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## THE FORESEEABLE FUTURE, PART II: MAY WE TRY TO FIND OUT WHAT LIES AHEAD?

Adapted from the writings of Dayan Yitzhak Grossman

Our previous article addressed the question of whether preventive MRI scans violate the mitzvah of *Tamim tiheyeh im Hashem Elokecha*; this article continues that analysis.

A fundamental question regarding the scope of the mitzvah of *tamim tiheyeh* is whether it is limited to supernatural means of attempting to predict the future or it applies even to natural ones. The previous article mentioned R' Menashe Klein's invocation of *tamim tiheyeh* in the course of his opposition to genetic screening for Tay-Sachs; elsewhere, he invokes it as an argument against the propriety of prenatal sex discernment via ultrasound.<sup>1</sup> Rav Klein clearly understands the mitzvah to extend even to natural, scientific means of predicting the future. But while his opposition to Tay-Sachs testing is an outlier to the consensus that approves of and even insists upon such testing, even R' Moshe Feinstein apparently takes for granted that *tamim tiheyeh* is not limited to supernatural methods, and he only rejects its application to Tay-Sachs testing because such testing is "easy," so refraining from it is tantamount to closing

one's eyes to avoid seeing what is visible.<sup>2</sup> Indeed, R' Eliyahu Bakshi-Doron, after citing R' Moshe's analysis of the application of *tamim tiheyeh* to Tay-Sachs screening, proceeds to invoke *tamim tiheyeh* as a basis for opposing certain types of preventive testing:

It seems that advance tests and advance knowledge, when it is uncertain and it cannot prevent the illness, is undesirable, and regarding this it is written, *Tamim tiheyeh im Hashem Elokecha*...Investigation into the future damages wholeheartedness and *emunah* and is undesirable. But if saving lives overrides the entire Torah, why is the problem of lack of *emunah* not overridden in order to save human life, and why should we not investigate the future in order to avoid danger?

It seems that if the genetic tests are reliable and can prevent danger with certainty, even if there is no immediate danger, then it is very desirable to perform them, e.g., tests for breast cancer and the like. But in general, genetic tests do not establish

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### PARSHAS DVARIM

#### RULE OF THREE

Excerpted and adapted from a *shiur*  
by Dayan Yosef Greenwald

*You shall not show favoritism in judgment, small and great alike shall you hear...*

Dvarim 1:17

The Rambam (Sefer Hamitzvos Lo Sa'aseh 284, based on Sanhedrin 7b) says this is a mitzvah not to appoint *dayanim* to bais din without the requisite knowledge and wisdom to rule. He additionally codifies a mitzvas *asei* to appoint qualified *dayanim* in every district.

The classic *sfarim* note a distinction between a *bais din* adjudicating *dinei mamonos* and a *rav* ruling on matters of *issur veheter*. The *rav* applies the halacha to the case at hand, but every case of *dinei mamonos* is unique, so a new *psak* must be made for it by the *bais din*. Three *dayanim* are involved to ensure the novel *psak* is correct. A litigant cannot argue in *bais din* that his *rav* said he's right, because unlike in *issur veheter*,

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<sup>1</sup>Shu"t Mishneh Halachos cheilek 15 siman 119 sv. Ulfon"l. For other sources and perspectives on the propriety of prenatal sex discernment via ultrasound, see Nishmas Avraham (Second Expanded Edition) pp. 167-68 and Tamim Tiheyeh, Din-Ask the Rabbi, Jan. 30, 2023.

<sup>2</sup>Eisevwhere (Shu"t Igros Moshe Y.D. cheilek 1 end of siman 90, and cf. Masores Moshe cheilek 1 p. 293 (#197)), R' Moshe invokes *tamim tiheyeh* as an argument against excessive investigations into the suitability of a prospective marriage partner, which is consistent with our understanding of his position that the *issur* is not limited to supernatural methods (see R' Micha Cohn, Health Screening and Genetic Testing vs. Bitachon-Part II, The Bais HaVaad Halacha Journal, Volume 5775 Issue XI Parshas Vayigash).

### Footnote

Q On Tisha B'Av, may one wear non-leather sneakers that are as comfortable as leather shoes? What about a shoe with leather trim?

A One of the prohibitions of Tisha B'Av is *ne'ilas hasandal* (wearing shoes). Non-leather footwear is not considered a shoe for this purpose (O.C. 554:16).

