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UNDER FIRE: MUST SOMEONE BE SAVED FROM A DANGER OF HIS OWN MAKING?

Adapted from the writings of Dayan Yitzhak Grossman

The Associated Press reports:

After migrants in northern Mexico placed mattresses against the bars of their detention cell and set them on fire, guards quickly walked away and made no apparent attempt to release the men before smoke filled the room and killed 38 men, surveillance video showed Tuesday...In the video, two people dressed as guards rush into the camera frame, and at least one migrant appears by the metal gate on the other side. But the guards did not appear to make any effort to open the cell doors and instead ran away as billowing clouds of smoke filled the structure within seconds...Mexico President Andrés Manuel López Obrador said the fire was started by migrants in protest after learning they would be deported. "They never imagined that this

would cause this terrible misfortune," López Obrador said.¹

In this article and a follow-up, we discuss several halachic issues raised by this tragedy.

THE OBLIGATION TO RESCUE

In general, a Jew able to save another from injury or death is obligated by a positive commandment to do so and violates a negative commandment if he fails to do so:

From where do we know that if one sees his fellow drowning in a river or a wild animal ravaging him or bandits coming to attack him, that he is obligated to save him? The

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¹ Maria Verza and Morgan Lee. Video shows guards walking away during fire that killed 38. AP News. <https://apnews.com/article/mexico-fire-migrant-facility-dead-eea0b6efaf77f9868ef27ed1cf572b3>. Cf. Fabiola Sánchez and Morgan Lee. 38 dead in Mexico fire after guards didn't let migrants out. AP News. <https://apnews.com/article/mexico-fire-migrant-facility-dead-5bb55cdddbdf14941c83cd425532faa>.

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Dedicated in loving memory of
HaRav Yosef Grossman zt"l



PARSHAS SHMINI

BLOOD TYPE

Excerpted and adapted from a shiur by
Rav Moshe Zev Granek

Do not make your souls abominable by means of any creeping thing; and you shall not make yourselves impure through them, lest you make yourselves impure through them.

Vayikra 11:43

The Chelkas Yaakov was asked if one may receive a blood transfusion from a non-Jew. He rules that it is permitted if the patient is in danger, but a transfusion from a Jew is preferable. He explains that the Rama (Y.D. 81:7) says a Jewish baby should not nurse from a non-Jew due to *timtum haleiv* (spiritually stopping up the heart). Since the Gemara says that milk comes from blood, the Chelkas Yaakov says receiving a transfusion can also cause *timtum haleiv*.

There is a basis to differ with the Chelkas Yaakov. The Darchei Moshe cites the reason for the nursing rule from the Ran (Avodah Zarah 7b in the Rif pagination) and the Rashba (Yevamos 114a): Jews have certain positive character traits, like mercy and kindness, that a nursing Jewish woman transmits to a baby, while any negative character traits a non-Jewish wet nurse possesses can also be passed on. But the Ritva (Yevamos 114a) explains differently: The nonkosher food the

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Tree Line

Q When may one recite *birkas ha'ilanos* on a flowering fruit tree?

A The Gemara (Brachos 34b) says, "One who goes out in the days of Nisan and sees flowering trees recites [*birkas ha'ilanos*]." Some *poskim* say the "days of Nisan" means the month of Nisan, and the *bracha* may only be made then (see Halachos Ketanos 2:28 and Eishel Avraham 226). The Chasam Sofer (glosses on O.C. 226) says it doesn't mean the calendrical Nisan but *tekufas* Nisan, the onset of spring. Depending on the year, the *bracha* may be recited well into Iyar.

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Q&A from the
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pasuk says, "Do not stand by the blood of your friend."

But is it indeed from here that this law is derived? According to a *breisa*, it is derived from another *pasuk*. The Torah says that a lost object must be returned to its owner, but from where do we know that if one's life is in danger, one must save him (thereby "returning" his life to him)? The *pasuk* says (apparently superfluously): "And you shall return it to him." (So why would "Do not stand by..." be required to teach the same thing?)

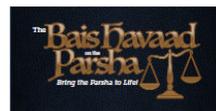
If the only source was "And you shall return it to him," I would have said that one is only obligated if he can save the victim himself. But with regard to bothering himself and hiring rescuers, I would have said that is not required. "Do not stand by..." informs us that he must do so.²

The Minchas Chinuch suggests that since the obligation to return lost property does not apply to cases of deliberate loss (*aveidah mida'as*),³ it follows that the obligation to rescue someone from lethal danger, which this Gemara derives from that obligation, similarly does not extend to one who commits suicide.⁴ The Kli Chemdah and the Igros Moshe, however, strongly disagree and insist that one is obligated to save even a suicide.⁵ The Revid Hazahav holds a compromise position: While in theory there is no obligation to save a suicide because he is considered *aveidah mida'as*, in practice there is, because there is a presumption that one who commits suicide is mentally deranged and therefore not in the category of *aveidah mida'as*.⁶

