liver function and digestion, to accumulate in the organ. This can result in scarring and liver failure.

At two months old, he underwent a Kasai procedure, a surgery where the damaged bile ducts outside the liver are replaced with a portion of the infant's small intestine. Though not a cure,

the operation can slow liver damage and delay or prevent the need for a transplant.

The procedure helped stabilize Ethan's health for nearly 15 years, until he started experiencing complications including cholestasis, a reduction or blockage of bile flow, and intense itching caused by the higher levels of bile. The subsequent liver damage also led to swelling in the veins around his esophagus, which required several treatment procedures and monthly hospital stays.

His family brought him to NewYork-Presbyterian/Columbia University Irving Medical Center at age 16 in 2012, seeking answers. "Ethan was experiencing a poor quality of life, and after trying interventional radiology procedures and catheters to drain the bile, it became clear that transplant would be the path forward," says Dr. Mercedes Martinez, medical director of pediatric abdominal organ transplantation at NewYork-Presbyterian.

After nearly two years on the national transplant waiting list, Ethan, who had just turned 18, received his first liver transplant in March 2014. "It was like a second birthday," Ethan says.

Navigating New Challenges

The transplant was a new start for Ethan, who soon after started college, where he ran cross-country and set his sights on a career in nursing.

...In 2020, Ethan became more than just a longtime patient at NewYork-Presbyterian—he joined NewYork-Presbyterian/Weill Cornell Medical Center's staff as an oncology nurse. Amid life's big changes, Ethan, then 26, began experiencing liver rejection in April 2022, landing him in the hospital for three weeks. Even though he got healthy enough to return to his normal routine, his care team recommended relisting him for another transplant, with discussions around the option of a living donor. His three siblings immediately underwent evaluation as potential donor candidates. His twin brother, Allen, was a match.

A Match – and Bond – Like No Other

For Allen, the decision to donate a portion of his liver to his twin came without question.

"Because our family had been dealing with Ethan's liver condition, I had a strong understanding of Ethan's mindset and knew he wouldn't love the idea of putting a loved one through a liver transplant. Ethan is very selfless that way," Allen says. "But it wasn't something I had to weigh. I was going to do it."

“Allen is someone who’s very caring, always supportive and there for me,” Ethan says. “I remember telling him, ‘I would prefer to be on the waiting list rather than you donate,’ but I was able to understand how to accept the help, and process that Allen just wanted me to be OK.”

Shared Strength in Recovery

On January 17, 2023, Ethan underwent a successful liver transplant surgery, led by Dr. Tomoaki Kato, chief of transplant surgery at NewYork-Presbyterian/Columbia, and Allen underwent donor surgery in the adjacent operating room, led by Dr. Abhishek Mathur, attending surgeon at NewYork-Presbyterian/Columbia.

Allen donated 62% of his liver to Ethan, and the twins recovered on the same floor, visiting each other in the Surgical Intensive Care Unit and later walking laps together through the halls.

... Six months after their transplant, Ethan returned to work and was back to running and indoor climbing. Allen set a personal best in weightlifting and a half-marathon, while pursuing a career as an electrical engineer.

“Allen’s consistency and accomplishments within the year of our transplant motivated me,” Ethan says. “We help elevate each other.” Says Allen: “To donate an organ and literally give somebody another chance at life, it gives you a very fresh perspective on how to live your own moving forward.”

One year post-transplant, the twins celebrated their 28th birthday in March 2024, gathering with friends and family to mark a fresh page in their next chapter. “I don’t think there’s any way that I can repay Allen, but for the rest of our lives I’ve got him and I’m here for him,” Ethan says. “The donation is a reminder of the strength of our bond.”

Scoring Rubric

	4-5	3	2	1
Interpretation and Application of Source Material	All major points are supported by textual evidence; sources are interpreted correctly and compellingly	Most points are supported by textual evidence; most sources are interpreted correctly and compellingly	Some points are supported by textual evidence; multiple sources were misinterpreted or used superficially	The argument was not supported by textual evidence
Breadth of Argument	Multifaceted argument drawing on diverse sources and ideas from throughout the sourcebook	Some variety in sources or ideas; makes limited connections between ideas or sources	Limited range of ideas or sources; does not make connections between ideas	Focused on one narrow point or source
Counter Arguments	Anticipates and engages deeply with potential counterarguments	Addresses counterarguments with reasonable responses	Identifies counterarguments but responds superficially or inaccurately	Fails to anticipate or address opposing viewpoints
Clarity & Persuasiveness	Compelling, polished, and highly persuasive	Generally clear and persuasive; some minor gaps or awkwardness	Some clarity, but noticeable gaps in logic or delivery	Presentation is unclear and unconvincing; logic difficult to follow
Teamwork	Exceptional collaboration; meaningful participation from entire team	Reasonable collaboration; most members contribute meaningfully	Some collaboration, but noticeably uneven participation	Little coordination; one team member dominates
Quality of Questions to other Teams	Questions posed to other teams are insightful and thoughtfully engage the opposing team's argument	Questions engage the opposing team's argument but lack sharpness or depth	Questions are weak or tangential; minimal engagement with opposing team's argument	Irrelevant, confusing, or hostile questions