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290 River Avenue, Lakewood NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org
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LIFELINE: WHICH TAKES PRECEDENCE, TALMUD TORAH OR HATZALAS NEFASHOS?

Adapted from the writings of Dayan Yitzhak Grossman

VINnews reports:

During a meeting of the Knesset's Ministerial Committee for Legislation held on Tuesday morning, it was agreed to advance a revised version of the proposed "Basic Law: Torah Study." The new version will reflect the importance of Torah scholars without equating them with IDF servicemembers, as had a previous version.

A statement issued on behalf of the committee said: "The change comes in response to demands from the Religious Zionism faction and the Likud faction."

Government Secretary Yossi Fuchs and the Minister of Justice confirmed during the committee discussion that the controversial clause would be removed and that the bill would return to committee before its first reading.

The clause in question stated: "The Basic Law shall establish that those who undertake to devote themselves to Torah study for a significant period shall be regarded as performing meaningful service to the State of Israel and the Jewish people, and that this shall have implications for their rights and obligations."

Coalition officials assess that once the clause is removed, members of the Religious Zionism faction will also support the bill. The move is intended to broaden support for the legislation and reduce public criticism that arose over

the controversial provision. Sources in Likud emphasized that the goal is to enshrine the supreme value of Torah study without creating a direct comparison that could provoke controversy.

The Religious Zionism faction stated this morning: "The Religious Zionism faction has announced that it will not allow the advancement of legislation that equates the status and benefits of those who refrain from military service with the status and benefits of those who serve in the IDF. The faction will support only a law that establishes Torah study as a foundational value without comparing yeshiva students to IDF servicemembers."...

In this article, we consider what Chazal and *poskim* say about the relative merits of Torah study and saving lives.

The Gemara says:

"For Mordechai the Jew was viceroy to King Achashveirosh and a great man among the Jews and popular with the multitude of his brethren" (Esther 10:3). With the *multitude* of his brethren, not with *all* of his brethren. This teaches that some members of the Sanhedrin parted from him (because by becoming a government minister, his Torah study was diminished—Rashi).²

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¹Yehuda Dov, Basic Law: Torah Study To Be Promoted In Knesset Without Equating Torah Scholars To Soldiers, VINnews.

²R' Yeshaya di Trani (Esther ibid.) understands the phrase "levov echov" to mean "to the multitude of his brethren, i.e., all of Yisrael." Other meforshim follow the Gemara's interpretation that Mordechai was not universally popular, but offer various other explanations for the opposition: "A man doesn't have the



PARSHAS KORACH

BEGGING TO DIFFER

Excerpted and adapted from a *shiur* by Dayan Yitzhak Grossman

Korach gathered the entire assembly against them at the entrance of the Ohel Mo'ed, and the glory of Hashem appeared to the entire assembly.

Bemidbar 16:19

Korach's rebellion against Moshe raises the question of when one *chacham* is permitted to disagree with earlier *chachamim* in matters of halacha, concerning which we will cite here just a few out of many sources.

The Ra'avad argues that if a *dayan* rules against a Gaon (from the *Tekufas Hageonim*), he is deemed a *to'eh bidvar* Mishnah (errant in an explicit matter), about which the halacha says he must retract his ruling. In the Ra'avad's understanding, one may never disagree with Geonim unless he has a very "famous question" against them, which he says is uncommon.

The Rosh holds that if the *dayan* is familiar with the Gaon's view and cites proofs against it that are accepted by the other *gedolim* of his generation, he is permitted to disagree. In support of his position, the Rosh cites the Gemara that one can only go to the authority in his generation (even if he is of lesser stature than earlier authorities that ruled differently). If the later *chacham* has no proofs and his view is not accepted by other *chachamim* in his time, he may not disagree with an earlier *chacham*.

The Rama rules like the Rosh, and some later *poskim* also permit contradicting earlier authorities in some cases. For instance, the Rid says that the

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Double Dipping

Q I purchased a silver dish from a non-Jew to give to a friend as a gift. Should I *tovel* it now, or should he *tovel* it after receiving it?

A *Klei seudah* (meal utensils) are subject to the mitzvah of *tvilas keilim*. If a store owner wishes to take a utensil from his inventory, eat with it temporarily, and then sell it, the Rama and the Taz hold that it is now a *kli seudah* and he must *tovel* it first (Rama Y.D. 120:8, Taz ibid. 10). But the Pri Chadash (ibid. 23) says that because he doesn't intend to keep it, it is not a *kli seudah*, so he may use it without *tvilah*. (When the utensil is sold, the Taz says the purchaser should *tovel* it again, but without a *bracha*.)