According to some, what is forbidden is not leather per se but the comfort and protection that it affords (Panim Me'iros, cited in Sha'arei Teshuvah ibid. 11), so sneakers that provide these things would likewise be forbidden. Though the halacha doesn't accord with this view, the Mishnah Brurah (604:5) says it is commendable to follow it on Yom Kippur, but he doesn't say that about Tisha B'Av. R' Shlomo Zalman

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with certainty that the carrier of the gene is in danger, for they are only estimations of a possibility of danger. Further, in most cases, even if someone is a carrier of a gene that entails a danger of illness, avoiding the illness is not at all assured, and the advance knowledge does not help. Therefore, in these cases it is preferable to remain with the lack of knowledge and to rely upon the mercies of Heaven, according to the principle that Hashem protects the simple,<sup>3</sup> and from Heaven they will have mercy.<sup>4,5...</sup>

In light of these matters, we should distinguish among tests: If the genetic tests can bring about the prevention of the diseases, then when the danger is before us, it is obligatory to be tested, and when the danger is not before us and it is an unlikely possibility (*miut she'eino matzui*), it is good to be tested to avoid danger. But if the knowledge will not bring certain avoidance, and the danger is not before us, it is desirable not to be tested and not to investigate the future, because the knowledge will only "increase knowledge and increase pain"<sup>6</sup> and burden the one tested, and on the other hand, he will not be included in the dispensation that Hashem protects the simple and from Heaven they will have mercy.<sup>7</sup>

Other authorities, however, maintain that scientific procedures do not fall under the scope of *tamim tiheyeh*. R' Shamai Kehas Gross permits weather forecasting, which he distinguishes from astrological prognostication:

Consulting stargazers is prohibited, for he sees via the wisdom of the constellations what will occur in the future, and this is prohibited. But those who know what the weather will be in the future, it is not because they look using the wisdom of the constellations, but because they see how the clouds approach each other and so on, for this is a sign that it will rain. Just as it is permitted to look at the sky to see if it is cloudy and so on, so do they see via special instruments how the sun and clouds are moving now. This does not at all resemble those who consult stargazers, and it cannot be prohibited on the grounds of *tamim tiheyeh* to know in advance what the weather will be like in the future.<sup>8</sup>

While the precise distinction that Rav Gross is making is not entirely clear, it is at least possible that according to him, all genetic testing would be absolutely permitted just like weather forecasting, because such testing does not utilize "the wisdom of the constellations," only an examination of various physical realia that inform us about the probabilities of various future developments. R' Asi ibn Yuli argues explicitly for the limitation of *tamim tiheyeh* to supernatural methods. He raises the basic question of how to distinguish between those activities that fall under this injunction and those that obviously do not and are clearly permitted, such as consulting a *rav* or a friend on the suitability of a particular business venture or whether to marry a particular woman: According to the Rambam and others of his school,

who understand that the occult practices prohibited by the Torah constitute falsehood and lies,<sup>9</sup> the distinction is obvious, but according to the many *Rishonim* who disagree with the Rambam and maintain that a large portion of them are real, and that astrology in particular is "a great and wonderful science," how are we to understand the difference? He therefore explains that the Torah only prohibits investigating the future via nonrational, mystical methods (even if they work), but not via rational ones (which, in his view, is why weather and business forecasting are permitted).<sup>10</sup> Elsewhere, he invokes this limitation of the *issur* as one of several justifications for genetic screening.<sup>11</sup> According to this view, preventive MRIs as well would clearly not fall under the scope of *tamim tiheyeh*.

Rav ibn Yuli argues at length for another fundamental qualification of the prohibition of *tamim tiheyeh*: that it is limited to attempting to predict future events, as opposed to attempting to discern information about the present.<sup>12</sup> He invokes this limitation too as a justification for genetic screening.<sup>13</sup> Once again, to the extent that the limitation justifies genetic screening, it would seem to justify preventive MRIs as well. But again, it must be noted that R' Moshe did assert that *tamim tiheyeh* would potentially apply to genetic screening, were it not for the aforementioned fact that it is easy, which makes refraining from testing comparable to closing one's eyes to avoid seeing what is visible, which would seem to imply that either a) R' Moshe does not accept the basic distinction between predicting the future and discerning information about the present, or b) he considers genetic testing to be fundamentally about the future, because the genes being tested have no significance for the present and are only interesting for their implications for future children.

According to the first interpretation, preventive MRIs would likely be prohibited as well (because as noted in the previous article, they would not seem to be considered easy to perform due to their cost), whereas according to the second interpretation, the question of whether the results of an MRI performed on a healthy person should be considered information about the present or indicators of future developments requires further consideration.<sup>14</sup>

This author subsequently discovered (thanks to an article published a decade ago in this journal by R' Micha Cohn<sup>15</sup>) that R' Moshe is indeed quoted as explicitly opposing preventive cancer screening on the grounds of *tamim tiheyeh*, at least in certain contexts:

Some have the custom that when they are fifty years old or so, they enter the hospital for several days to perform tests for cancer, to find out in advance if they *chas veshalom* have it—this one

<sup>9</sup> See Hilchos Avodas Kochavim 1:16.

<sup>10</sup> Shu"t Nachalas Levi (ibn Yuli: Yerushalayim 5780) cheilek 2 Y.D. siman 1 as 10 pp. 274-75.

<sup>11</sup> R' Asi ibn Yuli, *Bedikos Genetiyos Batzibur Hasepharadi*, Ha'im Mumlatz O Meyasar?, as 5, Meishiv Katalacha 1 Shevet 5782.