In our case, presumably all would agree that there was an obligation to save the lives of the migrants, because although they did start the fire themselves, it is clear that, as President López Obrador said, "they never imagined that this would cause this terrible misfortune," so

² Sanhedrin 73a.
³ Bava Metzia 25b.
⁴ Minchas Chinuch mitzvah 237 in Kometz Lamincha.
⁵ Kli Chemdah, Ki Seitzei siman 6 (to Devarim 22:1) os 2; Shu"t Igros Moshe Y.D. cheilek 2 siman 174 anaf 3 s.v. Umah shekasav haMinchas Chinuch.
⁶ Revid Hazahav (Treves), Devarim ibid. The Revid Hazahav seems to contradict himself as to whether all suicides are presumed to be the result of mental derangement, or only those that are known to be assessed as such; see Kli Chemdah ibid.
Cf. Chillul Shabbos Al Misabeid, Din-She'al Es Harav.

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non-Jewish wet nurse has ingested c a u s e s t i m t u m

haleiv in the baby.

The Chelkas Yaakov's logic appears consistent with this view. But the

ALLURE
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Mr. and Mrs. Michael Nudell

Rashba, whose view is codified by the Rama, maintains that the *timtum* comes from the person, not what she ate. If so, we have no basis from the *Rishonim* to assume that a non-Jew's blood causes *timtum* just because her milk does. Further, even the Ritva may

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they would not be considered *aveidah mida'as*.

CRIMINAL LIABILITY FOR FAILING TO RESCUE

While the deliberate failure to comply with the obligation to rescue someone from death is surely a grave sin, it does not engender any criminal liability. The Gemara says:

Rava said: If one person bound another, and the victim died from hunger, he is not liable to execution. And Rava said: If one person bound another in the sun, and he died, or in the intense cold and he died, he is liable to execution. But if he bound him in a place where the sun or the intense cold would eventually come, he is not liable to execution.⁷

If even someone who actively bound someone in a place where the sun would ultimately arrive and kill him is exempt from execution, then certainly one who only fails to rescue someone from lethal heat is exempt.

Murderers whose execution under standard procedures is prevented by certain technicalities are nevertheless executed via an irregular, indirect method.

The following laws apply when a person kills people, but [various technicalities of the laws of testimony are not met]...

All those murderers should be forced to enter a cell. There they are fed parched bread and small amounts of water until their digestive tracts contract. Then they are fed barley until their bellies burst because of the extent of their illness and they die.

This measure is not taken with regard to other crimes punishable by execution by the court. If a defendant is liable to execution, he should be executed. If he is not liable to execution, he should be released.

Although there are other sins that are more serious than murder, they do not present as serious a danger to society as murder does. Even idol worship—and needless to say, forbidden relationships or chillul Shabbos—are not like murder. For these sins involve man's relationship with the Omnipresent, while murder also involves man's relationship with his fellow man...⁸

Even this irregular form of execution, however, is only prescribed for active murder, and I am not

⁷ Sanhedrin 77a.
⁸ Hilchos Rotzeiach Ushmiras Hanefesh 4:8-9.

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But most *poskim* say Nisan is mentioned only as a typical example, and the *bracha* may be recited any time flowering trees are seen; the Mishnah Brurah (226:1) rules this way.



RAV ARYEH FINKEL

According to mekubalim, the *bracha* is associated with the month of Nisan and should only be recited then (Birkei Yosef 226). Many make an effort to follow this.

The *bracha* may only be made once per season, preferably on the first sighting of an eligible tree (O.C. ibid.). If the *bracha* was not recited when the tree was seen, some *poskim* say it may no longer be recited (Machatzis Hashekel 226). But the Mishnah Brurah (ibid. 5) allows the *bracha* to be made later, as long as flowers are still present.

If one didn't see a tree when it flowered but only when it started to bear fruit, the Mishnah Brurah (ibid. 4) rules that the *bracha* may still be made as long as the fruits are not completely ripe.

One who sees a flowering tree while driving past should make the *bracha* right away, *toch kedei dibur* (within 2-3 seconds). When this time elapses, the chance is lost (Piskei Teshuvos ibid. 3).

Birkas ha'ilanos may be recited on Shabbos, but some *sfarim* recommend not doing so for kabalah-based reasons. If by passing on the opportunity one risks missing out on the *bracha* entirely, he should make it on Shabbos (Piskei Teshuvos ibid.).

aware of any basis for applying it to one who passively fails to save someone from death.

In the following article, we will *iy"H* consider the question of civil liability for wrongful death or injury caused by failure to take action to save someone from danger.

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