If someone purchases a utensil intending not to use it but to gift it, it is subject to the same dispute (Teshuvos (continued on page 2))

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Rav Yosef said: Studying Torah is greater than saving lives. For initially, Mordechai is reckoned after four, but in the end (after the Purim story), after five. Initially it is written, "Those who had come with Zrubavel were Yeishua, Nechemiah, Sraiah, Re'eilaiah, Mordechai Bilshan." And in the end it is written, "The ones who came with Zrubavel were Yeishua, Nechemiah, Azariah, Ra'amiah, Nachamani, Mordechai Bilshan."³

The Rosh rules:

You wrote that some say a community may divert tzedakah funds even from Torah study to the thirty *pshitin* that they pay the governor (*hegmon*) each year, for it constitutes saving lives (*hatzalas nefashos*), because there are some paupers that do not have what to give, and he will beat them and strip them naked—the *din* is with them. Because this involves *hatzalas nefashos*, it takes precedence over everything.⁴

This ruling is codified in the Shulchan Aruch.⁵

The Maharshah is baffled by this *psak*, because it seems to contradict the above principle in the Gemara that Torah study is greater than saving lives.⁶ He himself leaves the problem unresolved, but later *Acharonim* have offered various resolutions.

THE DRISHAH

The Drishah (R' Yehoshua Falk, a *talmid* of the Maharshah) writes:

It appears that the Gemara is discussing where it is impossible to fulfill both; then, studying Torah takes precedence. But the Rosh is discussing where even if they give money to the governor, money will still remain to provide for Torah study, just not with as much abundance. In such a context he said that because there is *hatzalas nefashos*, it takes precedence...⁷

The Taz, in turn, is baffled by this position of the Drishah that where it is impossible to fulfill both, studying Torah takes precedence, and he calls it "certainly incorrect."⁸

THE PRISHAH

The Prishah (also by R' Yehoshua Falk) explains:

The Gemara is discussing where there are others who can save them. So although it is a great mitzvah to take the initiative and save lives, studying Torah nevertheless takes precedence, because there are others who can save them...⁹

THE BACH AND THE TAZ

The Bach and his son-in-law the Taz both dismiss the Maharshah's question as rooted in the fallacious assumption that being greater and taking precedence are the same. They explain that as a matter of practice, of course saving lives takes precedence, per the rule that "there is nothing that stands in the way of saving a life."¹⁰ And the Gemara means only that someone who merits the opportunity to engage in Torah study is considered to

have greater merit and to be more important (*chashuv*) than one who engages in saving lives, and should be given precedence (as a form of respect) over him.¹¹ The Aruch Hashulchan follows this approach as well.¹²

The Ksav Sofer reports that his father, the Chasam Sofer, would often express a variation of this approach:

It is certain that one who encounters an opportunity to save lives must leave the words of Torah. Nevertheless, in Heaven they choose one whose Torah is not as important to interrupt his study. The Sanhedrin saw that Mordechai's Torah must not be as important as those who sat behind him, so some of them parted from him and they made him fifth in the Sanhedrin.¹³

THE OR HACHAIM AND THE BEN ISH CHAI

The Or Hachaim (R' Chaim ibn Atar) and the Ben Ish Chai (R' Yosef Chaim of Baghdad), in their *peirushim* to the above Gemara, both qualify the statement that studying Torah is greater than saving lives in a manner that may eliminate the contradiction between it and the Rosh (though they do not mention him). The Or Hachaim writes:

"Studying Torah is greater than saving lives." This is only in such a case, where he stands in the breach to prevent the situation from coming to danger to life. But to save from the sea or from a collapsed building,¹⁴ where lives are here to save, there is nothing equal to saving lives...

The proof is that Mordechai reduced his Torah study (*batei* meihaTorah) and entered government after Yisrael had already been saved, and it was because of this that the Sanhedrin parted from him...and he entered government to stand in the breach so that an adversary and an enemy¹⁵ should not come into the legacy of the A-Imighty.¹⁶ But *at the time* of the saving of Yisrael, it is obvious that it is much greater than studying Torah...¹⁷

The Ben Ish Chai explains similarly:

Know that when it says "greater than saving lives," it does not mean saving lives that are *certainly* in danger, for there is certainly nothing that stands in the way of saving a life. Rather, it means the possibility (*safek*) of saving lives. For Mordechai Hatzadik *a"h* took government office after Yisrael was already saved and the miracle was done, only he said that he might have an opportunity to save lives in the future.¹⁸

According to their approaches, it seems quite plausible to interpret the Rosh as referring to certain current danger rather than possible future danger.¹⁹

SUMMARY

1. The Drishah asserts that in the event of an absolute conflict between studying Torah and saving lives, studying Torah takes precedence.
2. Most *Acharonim* disagree and maintain that in

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Vehanhagos 1:452), because its purpose, to its current owner, is not eating. So if the gift giver *tovels* it before he gifts it, the Taz holds the *tvilah* is effective, but the Pri Chadash holds it is invalid, because there was no mitzvah yet.

