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VALUE JUDGMENT: WHAT'S A LIFE WORTH?

Adapted from the writings of Dayan Yitzhak Grossman

In March, New York's Governor Andrew Cuomo justified the state's COVID-19 shutdown on the grounds that even a single human life is priceless:

I want to be able to say to the people of New York I did everything we could do. And if everything we do saves just one life, I'll be happy.

He reiterated this in May:

The faster we reopen the lower the economic cost, but the higher the human cost. Because the more lives lost. That, my friends, is the decision we are really making. . . .

How much is a human life worth? That is the real discussion that no one is admitting, openly or freely. That we should. To me, I say the cost of a human life, a human life is priceless. Period.

Libertarians and economists dismissed

this seemingly high-minded stance as fundamentally unserious:

In a world of finite resources, where government agencies routinely and appropriately weigh the cost of potentially lifesaving regulations, that attitude is utterly irrational.¹

It's appalling to attach a dollar number to a human life—for non-economists. You can never make things perfectly safe with zero risk. We do have limited time, health-care staff, ventilators, and money. What is the curve of transmission? How many people are going to die if you open up the economy?

¹ "Only Social Darwinians Worry About the Harm Caused by COVID-19 Lockdowns," Andrew Cuomo Says," Jacob Sullum in Reason, Mar. 24, 2020, <https://reason.com/2020/03/24/only-social-darwinians-worry-about-the-harm-caused-by-covid-19-lockdowns-andrew-cuomo-says/>. Cf. the same author's "Andrew Cuomo's Morally Grotesque Rationale for Maintaining COVID-19 Lockdowns," also in Reason, May 7, 2020, <https://reason.com/2020/05/07/andrew-cuomos-morally-grotesque-rationale-for-maintaining-covid-19-lockdowns/>

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Dedicated in loving memory of
HaRav Yosef Grossman zt"l

IMAGINE THE FOLLOWING SCENARIO:

A child falls off his bike and needs stitches (c'v.) His parents were referred to the best. Their child deserves the very best. They are on a good healthcare program but the company refuses to let them use the provider of their choice, forcing them to use one of their in-network doctors. They're not comfortable with someone dictating their choices. Shouldn't their son's healthcare be in their own hands... They are like many Americans who are denied the freedom to choose. They, most likely, are like you.

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No one is really too sure.²

In this article we demonstrate that the Torah also accepts the basic paradox that while the value of human life is inestimable, we can and do routinely weigh low but significant risk to life against other human and societal values, and sometimes we conclude that the risk is acceptable.

² Colin Camerer, quoted in "Will some people be affected badly? Yes." As Trump says U.S. must reopen soon, question hangs in the air: Can the economy be saved without sacrificing lives?" MarketWatch, May 6, 2020, <https://www.marketwatch.com/story/how-do-you-choose-between-economic-deaths-of-despair-and-coronavirus-victims-economists-lawmakers-grapple-with-a-moral-conundrum-2020-03-26>

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Shoe Away

Q I borrowed a car from a neighbor to do some errands. As I was pulling out of his driveway, I noticed that he had left a laptop computer on the passenger seat. I drove to the local shopping mall. When I returned to the car, the computer was gone; I had apparently forgotten to lock the doors. Given that the owner left the computer on the seat and never mentioned it to me, am I liable for the loss?

A There are two ways that a person can be responsible for what happens to someone else's property: as a *mazik* (damager) and as a *shomer* (custodian).

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Q&A from the
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VEILAV HU NOSEI ES NAFSHO

Many *poskim* allow the assumption of at least some risk to life in the course of earning a living, even though the level of risk is great enough that its assumption would be prohibited for the purpose of mere recreation.³ Similarly, some allow attempting to fend off a burglar in order to save one's property, even at the risk of one's life.⁴

There is, however, a dissenting view that forbids a worker from knowingly accepting hazardous employment, and concomitantly, an employer from offering such employment.⁵

THE WAY OF THE WORLD

A related doctrine asserted by many *poskim* allows the assumption of at least some level of risk while engaging in normal human activity.⁶ In this context as well, some *poskim* distinguish between mere recreation, such as a sea voyage "to tour the world and see novel things," which should be avoided, even if the chance of danger is "low and very remote," and business travel, which is acceptable.⁷

FOUR ARE REQUIRED TO GIVE THANKS

Chazal characterize four situations as sufficiently dangerous to warrant "the giving of thanks"—a *korban todah*, or in our time, the recitation of *birkas hagomeil*—and two of the four seem to include activity commonly engaged in on an elective basis: seafaring and traveling through the desert. The *poskim* articulate various rationales as to why such activity is not forbidden under the prohibition of self-endangerment (*venishmartem me'od lenafshoseichem*).⁸

3 Shu't Tzemach Tzedek (Krochmal) siman 6; Shu't Noda Bihudah Tinyana Y.D. siman 10 s.v. V'amnam; Shu't Igros Moshe C.M. cheilek 1 siman 104; Shu't Tzitz Eliezer cheilek 9 siman 17 perek 5 os 9.

