YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**20th Century Teshuvot**

**By Rav Gidon Rothstein**

**Shiur #20:**

***Tzitz Eliezer* on How a Doctor Returns from the Hospital on Shabbat**

Simple cases often hide interesting nuances. It is clear that a Jew may violate Shabbat to save lives, and doctors do that more often than others. In recognition of inconveniences their profession creates, *Eruvin* 44b told us *Chazal*allowed doctors to return home on Shabbat after having left to save a life. *Tzitz Eliezer*22:95, from 29 Sivan 5758 (1998), takes up the extent of that permission.

The doctor in question specialized in high-risk pregnancies as well as being in charge of the maternity ward at Bikur Cholim Hospital. It’s an area of medicine where emergencies tend to arise, and he was often called in on Shabbat. Driving to the hospital was clearly *pikuach nefesh*, saving lives. Once the emergency has been addressed, however, what should he do?

A non-Jew who worked at the hospital could drive him home, but that would mean he wouldn’t have his car available for any other emergency that might arise that day. It has in the past happened that he was called in again for an emergency Caesarean section and, since his car was at the hospital, he had to be picked up by ambulance – an ambulance that could then not be used for other life-saving matters. There’s a resources cost, with possible ramifications for lifesaving, involved in leaving his own car at the hospital.

May he therefore drive his car back home, to have it just in case? Would it be better to ask the non-Jew employed by the hospital to drive him in his car (and then find his own way back to the hospital)? Or, possibly, must he spend the rest of Shabbat at the hospital?

**Self-Referencing**

R. Waldenbergrecommends the doctor read his earlier responsum on a very similar question, *Tzitz Eliezer*21:59. (Based on my minimal acquaintance with his writings, R. Waldenbergseems to have had total recall of all he wrote. In this case, it’s from the previous volume, but was written three years earlier, in Iyar of 5755 (1995); later in the responsum, he’ll refer to responsa from eight and nine volumes earlier. Since I often do not remember what I said yesterday, let alone what I wrote the previous week, I find that alone dauntingly impressive.)

Let’s go to that earlier responsum, then come back to see the specific points this one adds. It was written to a doctor at Hadassah Ein Kerem who was considering purchasing a home in Efrat. He, too, wondered about getting home after being called in for an emergency. He added the interesting concern that if he knew he would have to spend the rest of Shabbat in the hospital, he might subconsciously minimize cases, somewhere in his mind knowing that going in would leave him stuck there.

(*He* recognized how his conflicted motives could affect decision-making. Many of us insist we could maintain our objectivity, *ve-ha-meivin yavin*.)

He had heard from other doctors in Efrat that R. Moshe Feinstein, by then deceased, had permitted doctors to drive home in such situations. (It sounds like this was part of a real estate pitch: “Buy in Efrat; we have written permission from R Moshe!”)

**Returning Rabbinically or Biblically After Saving a Life**

*Tzitz Eliezer* concedes that R. Feinstein, in *Iggerot Moshe Orach Chaim* 4:80, understood *Eruvin* 44b-45a to mean that soldiers who violate Shabbat to save lives may also violate Shabbat to return home. (It seems well-accepted that soldiers were just an example; the same rule would apply to anyone who leaves home to save lives.) The Gemara explains it is a way to assure they will not refuse to go in the future – similar to what this doctor had said to *Tzitz Eliezer,*that he could imagine himself minimizing a case because he did not want to have to go in and be forced to remain for the rest of Shabbat.

R. Feinstein understood the issue to be about the people themselves as well as their family members, who might pressure them not to go (another valuable insight into how decisions are made; R. Feinstein thought the Gemara worried that even those committed to saving lives might yield to family members’ complaints, and stay home).

His more surprising and halakhicallysignificant claim was that the Gemara allowed such people to violate even Biblical prohibitions. He stressed that would be true even if there is only a minimal concern – the doctor is dedicated to his or her profession, his or her family knows and appreciates and is ready to sacrifice for it, etc. R. Feinstein thinks such a doctor *still*has the halakhicright to go home, even in a way that would ordinarily be a Biblical-level violation of Shabbat. [R. Feinstein is assuming *Chazal*felt they had the right in this instance to uproot Torah law actively, a disputed topic of its own.]

*Tzitz Eliezer*disagrees, respectfully. He had previously written, in 16:7 (and 3:9 – two more examples of his amazing recall of what he said where), that the Gemara there mentions only carrying weapons [in an area not assumed to be a *reshut ha-rabim,*a public thoroughfare] and travelling farther than two thousand *amot*, which are both Rabbinic concerns; he understood the permission to be limited to that level of violation. *Minchat Chinukh*took this view as well, as did R. Shlomo Kluger in *Shu”t U-Vacharta Ba-Chayim*99.

R. Kluger actually gives two reasons not to violate Biblical prohibitions, the second of which is *Tzitz Eliezer*’s point that the passage in *Eruvin* mentions only Rabbinic issues. His first takes a more remarkable, although to me unconvincing, view of human nature. He says saving lives is so valuable that no one would refrain from doing it just because they’d be stuck somewhere for the rest of Shabbat. (He does not explain why the Gemara needed to make the rule for soldiers, then; in his view, shouldn’t we be confident they’d always go to save lives? Worse is the fact that the doctor who asked *Tzitz Eliezer*this question was candid about the possibility he might convince himself there was no lifesaving need here, if having to ride out Shabbat in the hospital was a likely possibility.)