Many contemporary *poskim* follow the strict view of the Pri Chadash, but Rav Elyashiv says that in a case of need, the lenient view of the Taz may be relied upon with *keilim* whose *tvilah* obligation is only *mideRabanan*, like glass (Tvilas Keilim Kehilchasah p. 115).

It is best for you to leave it to your friend to *tovel* his gift, and it is advisable to attach a note indicating that *tvilah* has not been done.

If you have reason to suspect that the recipient won't do it, then you should. R' Moshe Sternbuch (*ibid.*) suggests to do one of two things:

1. You should decide to use the utensil temporarily, which makes it require *tvilah* according to the Taz, and then *tovel* it.
2. You should transfer it to your friend's possession without his knowledge and then *tovel* it for him. Do this by having someone else acquire it from you on his behalf, which is effective due to the principle of *zachin le'adam shelo befanav* (we may benefit a person in his absence).

such a case, saving lives takes precedence (and this is apparently even the position of the Drishah himself in his Prishah).

3. The Prishah maintains that if others can save the lives, studying Torah takes precedence.
4. The Or Hachaim and the Ben Ish Chai maintain that if the danger is not current and certain, only a future possibility, studying Torah takes precedence.
5. Some *Acharonim* maintain that although as a matter of practice, saving lives takes precedence over studying Torah, one who merits to study Torah is nevertheless greater than one who saves lives.

(It is unclear whether the views in numbers 3, 4, and 5 are generally accepted.)

Note that our analysis does not consider the relative *mesiras nefesh*—the deprivation, risk, and sacrifice—involved in studying Torah and saving lives in various circumstances, because those factors are not considered in the sources cited.

ability to please everyone" (Ibn Ezra and Midrash Lekach Tov *ibid.*); people blamed him for provoking Haman, which resulted in their being sentenced to annihilation, a fate they only avoided due to Divine intervention (R' Yosef Kara, *nusach sheini*, *ibid.*); people blamed him for not utilizing his position to obtain an exemption for his nation from Achashveirosh's heavy tax (see Esther 10:1, Ksav Sofer Esther 10:2 s.v. Ki Mordechai hofehudi, and see the continuation of his discussion for additional approaches to the *pasuk* and Chazal's understanding of it). Cf. here.

3Megillah 16b.

4Shu"t HaRosh klaf 6 siman 2, cited in Tur Y.D. end of siman 251.

5Shulchan Aruch *ibid.* se"i 14.

6Chidushei Uvurei Maharshah to Tur *ibid.* (Yerushalayim 5719).

7Drishah *ibid.* s.k. 5.

8Taz *ibid.* s.k. 6.

9Prishah *ibid.* s.k. 13.

10Yoma 82a.

11Bach *ibid.* Taz *ibid.*

12Aruch Hashulchan *ibid.* se"i 21. Cf. R' Asher Weiss, Parshas Toldos: Cadol Talmud Torah Yosef Mikibud Av Va'eim, os 2 and Shu"t Bedinei Kedim Bittzakah, end of s. 1.

13Ksav Sofer Al HaTorah, Korach, s.v. Od n' behakdamas divrei aam"v hgn"y. Cf. R' Noam Dvir Meisels, Keshemitzav Limud Torah Vehatzalas Nefashos Nilgashos (at n. 32).

14See Mishnah Yoma 8:7 and Gemara *ibid.* 85a.

15From Esther 7:6.

16From Iyov 31:2.

17Rishon LeTzion Megillah *ibid.*

18Ben Yehoyada *ibid.*

19See our discussion of the famous—albeit controversial and difficult to define—requirement of *choleh befanenu* for a situation to be considered *pikuach nefesh* and to justify violating *issurim* in Clear and Present Danger, Part I (Oct. 29, 2020), and Part II (Nov. 5, 2020).

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later generations are compared to dwarfs on the shoulders of giants, who can use the knowledge of the giants to arrive at their own ruling, even if they are of lesser stature.

In recent times, R' Moshe Feinstein

wrote to R' Menashe Klein (who sought to rule against R' Moshe, the *gadol hador*) and said that the latter was not willing to disagree with him, and even a lesser chacham has the right to express his view. The issue is complex,¹ but in practice, most recent

¹Other issues to take into account include: the fact that some *Rishonim* cite the Gemara mentioned above as proof for the opposite approach

poskim will not disagree with a large group of significantly earlier *Rishonim* or *Acharonim*, but they may disagree with individual *poskim* from the century before them.

(that one may not argue with earlier authorities), the assumption that *Rishonim* do not generally argue with *Amora'im*, and the idea that repealing the *gezeirah* of an earlier *bais din* may be different from disagreeing on the halacha.

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