<sup>12</sup> Nachalas Levi ibid. osos 15-18 pp. 281-83.

<sup>13</sup> *Bedikos Genetiyos* ibid. Cf. R' Micha Cohn, Health Screening and Genetic Testing vs. Bitachon-Part One, The Ba'is HaVaad Halacha Journal, Volume 5775 Issue IX, Parshas Vayeishev.

<sup>14</sup> In the previous article, we noted that R' Chaim Jachter quotes R' Moshe as saying that *tamim tiheyeh* "does not apply because genetic testing does not predict the future; it reveals what already exists." According to this interpretation of R' Moshe's position, he actually is making precisely the same distinction as Rav ibn Yuli, but as we noted in the previous article, it is difficult to square Rav Jachter's interpretation of R' Moshe's position with the latter's wording.

In a *teshuvah* on genetic screening, R' Raphael Evers explains that *tamim tiheyeh* does not apply to such screening because a) the screening is for "the current root of the illness in the genes of the parents, that may possibly cause damage to children in the future," and b) the test utilizes natural, as opposed to supernatural, means (Shu"t Vashav Verava cheilek 2 siman 71, cited by Rav ibn Yuli in *Bedikos Genetiyos*). Rav Evers initially cites R' Moshe's approval of such testing and his explanation of why it does not violate *tamim tiheyeh*, and then proceeds to introduce his own reasons with the words "Uchedei leha'amik davar hakedoshim shehu z"l ramaz bidvarov shelhalacha lema'aseh ein kan choshesh legabai h'osai detamim tiheyeh". It is not entirely clear whether he really means to explain R' Moshe's view or is merely offering his own justifications for permitting genetic screening.

Cf. R' Yehudah Yitzchak, *Bedikos Genetiyos Kodem Hanisuim Bir' Hahalacha Vehamada*, Choveress Asia 87/98 (9775) pp. 121-33.

<sup>15</sup> R' Micha Cohn, Health Screening & Genetic Testing vs. Bitachon-Part III, The Ba'is HaVaad Halacha Journal, Volume 5775 Issue XII Parshas Vayeichi.

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Auerbach (Halichos Shlomo 15:4), however, says to be strict about this on Tisha B'Av even if one is lenient on Yom Kippur.

A predominantly non-leather shoe with a minority of leather components is forbidden (O.C. ibid. and Mishnah Brurah). If those parts are only decorative, it is permitted, because the leather doesn't add comfort (Kovetz Halachos 18:17). The same is true for synthetic sandals with leather straps (ibid. footnote 15).

Some forbid faux leather because of *mar'is ayin* (Minchas Shlomo 2:53). Others contend that *mar'is ayin* doesn't apply to this *issur*. Still others say there's no *mar'is ayin* here, because the public is aware of the widespread use of faux leather (R' Yosef Shalom Elyashiv, Ashrei Ha'ish 3:71).



should not do (on account of *tamim tiheyeh*)...

It is impossible to escape from Hashem, if He particularly desires, *chas veshalom*, to afflict someone with disease or worse, and all the tests and possibilities will not be effective! One should therefore not conduct himself in such a fashion, and only if there is actually a real concern should he conduct himself according to the laws of nature.<sup>16</sup>

Note that throughout this article and the previous one, we have assumed (as do most *talmidei* chachamim who have written on this topic of whom this author is aware) that R' Moshe's published *teshuvah*<sup>17</sup> states that he did indeed approve of genetic testing for Tay-Sachs. It has come to our attention, however, that R' Reuven Feinstein understands his father's view to have actually been precisely the opposite (full text linked in footnote):

To any *talmid muvhak* of the *Rosh HaYeshiva*, *ztvk*"l, it is clear from the way the letter is written that he was against the idea. People who are not well versed in the style of the *Rosh HaYeshiva*, *ztvk*"l, however, sometimes walk away with the incorrect impression as to his opinion in this matter...

He opens with the statement that such testing might be a violation of *tamim tehiyeh*, unless it is very easy to do. He then spends the rest of the *teshuvah* explaining why it is not, in fact, so easy to do. Obviously, then, the *Rosh HaYeshiva* maintains that it is forbidden. But, because this was a *teshuvah* that was intended to be explained to non-Jews and non-observant Jews, the *Rosh HaYeshiva*, *ztvk*"l, couched his opinion carefully...

Practically speaking, the *Rosh HaYeshiva*, *ztvk*"l, held not to do such tests...<sup>18</sup>

<sup>16</sup> Masores Moshe ibid.

<sup>17</sup> Shu"t Igros Moshe E.H. cheilek 4 siman 10 (originally published in Halacha Urefuah cheilek 1 pp. 327-28).

<sup>18</sup> R' Sholom Reuven Feinstein, Nahar Shalom Dvarim pp. 251-54 Cf. this thread.

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where the *psak* is only applied, the creation

of a *psak* for *dinei mamonos* requires that both parties and the *dayanim* be present

together to ensure accuracy.

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