

For Sale By...Owner? Organ Donation For Monetary Benefit

Parashat Vayishlach 5778

R' Yisroel Meir Rosenzweig

Altruistic Organ Donation

- Most Poskim view it as being permitted and a fulfillment of not standing idly by your fellow's blood [לא תעמוד על דם רעך] and returning a lost object [השבת אבדה].

Issues to address:

- Self-injury for monetary benefit – *Sources 1-4*
- Ownership over one's body - *Sources 5-7*
- Receiving money for performing a mitzvah – *Source 8*

The Gemara goes through three possible answers in trying to ascertain who's our Tanna. They involve: suicide, tearing garments, and the *nazir*. Below is the Gemara's discussion of tearing garments.

1. Gem. Bava Kamma 91b [Modified Koren/Sefaria translation]

מאן תנא דשמעת ליה דאמר: אין אדם רשאי לחבל בעצמו? ...אלא האי תנא הוא, דתנאי: מקרעין על המת ולא מדרכי האמורי, אמר רבי אלעזר: שמעתי, שהמקרא על המת יותר מדאי - לוקה משום בל תשחית, וכ"ש גופו...
ורב חסדא כד הוה מסגי בניי היזמי והגא, מדלי להו למאניה, אמר: זה מעלה ארוכה, וזה אינו מעלה ארוכה!

The Gemara asks: Who is the tanna that you heard that says: It is not permitted for a person to injure himself? ... The Gemara suggests: Rather, it is the opinion of this tanna, as it is taught in a baraita: One may rend garments in anguish over one who died, and it is not considered of the ways of the Amorites. Rabbi Elazar says: I heard that one who rends his garments excessively over one who died is flogged for having transgressed the prohibition of: Do not destroy (see Deuteronomy 20:19). The Gemara suggests: And all the more so it is the case that according to Rabbi Elazar one who injures his body in anguish transgresses this prohibition...
and like that practice of Rav H̄isda, who, when he would walk among thorns and shrubs, would raise his clothing despite the fact that his skin would get scratched by the thorns. He said in explanation of his actions: This flesh will heal if scratched, but that garment will not heal if torn. Similarly, perhaps it is prohibited to rend one's garments, but it is permitted to injure oneself.

2. Tosafot Ibid. s.v. אלא האי תנא

וא"ת ומאי ס"ד השתא וכי על זה צריך להביא ראיה דמקרא בגדים עובר משום בל תשחית ואור"י דאין מביא ראיה אלא שאסור לחבול אפי' לצורך...

If you try to say - what should one have thought? Is it necessary to bring proof that tearing up clothes is a violation of *Bal Taschit*. **Ri said: The proof isn't being brought here other than to demonstrate that it is forbidden to cause injury even for a need...**

3. R' Yaakov Yehoshua Falk [1680 - 1756, Poland, Germany], Pnei Yehoshuah, Bava Kamma 91b

די"ל התם שאני שהוא צורך גדול וסכנת נפשות ובכה"ג באמת אפילו בחובל בעצמו שרי היכא דאיכא צורך גדול

Perhaps that case [laying siege to a city] is different since it is for a great need and to save lives [of the soldiers laying siege]. Similarly, this truthfully even applies to self injury - it is permitted in a scenario of great need.

4. Rambam [1135-1204, Spain, Egypt], Hil' Chovel U'Mazik 5:1 [Translation by Eliyahu Touger]

אָסוּר לְאַדָּם לְחַבֵּל, בֵּין בְּעַצְמוֹ בֵּין בְּחֵבְרוֹ. וְלֹא חוֹבֵל בְּלֵבָדּוֹ, אֲלֵא כָּל הַמְּכָה אָדָם כְּשֶׁר מִיִּשְׂרָאֵל--בֵּין קֶטַן בֵּין גָּדוֹל, בֵּין אִישׁ בֵּין אִשָּׁה, דֶּרֶךְ נִצְיוֹן--הָרִי זֶה עוֹבֵר בְּלֹא תַעֲשֶׂה, שְׁנֵאמַר "לֹא יִסִּיף... לְהַכְתּוֹ" (דברים כה,ג): אִם הִזְהִירָה תוֹרָה שְׁלֹא לְהוֹסִיף בְּהַכָּאת הַחוּטָא, קַל וְחֹמֶר לְמַכָּה אֶת הַצַּדִּיק.

