

Sources: Bar Ilan Responsa Project

תּוֹרַת חַיִּים וְאַהֲבַת חֶסֶד

I. Torah Sources Obligating the Saving of Life

1a) Book of Vayikra (Leviticus Ch. 19)

16. You shall not go around as a gossipmonger amidst your people. You shall not stand by [the shedding of] your fellow's blood. I am the Lord.

טז. לא תלך רכיל בעמך לא תעמד על דם רעך אני יהוה:

b) Rashi, quoting the Talmud in Sanhedrin 73a:

You shall not stand by [the shedding of] your fellow's blood: [I.e., do not stand by] watching your fellow's death, when you are able to save him; for example, if he is drowning in the river or if a wild beast or robbers come upon him.

c) Shulchan Aruch (Code of Jewish Law) R. Yosef Karo, Choshen Mishpat 426:1

הרואה את חברו טובע בים, או לסטים באין עליו, או חיה רעה באה עליו, ויכול להצילו הוא בעצמו או שישכור אחרים להציל, ולא הציל עובר על לא תעמוד על דם רעך (ויקרא יט, טז).

One who sees his friend either drowning, being ambushed by robbers, or attacked by wild animals, and can either personally save him, or hire another to do so, and neglects to do so ... violates the obligation of "do not stand aside as the blood of your brother is being shed"

II. How Far Must One Go to Save a Life ?

2) Responsum of Radbaz -- Rabbi David ben Solomon ibn Avi Zimra was born in Spain in 1479 and died in Israel in 1573. He left Spain in 1492, as a result of the Spanish expulsion of the Jews. Like many other scholars, he emigrated to Safed. In 1513, he left Israel for Cairo, where he became head of the local Jewish community, chief rabbi, head of the rabbinic court and yeshivah, and executor of the charity fund.

שו"ת רדב"ז חלק ג סימן תרכז

(אלף נב) שאלת ממני אודיעך דעתי על מה שראית כתוב אם אמר השלטון לישראל הנח לי לקצץ אבר אחד שאינך מת ממנו או אמית ישראל חבירך. יש אומרים שחייב להניח לקצץ האבר הואיל ואינו מת... תשובה זו מדת חסידות... ותו דילמא ע"י חתיכת אבר אעפ"י שאין הנשמה תלויה בו שמא יצא ממנו דם הרבה וימות ומאי חזית דדם חבירו סומק טפי דילמא דמא דידיה סומק טפי... ותו דכתיב **דרכיה דרכי נועם וצריך שמשפטי תורתנו יהיו מסכימים אל השכל והסברא ואיך יעלה על דעתנו שיניח אדם לסמא את עינו או לחתוך את ידו או רגלו כדי שלא ימיתו את חבירו הלכך איני רואה טעם לדון זה אלא מדת חסידות ואשרי חלקו מי שיוכל לעמוד בזה ואם יש ספק סכנת נפשות הרי זה חסיד שוטה דספיקא דידיה עדיף מוודאי דחבריה. והנראה לע"ד כתבתי :**

From Rabbi Zev Schostak - "Is there Patient Autonomy in Halacha?"

The ability of a live donor to donate non-vital organs or parts of his body, such as bone marrow or kidneys, clearly demonstrates that he has a proprietary interest in his body since one may not donate what does not belong to him. Of course, organ transplants are a relatively recent development, and one would think it virtually impossible to find a precedent or sources in halacha. **Yet, contemporary authorities have found a source in a responsum of the Radbaz.**^[19] The Radbaz was posed this most poignant question: a gentile authority requests that a Jew allow him to amputate one of his non-vital limbs or he will execute one of his friends. May he permit this amputation in order to save his friend's life? The Radbaz ruled that he is not required to allow the amputation, unless he is motivated out of piety; however, if any way he may be risking his life by allowing the amputation, he is regarded as a "pious fool" if he permits it.