4 Shu't Avnei Nezer O.C. end of siman 428 os 11.

5 Shu't Yad Eliyahu (Lublin) siman 28 p. 33a.

6 Shu't Binyan Tzion siman 137 (but see Shu't Achiezer cheilek 1 siman 23 os 2 and the extensive discussion cited in Otzar Haposkim E.H. siman 23 se'if katan 17 from os 16, p. 206); Shu't Igros Moshe C.M. cheilek 2 siman 76.

7 Shu't Shem Aryeh end of siman 27 p. 39b; Igros HaRa'ayah kerech 3 siman 852.

8 Devarim 4:15. The Vad Hamelech (Landau, Brachos 10:8) indeed argues that dangerous activities should be absolutely prohibited, and he therefore proposes ("lulei d'mistefina") the novel idea that *birkas hagomeil* is only recited if an unusual and unanticipated dangerous

· The Binyan Tzion asserts that the overriding and paramount concern for *pikuach nefesh*, extending even to a slight possibility of danger, applies only where there is present and certain danger. For example, we are permitted to desecrate Shabbos by digging through rubble even for the minuscule probability that doing so will save a Jewish life, and we do not assume the most probable outcome (that our Shabbos desecration will turn out to be fruitless)—*ein holchin befikuach nefesh achar harov*. Where there is currently no danger, however, but merely a concern for future danger, we apply the normal halachic rule of following the *rov* (majority; in our context, the likeliest outcome).⁹

· The Divrei Malkiel maintains that where there is only a *chashash* (remote possibility) of danger, although the Torah allows the violation of its laws for the preservation of life, it does not require it, and stringent conduct in this case is not considered (sinfully) suicidal.¹⁰

· The Shem Aryeh explains that anything that is "the custom of the world" and "a matter of necessity" does not fall under the prohibition of self-endangerment. This formulation also explains why waging even elective war (*milchemes reshut*) is permitted, despite the clear danger it entails,¹¹ and even why a woman is allowed to bear children, despite the danger of childbirth! He concludes, however, that this is only a dispensation for necessary travel, such as for business purposes, but not for recreational touring and sightseeing, which are problematic.¹²

situation arose on the journey. Most *poskim*, however, do not accept this position: See Biur Halacha beginning of siman 219; Kaf Hachaim ibid. s.k. 6; Shu't Minchas Yitzchak cheilek 2 siman 47 and cheilek 4 siman 11 os 1; Shu't Yabia Omer cheilek 1 O.C. siman 13 os 8.

9 Binyan Tzion ibid., and cf. Achiezer ibid.

10 Shu't Divrei Malkiel cheilek 5 siman 35.

11 Cf. Shu't Chasam Sofer C.M. siman 44 s.v. Vehinei ha deShmuel; Meromei Sadeh Eruvin 45a s.v. BeRashi v'eha lo ba'u; Ha'amek Davar Bereshis 9:5 (and Harchev Davar there) and Devarim 20:8; Mishpat Cohen end of siman 143, pp. 315-16; and see Shu't Imrei Aish siman 52 and Shu't Devar Yehoshua cheilek 2 siman 48.

12 Shem Aryeh ibid.

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A *mazik* is one who either physically damages someone else's object or whose gross negligence directly causes the damage (*garmi*). If his involvement is less direct, he could not be ordered to pay by a *bais din*, but he may have a moral responsibility to pay (*chayav bedinei shamayim*).

A custodian becomes responsible for an object once he assumes responsibility for the item and makes a *kinyan* to take possession. He is then liable if loss results from any negligence at all on his part.

In your case, it would appear at first glance that you are in neither category: You did not directly cause the computer to be stolen, so you aren't a *mazik*, and you didn't commit to watch it, so you aren't a *shomer*.

However, we find in Shulchan Aruch (C.M. 291:2) a case like yours: A fellow was traveling to another city by donkey, and his friend asked him to deliver a pair of shoes. The traveler instructed his friend to place the shoes on the donkey. On the way, the traveler stepped away from the donkey to use the facilities and returned to find the shoes gone.

The Rosh rules that although the traveler never verbally committed to watch the shoes, since the shoe owner will obviously not be able to watch his shoes while they're away, the commitment is implicit. The Nesivos comments that even if the traveler is not considered a *shomer*, he is a *mazik* for having moved the item from a more secure place (the city) to a less secure place (the roadside), where it is more likely to be damaged or stolen.

It emerges that you would be liable to pay for the computer, either—per the Rosh—as a *shomer*, because you implicitly committed to watching the computer by taking it from the owner's driveway to a place where he can no longer watch it, or—per the Nesivos—as a *mazik*, because you moved it from a safer place (the owner's driveway) to a less-safe place (an unlocked car outside a mall).



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