(*Tzitz Eliezer*does not explain the value of a rule limited to Rabbinic violations of Shabbat if the doctors or soldiers cannot get home without ignoring Biblical issues.)

**Focusing on the Now**

Those who are summoning the doctor don’t have to worry about that, says *Tzitz Eliezer*. Faced with someone whose life needs to be saved, they may even tellthe doctor he or she will be allowed to return (even if it’s not true). Should he or she ask the question after the fact, we’ll say no, he or she cannot violate Shabbat Biblically in order to go home. [That’s a complicated throwaway; it is a trick that works only once, and it can easily erode trust in rabbis. Would need more discussion, I think.]

He suggests a workaround: for the doctor to have hours in his or her home late in the afternoon on Shabbat, where life-saving instances come up with enough regularity to justify leaving the hospital for the halakhicallymeaningful possibility he or she will have to save a life back at the house. [To me, it’s another difficult suggestion, since it recommends that observant doctors make a practice of having office hours on Shabbat and Yom Tov afternoons. *Tzitz Eliezer* knows that, too, and cites the beautiful phrase from *Chagiga*4b, *kulei hai ve-ulai*, all this and only maybe; the strategy isn’t certain.)

**Staying in the Old City**

R. Waldenberg holds what he holds, but he also recognizes R. Moshe Feinstein was an authority of sufficient repute to rely on without any shame or impropriety. In this case, though, the man had told *Tzitz Eliezer*that where he currently lived – the Old City of Jerusalem – there were cooperative non-Jews available to drive him to and from the hospital, which would not be true in Efrat. He had also said he was ready to stay, if he was told that’s the halakha.

Since his current situation lets him observe these *halakhot* in a manner that is more certainly permissible, *Tzitz Eliezer*urges him to stay. He thinks R. Feinstein might have agreed in such a case. (Not every avenue of permissibility must be utilized; for all that R. Feinstein thought doctors were *allowed* to violate the Torah at a Biblical level, it’s better if they don’t need to.) If this man stays in a less good situation to keep Shabbat better, that’s a merit for which he’ll be rewarded.

[I think this would then need to be weighed against whatever the factors were that were pushing the family towards living in Efrat, but *Tzitz Eliezer*is pointing out that the choice here is between very different levels of ability to observe Shabbat in its best possible way, and that that should be an important part of the decision.]

He then adds a factor I had not realized should play into the decision. A Jew living within the ancient walls of Jerusalem may only move because of truly pressing circumstances, *Tzitz Eliezer*says, as he had explained in 13:22. (Sadly, we do not have the space here to consult that *teshuva*,but just notice the claim – that living in ancient Jerusalem obligates a Jew to stay, barring significant pressure to leave.)

**Back to Our Obstetrician**

Returning to the responsum with which we started, this case is a bit easier, since Bikur Cholim employed non-Jews to ferry doctors on Shabbat (or to perform other Biblically prohibited activities helpful for the care of the ill but not lifesaving); he may certainly ask one of them to drive him home in his car, so that he has it available for other emergencies. (*Tzitz Eliezer* closes the responsum by saying that that option is *heter gamur,*completely allowed.)

Once that’s the usual case, if it happens that the non-Jew is not available one time, the doctor may more easily rely on R. Moshe Feinstein’s ruling on that occasion. (Since he’s not making it a regular practice; halakha more comfortably relies on lone opinions, that would otherwise not be put into practice,in *she’at ha-dechak*, extraordinary circumstances). This is especially true since some opinions hold that Shabbat is *hutra*, fully permitted, when it comes to saving lives – such that we need not make calculations as to how to violate it less severely.

We typically assume, however, that it’s *dechuya,* simply set aside, so that we must seek out ways to minimize Shabbat violations, assuming such a calculus will not have any impact on the efficacy of our life-saving attempts. This means doctors need to weigh how their choices will or will not put them in a position to violate Shabbat needlessly (and even what the word “needlessly” means in this context) – as did these doctors in bringing their questions of where to live and how to drive to the hospital to *Tzitz Eliezer*.

And with this, we bid farewell, for now, to *Tzitz Eliezer*, a prodigious *posek*who covered lots of ground, not just medical. He taught us, in this venue, about second day Yom Tov for Israelis outside of Israel, about the permissibility/propriety of taking a job that will likely require violating Shabbat for the purpose of saving lives, about the necessity of revealing information to others so they can protect themselves from physical, financial, or emotional harm, about when abortion can be permitted, and, finally, how doctors should weigh different options for returning home on Shabbat after saving lives.

In the next *shiur*, we will begin to become acquainted with a *posek*I had not known until I started the research for *Judaism of the Poskim*, but then came to admire, R. Chaim David Ha-Levy, the longtime Sephardic Chief Rabbi of Tel Aviv.