The Radbaz summarizes his position most succinctly: **"his doubtful (risking of his life) supersedes the certain (saving) of his friend's life."**^[20] Contemporary authorities derive from this ruling that bone marrow transplants and, according to most opinions, kidney transplants are permissible in instances where there are no substantial risks to the donor.^[21] Yet, contemporary authorities have found a source in a responsum of the Radbaz.^[19] The Radbaz was posed this most poignant question: a gentile authority requests that a Jew allow him to amputate one of his non-vital limbs or he will execute one of his friends. May he permit this amputation in order to save his friend's life? **The Radbaz ruled that he is not required to allow the amputation, unless he is motivated out of piety; however, if any way he may be risking his life by allowing the amputation, he is regarded as a "pious fool" if he permits it. The Radbaz summarizes his position most succinctly: "his doubtful (risking of his life) supersedes the certain (saving) of his friend's life."**^[20] Contemporary authorities derive from this ruling that bone marrow transplants and, according to most opinions, kidney transplants are permissible in instances where there are no substantial risks to the donor.^[21]

III. Possible Reasons Not to Permit Transplants After Death

3) From “HODS”: There are three biblical prohibitions concerning a cadaver that would, at first blush, seem to indicate that organ donation should be forbidden. They are:

- ***Nivul Hamet***, a biblical prohibition that forbids the needless mutilation of a cadaver. This prohibition is the basis for why autopsies are generally forbidden. But Jewish law does permit autopsies when the results of the autopsy have a real and immediate chance to save lives (Rabbi Yechezkel Landau, the former Chief Rabbi of Prague, in his *Noda Beyehuda*). **Most Rabbis agree that *Pikuach Nefesh*, saving a life, is more important than the prohibition of *Nivul Hamet*.**
- ***Halanat Hamet***, Deuteronomy 21:23, a biblical prohibition that forbids delaying burial of a body. **All Rabbis agree that *Pikuach Nefesh*, saving a life, is more important than expedient burial.**
- ***Hana'at Hamet*** is a prohibition (some say biblical others say rabbinical) that forbids one from deriving any benefit from a dead body, such as selling it for medical research. All Rabbis agree that *Pikuach Nefesh*, saving a life, is more important than this prohibition.

The above prohibitions afford respect and dignity to cadavers, for they once hosted life itself. In this context, it makes sense that all Rabbis agree that saving a life outweighs observing prohibitions concerning a cadaver because by saving a life one is giving utmost respect and dignity to the human body. As it is written in Jewish Law, "Save one life and it is as if you have saved the entire world," Sanhedrin 4:5.

Resurrection of the Dead

The belief that a person must be buried with his or her organs in order to be resurrected from the dead has no basis in classical Jewish sources. The fact is that upon death all organs, tissue and muscles quickly decompose as all organic material succumbs to degradation by microorganisms. The book of Ezekiel (Chapter 37), for example, recounts a resurrection of dry bones as dry bones are all that remain. Ultimately, however, even bones disintegrate.

In fact, classical Jewish sources confirm organs decompose. The Mishna and Talmud report that deceased family members were traditionally placed in a niche inside a family burial cave. After a few months, when the organs decomposed, the bones were then put into a pit in the cave that contained all the bones of previous ancestors, thus the Hebrew euphemism for death, 'To be gathered unto his fathers.'

IV. Defining Death

4a) Talmud, Tractate Yomah 85a

תנו רבנן: עד היכן הוא בודק? עד חוטמו, ויש אומרים: עד לבו.

The Rabbis taught: How far do you check? Until the nose. There are those that say: until the chest

b) Rambam (Maimonides) Laws of Shabbat 2:9

בדקו עד חטמו ולא מצאו בו נשמה מניחין אותו שם שכבר מת.

If they checked until his nose and found that he was not breathing, he is left there (on Shabbat) since he has already died.

c) Shulchan Aruch (Code of Jewish Law) Orach Chayim 329:4

אפי' מצאוהו מרוצץ, שאינו יכול לחיות * אלא לפי שעה, מפקחין ובודקים עד חוטמו; אם לא הרגישו בחוטמו חיות, (י) אז ודאי מת לא שנא פגעו בראשו תחלה (יא) לא שנא פגעו ברגליו תחלה.