It is forbidden for a person to injure anyone, neither his own self nor another person. Not only a person who causes an injury, but anyone who strikes in strife an upright Jewish person, whether a minor or an adult, whether a man or a woman, violates a negative commandment, as Deuteronomy 25:3 states: "Do not continue... to flog him." One may conclude that if the Torah adjures us against adding to the blows due a sinner, surely this prohibition applies with regard to striking a righteous person.

William Shakespeare, The Merchant Of Venice (1.3.156-163)

This kindness will I show.

Go with me to a notary, seal me there

Your single bond; and, in a merry sport,

If you repay me not on such a day,

In such a place, such sum or sums as are

Express'd in the condition, let the forfeit

Be nominated for an equal pound

Of your fair flesh, to be cut off and taken

In what part of your body pleaseth me.

5. Yechezkel 18:1-4 [JPS 1985 translation]

(א) וַיְהִי דְבַר ד' אֵלַי לֵאמֹר:

(ב) מַה לָּכֶם אַתֶּם מְשַׁלְּמִים אֶת הַמָּשָׁל הַזֶּה עַל אֲדַמַּת יִשְׂרָאֵל לֵאמֹר אָבוֹת יֹאכְלוּ בֶסֶר וְשֵׁנֵי הַבְּנִים תִּקְהֶינָה:

(ג) חֵי אֲנִי נְאֻם ד' אֱלֹהִים אִם יִהְיֶה לָּכֶם עוֹד מְשָׁל הַמָּשָׁל הַזֶּה בְּיִשְׂרָאֵל:

(ד) הֲזוֹ כָּל הַנְּפֹשׁוֹת לִי הֲנֵה כְּנֹפֵשׁ הָאָב וּכְנֹפֵשׁ הַבֵּן לִי הֲנֵה הַנְּפֹשׁ הַחַטָּאת הִיא תָמוּת:

1 The word of the LORD came to me:

2 What do you mean by quoting this proverb upon the soil of Israel, "Parents eat sour grapes and their children's teeth are blunted"?

3 As I live—declares the Lord G-D—this proverb shall no longer be current among you in Israel.

4 Consider, all lives are Mine; the life of the parent and the life of the child are both Mine. The person who sins, only he shall die.

6. Rambam [1135-1204, Spain, Egypt], Hil' Rotzeach 1:4 [Translation by Eliyahu Touger]

וּמְזַהְרִין בֵּית דִּין שֶׁלֹּא לְקַח כֶּפֶר מִן הַרוֹצֵחַ, וְאִפְלוּ נָתַן כָּל מָמוֹן שֶׁבְעוֹלָם, וְאִפְלוּ רִצָּה גּוֹאֵל הַדָּם לְפָטְרוֹ: שְׂאִין נִפְשׁוֹ שְׁלֹזָה הַנְּהַרְגַּ קִנְיֵן גּוֹאֵל הַדָּם, אֲלֵא קִנְיֵן הַקְּדוֹשׁ בְּרוּךְ הוּא--שֶׁנֶּאֱמָר "וְלֹא-תִקְחוּ כֶּפֶר לְנַפְשׁ רֹצֵחַ" (במדבר לה:לא). וְאִין לָךְ דְּבַר שֶׁהַקְּפִידָה תוֹרָה עָלָיו כְּשֶׁפִּיכּוֹת דְּמַיִם, שֶׁנֶּאֱמָר "וְלֹא-תִחַנְּפוּ אֶת-הָאָרֶץ... כִּי הַדָּם, הוּא יַחַנְיָף אֶת-הָאָרֶץ" (במדבר לה:לג).

The court is enjoined not to accept ransom from the murderer to save him from execution. Even if he gave all the money in the world, and even if the blood redeemer was willing to forgive him he should be executed. **The rationale is that the soul of the victim is not the property of the blood redeemer, but the property of the Holy One, blessed be He.** And He commanded, Numbers 35:31: "Do not accept ransom for the soul of a murderer." There is nothing that the Torah warned so strongly against as murder, as Ibid.:33 states: "Do not pollute the land in which you live, for blood will pollute the land."