Even if they found him crushed – to the extent that he could only live a short time, we uncover the rubble and check until the nose; if we did not sense from his nose that he was living, then he is considered to be dead.

d) Responsum of Rav Moshe Sofer, “Chatam Sofer” – adopts this view in his responsa

...או שסמכו עצמן אקרא כל אשר רוח חיים באפו דהכל תלוי בנשימת האף וכמבואר ביומא פ”ה ע”א ופסקו רמב”ם וטוש”ע.

The sages relied upon the verse, “everything that had a breath of life in it” – and concluded that everything is contingent on the breathing from the nose, as it says in Yomah 85 and as ruled by Rambam and Shulchan Aruch....

5) The Brain Death Controversy in Jewish Law – Rabbi Yitzchok A. Breitowitz

Briefly stated, the Mishnah in Oholot establishes the dual propositions that, first, physical decapitation of an animal is a conclusive indicator of death and second, some degree of subsequent movement is not incompatible with a finding of death provided that such movement qualifies as spastic in nature (*pirchis be'alma*) like the twitching of the "severed tail of a lizard." The Talmud in *Yoma 85a*, detailing with a person trapped under a building, rules that a determination of respiratory failure establishes death without the need to continue to uncover the debris to check heartbeat. Proponents of "brain death" argue that a dysfunctional brain-stem is equivalent to a decapitated one (physiological decapitation), that destruction of the brain-stem inevitably means inability to spontaneously respire (meeting the criterion in *Yoma*) and that subsequent "movement," whether the Lazarus Reflex or the heartbeat, falls into category of *pirchus* since such movement is not coordinated from a "central root and point of origin,"¹⁴ ie., the brain.

The counter-arguments are: first, physiological dysfunction is not the equivalent of anatomical decapitation. The only phenomenon short of actual decapitation that might similarly qualify is total liquefaction (lysis) of the brain, something that probably does not occur until well after cardiac arrest. *Second, according to Rashi in Yoma, cessation of respiration is a conclusive indicator of death only when the person is "comparable to a dead man who does not move his limbs."* While certain forms of postmortem movement may be characterized as merely spastic and would not qualify as "movement," the rhythmic coordinated beating of the heart and the maintenance of a circulatory system can hardly be characterized as *pirchus* since such a heartbeat is life-sustaining and identical to that in a normally functioning individual.the *Gemara* in *Yoma* merely creates a presumption that upon cessation of respiration and an appropriate waiting time, one is permitted to assume that heartbeat has stopped as well.

6) Rabbi Moshe Feinstein – Responsum “Iggerot Moshe”

שו"ת אגרות משה חלק יו"ד ג' סימן קלב

May 5, 1976

קביעת עת המוות בעה"י ה' אייר תשל"ו מע"כ חתני הנכבד והאהוב לנו כש"ת הרה"ג מוהר"ר משה דוד טענדלער שליט"א.

(1) הנה בדבר ידיעת מיתת האדם מפורש בגמ' יומא דף פ"ה ע"א בנפל מפולת על האדם שמפקחין את הגל אפילו בשבת ובודקין עד חוטמו, ואיפסק כן ברמב"ם... שאם לא הרגישו שום חיות הוא בדין מת שהוא בבדיקת הנשימה, שאף אם הנשימה קלה מאד נמי הוא בדין חי שרואין זה ע"י נוצה וע"י חתיכת נייר דקה שמשימין אצל החוטם אם לא מתנדנד הוא בחזקת מת...

Even very light breathing – person is considered “alive” – feather, light piece of paper test....

2) זהו בסתם חולים שנקרב מצבם למיתה ולא הוצרכו למכונה שיעזרם לנשום, אבל איכא חולים גדולים שלא יכלו לנשום והניחו הרופאים בניהם מכונה שנושם ע"י זה, שע"י המכונה הא שייך שינשום אף שהוא כבר מת דנשימה כזו הא לא מחשיבו כחי, הנה אם לא ניכר בו בענינים אחרים ענין חיות שנראה כלא מרגיש בכלום אף לא בדקירת מחט וכהא שקורין קאמא כל זמן שהמכונה עובדת עבודתה אסור ליטול מפיו דשמא הוא חי ויהרגוהו בזה, אבל כשפסקה מלעבוד שנחסר העקסינזען /החמצן/ שהיה שם לא יחזירו לפיו עוד הפעם עד עבור זמן קצר כרבע שעה, שאם אינו חי כבר יפסיק מלנשום וידעו שהוא מת, ואם יחיה היינו שיראו שהוא נושם גם בלא המכונה אך בקושי ובהפסקים יחזירו המכונה עוד הפעם לפיו מיד וכה יעשו הרבה פעמים עד שיוטב מצבו או שיראו שאינו נושם בעצמו כלל שהוא מת.

This test relates to someone who is close to death, and does not need a respirator, but someone on a respirator – could theoretically be “breathing” even if he is already dead – this type of breathing is not considered “living”; but it’s forbidden to remove the respirator because its removal could kill him.. However, when it stops working – namely, when the oxygen dissipates, wait fifteen minutes until the respirator is restarted – if he lives ie we see that he is breathing, albeit with difficulty without the respirator, it should be immediately restarted until he improves or until we see that he is not breathing on his own, and dies.

3) אבל זהו באינשי שנחלו בידי שמים באיזו מחלה שהיא אבל באלו שהוכו בתאונת דרכים (בעקסידענט ע"י הקארס) וע"י נפילה מחלונות וכדומה שאירע שע"י התכווצות העצבים באיזה מקומות הסמוכים להריאה ולכלי הנשימה אינם יכולין לנשום וכשיעבור איזה זמן שינשמו אף רק ע"י המכונה יתפשטו מקומות הנכווצים ויתחילו לנשום בעצמם שאלו אף שאין יכולין לנשום בעצמן וגם לא ניכרין בהם עניני חיות אחרים אפשר שאינם עדיין מתים, וכיון שאתה אומר שעתה איכא נסיון שרופאים גדולים יכולין לברר ע"י זריקת איזו לחלוחית בהגוף ע"י הגידים לידע שנפסק הקשר שיש להמוח עם כל הגוף שאם לא יבא זה להמוח הוא ברור שאין להמוח שוב שום שייכות להגוף וגם שכבר נרקב המוח לגמרי והוי כהותז הראש בכח, שא"כ יש לנו להחמיר באלו שאף שאינו מרגיש כבר בכלום אף לא ע"י דקירת מחט ואף שאינו נושם כלל בלא המכונה שלא יחליטו שהוא מת עד שיעשו בדיקה זו שאם יראו שיש קשר להמוח עם הגוף אף שאינו נושם יתנו המכונה בפיו אף זמן גדול, ורק כשיראו ע"י הבדיקה שאין קשר להמוח עם הגוף יחליטו ע"י זה שאינו נושם למת.

But all of this is with people who are ill of natural causes , but those injured in a car accident...in which the nerves close to the lung and respiratory system prevent normal breathing, and through a respirator may be able to resume normal breathing...it’s possible that these people, even though they are only breathing via the respirator – are still alive...Now, you have told me that the doctors can perform a test – through the injection of a liquid – to determine if the linkage between the brain and the rest of the body still exists...it may turn out that the brain is no longer connected to the body, and this is as if he has been decapitated...

7a) Chief Rabbinate Decision 5747 accepts the Gemara, Rambam Shulchan Aruch and Chatam Sofer, Rav Moshe's Definition above... and conclude that.....

משה חלק יורה דעה ח"ג סימן קל"ב¹⁷)¹⁸ לכן יש לוודא שהנשימה פסקה לחלוטין באופן שלא תחזור עוד.
זאת ניתן לקבוע על ידי הוכחת הרס המוח כולו כולל גזע המוח שהוא הוא המפעיל את הנשימה העצמית באדם¹⁹.