7. R' David ben Shlomo ibn Avi Zimra [c.1479 - 1573, Spain, Egypt, Israel] Radvaz, Hil' Sanhedrin 18:6

תְּנִיא מִי שְׁבֵא לְבֵית דִּין וְאָמַר הַלְקוֹנִי אִין מַלְקִין אוֹתוֹ וְהִכִּי אִמְרִין בְּכָל דּוֹכְתָא אִין אָדָם מְשִׁים עֲצָמוֹ רִשְׁעוֹ...וְאִפְשָׁר לְתַת קֶצֶת טַעַם לְפִי שְׂאִין נִפְשׁוֹ שֶׁל אָדָם קִנְיֵנוֹ אֲלֵא קִנְיֵן הַקֹּדֶשׁ הַזֶּה שֶׁנֶּאֱמָר הַנְּפֹשׁוֹת לִי הֲנֵה (יחזקאל י"ח) הִילְכֵךְ לֹא תוֹעִיל הוֹדָאתוֹ בְּדַבָּר שְׂאִינוֹ שֶׁלּוֹ מַלְקוֹת פְּלִגּוֹ דְּמִיתָה הוּא אֲבָל מְמוֹנוֹ הוּא שֶׁלּוֹ...

It is taught: One who comes before a court and requests to be lashed, he is not given lashes. This is as taught – a person cannot be found guilty by his own testimony...It is possible to provide at least partial rationale for this. A person's soul is not in his own possession, rather it belongs to G-d, as it states, "all lives [souls] are Mine." Therefore, his admission to guilt cannot have any impact upon something which is not his. Lashes are considered a portion of death, but a person's money is his...

- **R' Yisrael Meir Lau, Techumin 18** – The Radvaz emphasizes the fact that lashes are a substitute and therefore a portion of the death penalty. In doing so, he has linked lashes to the soul and not the body. Therefore, it seems that the Radvaz would be a support for the view that one *does* have ownership over their body.
- **R' Shaul Yisraeli, Amud HaYamini 16 5:19 (ב)** – The Rambam and, in turn, the Radvaz are discussing who has ownership over the soul (i.e. life), this is not a proof that injuring a single part of the body is forbidden.
- **R' Shlomo Yosef Zevin, Or HaHalachah, Mishpat Shylock L'fi HaHalachah** – Acknowledges that the Rambam is not a full proof, but still uses it as support for R' Shneur Zalman of Liadi's view that "a person does not have ownership of their body at all" (Shulchan Aruch HaRav, Hil' Nizkei Haguf V'hanefesh 4).

8. Gem. Bechorot 29a [Soncino translation]

אָמַר רַב יְהוּדָה אָמַר רַב: דָּאִמַר קְרָא אַרְאָה לְמַדְתִּי אַתְכֶם וְגו' – מַה אֲנִי בַחֲנָם אָף אַתֶּם בַּחֲנָם. תְּנִיא נְמִי הַכִּי: כֹּאשֶׁר צוּנִי ד' אֱלֹקֵי – מַה אֲנִי בַחֲנָם, אָף אַתֶּם בַּחֲנָם וּמִנִּין שְׂאִם לֹא מִצָּא בַחֲנָם שִׁילְמַד בְּשֹׁכֵר – תְּלַמוּד לּוֹמֵר: בְּאִמַּת קִנְיָה, וּמִנִּין שְׂאִם יֹאמַר, כֶּשֶׁם שֶׁלְּמַדְתִּיה בְּשֹׁכֵר – כֶּךָ אֲלִמְדָנָה בְּשֹׁכֵר – תְּלַמוּד לּוֹמֵר: אִמַּת קִנְיָה וְאֵל תְּמַכּוּר.

Rab Judah reported in the name of Rab: Scripture says: Behold I have taught you, etc.: Just as I teach gratuitously, so you should teach gratuitously. It has also been taught to the same effect. Scripture Says: Even as the Lord my G-d commanded me, [intimating], just as I teach gratuitously, so you should teach gratuitously. And whence do we derive that if he cannot find someone to teach him gratuitously, he must pay for learning? The text states: Buy the truth. And whence do we infer that one should not say 'as I learnt the Torah by paying, so I shall teach it for payment'? The text states: And sell it not.

- If we conclude that it is permitted to donate, then we assume that there is a mitzvah involved. Can one receive payment for fulfilling a mitzvah?
- If we conclude that it is forbidden, then one may be receiving payment for having committed a wrongdoing!
 - Gem. Bava Metziah 30b-31b forbids receiving payment for returning a lost object. However, being paid for time lost is permitted
 - Being paid for pain experienced is permitted [צַעֲרָא] – Gem. Bava Kamma 85a