One must be sure that breathing has completely disappeared to the point that it will not return. This can be established through proof of the destruction of the entire brain, including the brain stem, which controls independent breathing in a person

b) Rabbi Breitowitz: *'The Israeli Chief Rabbinate Council, in an order dated Cheshvan 5747, has also approved the utilization of "brain death" criteria in authorizing Hadassah Hospital to perform heart transplants but on a somewhat different theory than Rabbi Tendler. Positing that cessation of independent respiration was the only criterion of death the Rabbinate ruled that brain death was confirmatory of irreversible cessation of respiration. Theoretically, this would allow for a standard far less exacting than clinical brain death, perhaps nothing more than a failure of an apnea test. Indeed, Dr. Steinberg, the principal medical consultant to the Rabbinate, dismissed any requirement of nuclide scanning since destruction of the brain's respiratory center may be conclusively verified without such a test.'*²

8) Rav Shlomo Zalman Auerbach was born in Jerusalem in 1910. As the head of yeshiva "Kol Torah", he taught many students who later became rabbis and torah scholars. He is recognized as one of the prominent poskim of his time. Many of his decisions and works related to the halachic problems that arose with introduction of modern technology.

- Accepts the principle of brain death – but distinguishes between brain stem death and what he calls “death of the entire brain” (not one cell is alive)
- The brain death patient is a *safek gosses* (someone who has only 72 hours or less to live). A *gosses* cannot be moved for anything other than his benefit...it is forbidden to hasten a person's death, even if he is in a state of “*safek Gosses*” – even if this relates to the certain saving of another's life...
- All current forms of testing to determine brain death violate the prohibition of moving a *gosses* and cannot be performed
- However if they violated this prohibition and determined that he is brain dead, they can rely on this to remove the respirator...
- In this kind of scenario, if he does not start to breath after 30 seconds, he is considered deceased.

But, as Rabbi Breitowitz notes, **Of special significance are letters²⁶ signed by R. Shlomo Zalman Auerbach and R. Yosef Elyashiv, widely acknowledged as the leading *poskim* in Eretz Yisroel (if not the world), stating that removal of organs from a donor whose heart is beating and whose entire brain including the brain-stem is not functioning at all is prohibited and involves the taking of life.** Unfortunately, these very brief communications do not indicate if the *psak* is based on *vadei* (certainty) or *safeik* (doubt) nor do they address what the decision would be in case of total lysis.

9) Rabbi J. David Bleich, Rosh Kollel at Yeshiva University and author of many papers and a recently published book on the subject, has stated that anything short of total liquefaction (lysis) of the brain cannot constitute the equivalent of decapitation.

10) Text of Organ Donor Card of Halachic Organ Donor Society

2. Please read the text below, and check one of the boxes.

I agree to donate my organs for immediate transplant, not for research, provided it is done in accordance with Jewish law as dictated below:

I agree to donate my organs only after:

- irreversible cessation of breathing, which is confirmed by brain-stem death. [Medically, this allows for donation of all organs. This criterion is the position of the Chief Rabbinate of Israel.]
- irreversible cessation of heartbeat, provided that no invasive preparatory procedure is done prior to cessation of heart beat. [This option reduces the possibility of being an organ donor and limits the number of organs that may be donated.]

Which organs are you willing to donate?

I would like to donate all life-saving organs.

I would like to donate the following organs:

Skin Corneas Liver Lungs Pancreas Intestines Kidneys Heart

Any and all preparations for transplant should begin after consultation with a family-appointed rabbi. Transplants may commence only after a medical team, who is independent of the attending physicians and who is unaware that I am a potential organ donor, determines death as I have dictated above. All medical procedures must be done with proper respect, and minimum damage, to the cadaver.

I understand that the HOD Society will share my donor information with domestic and international databases provided that my specific requests are accurately conveyed.