

Life After Heart Surgery

Is living on a heart-and-lung machine considered a life?

A Parashat Para special

By Rabbi Micha Cohn

Q: Is a person whose heart is not beating and is living on a heart-and-lung machine Halachically considered alive?

A: When heart transplantation was in its early stages with very low success rates, there was much *Halachic* discussion about the permissibility of these procedures not only from the perspective of the donor, but from the perspective of the recipient as well. These discussions raised a fundamental modern *Halachic* problem: If a stopped or missing heart is *Halachically* viewed as death, how could a recipient allow his heart to be removed? Is it permitted to 'die' in order to live? The discussion begins with a classic dispute between two great 17th century authorities in the laws of *Terefot* (mortal physical conditions that render an animal *Halachically* unfit for consumption).

Maran in *Shulhan Aruch*[1] rules that an animal missing its heart has the status of a *Terefa* and is not kosher. In the *Kesef Mishne*, *Maran's* commentary on the *Rambam*[2], he explains that the *Rambam* does not mention a missing heart as one of the conditions that render the animal a *Terefa*, because the *Rambam* only mentions maladies of organs that if missing or damaged the animal could still live for a short amount of time. However, organs that if missing or removed the animal could not survive even for a short amount of time are not mentioned as the animal is considered to be already dead (*Nevela*). Likewise, organs that an animal could not be born without, like a brain, heart,

esophagus or trachea, are not mentioned because they do not occur.

The Heartless Chicken

The *Hacham Tzvi* (Amsterdam, 17th century)[3] was asked about a slaughtered chicken which was found to have no heart. Curiously, although the *Shulhan Aruch* writes that an animal missing a heart is a *Terefa*, the *Hacham Tzvi* ruled otherwise.

He argued that since, as *Maran* himself writes in *Kesef Mishne*, it is impossible for a chicken to live without a heart, the heart must have fallen out and was eaten by an eager house cat. Even though the *Hacham Tzvi* was challenged about his ruling, he maintained that even if witnesses testify that there was no heart we should consider them to be lying rather than accept the impossibility of a heartless living chicken. The *Hacham Tzvi*[4] cites additional proof from the *Zohar*, *More Nevochim*, and Rav Sa'adia Ga'on, that the source of life is in the heart and therefore it is preposterous to maintain that the chicken could have been living without a heart.

The *Kereti U'Fleti*, written by Rav Yehonatan Eibshitz, took issue with the *Hacham Tzvi's*

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position. While Rav Eibshitz agreed that in the original case of the heartless chicken it is most probable that there was a heart and it was snatched by the hungry house cat. However, to uphold this position and render the chicken kosher even against the words of two competent witnesses is taking this argument too far.

Rav Eibshitz points out that the *Rambam* only omitted a case of a heartless animal, but did not write explicitly that it is considered to be a *Nevela* – a dead carcass, because he did not want to completely rely on his own logical assumption that it is an impossibility. Therefore, the safer approach would be to consider the chicken not kosher. Interestingly, the *Kereti U'Fleti* cited a report from physicians of his time that perhaps other organs could compensate for the heart. [It is also possible that the chicken had a heart but was malformed.] The classic 19th century compendiums on *Yore De'a* – the *Darke Teshuva* and *Da'at Torah* – discuss these differing points of view at length.

Modern Times

In contemporary times the divergent views of the *Hacham Tzvi* and *Kereti U'Fleti* became a focal point in the discussion about the permissibility of receiving a heart transplant. According to the *Hacham Tzvi*, immediately upon the removal of the recipient's heart the patient should be considered to be *Halachically* dead; the subsequent 'revival' after the new heart is implanted may be viewed as a 'resurrection'!

If this is correct, it would be highly questionable if a patient is permitted to 'die' in order to live a longer life. While the objection of the *Igrot Moshe*[5] in letters from 1968 and 1978 considering heart transplantation as "murder of two souls" was because of the very poor outcomes, the *Minhat*

Yitzhak[6] and *Tzitz Eliezer*[7] raise this issue in more recent times, with significantly higher success rates.

Rabbi Menachem Kasher in *Dirve Menahem*[8] pointed out that the implications of applying the logic of the *Hacham Tzvi* to heart transplantation are very far reaching. If a husband undergoing the surgery is considered *Halachically* dead during the surgery, his wife would then be a widow, and after he becomes 'resurrected' with his new heart he will have to remarry his own wife!

While there may be various solutions to this *Halachic* problem based on the comments of the *Hida* in *Birke Yosef*[9], and a broader definition of *Pikuah Nefesh* and *Haye Sha'a* (see *Divrei Menahem* *ibid.*), I would like to propose a solution of my own.

What a Miracle

The son of the *Hacham Tzvi*, Rav Yaakov Emden, sought to alleviate some of the criticism of his father's position on the chicken missing a heart. He explains[10] that his father asserted that the witnesses are not believed not because it is a total impossibility, but because it would be considered *Ma'ase Nissim* – a miraculous occurrence. As we find in other areas of *Halacha*, while we believe miracles can happen, the remoteness of the possibility would just make it more probable that the witnesses are lying.

According to Rabbi Emden's understanding of his father's position, he is conceding that a heartless chicken is not *fundamentally* dead, just a rare and miraculous occurrence. Accordingly, a missing heart is different than other forms of certain death, like decapitation. From a *Halachic* standpoint, even if a headless-body could miraculously walk and function, it is still not considered alive.



Based on this new understanding of the *Hacham Tzvi*, a person attached to a heart-and-lung machine could still be considered living, just it may be considered an outright miracle. It would also seem that according to Rav Emden, his father's reference to the *Zohar* and other sources that life is in the heart is a general idea but subject to exception.

A New Phenomenon

Going further, we can assert that a person living on a heart-and-lung machine does not need to be viewed as *Ma'ase Nissim* – a miraculous occurrence – but rather as a new reality. There is an interesting discussion among contemporary *Poskim* about whether an infant conceived via artificial insemination can be circumcised on *Shabbat*. The basic discussion revolves around the comments of *Rabbenu Hananel* who wrote that if a woman conceives artificially, then the circumcision cannot be performed on *Shabbat* as it is a miraculous occurrence.

Rav Shlomo Zalman Auerbach deliberated over the possible application to today's artificial reproductive technologies. However, Rav Shmuel Wosner[11], strongly dismissed the notion of considering these commonplace procedures miraculous and maintained that the *Brit Mila* could be performed on *Shabbat*. Rav Wosner explained that we cannot compare artificial reproductive technologies to an artificial conception taking place many centuries ago. Whereas *Rabbenu Hananel's* case was a rare and miraculous occurrence, the highly developed reproductive technologies of today and are not miraculous but rather a new reality based on advanced medical knowledge.

In a similar vein, Rav Moshe Feinstein[12] maintains that the definition of *Terefot* pertaining the laws of *Kashrut* is fixed on the mortality of these maladies at the time of the giving of the Torah on Sinai. However, the definition of *Terefot* as it pertains to criminal punishment depends on the mortality rate in contemporary times.

To arrive at the conclusion that the definition of *Terefa* as it pertains to *Kashrut* cannot follow

contemporary conditions, he asserts that *Hachamim* recognized that nature changes and these occurrences of survival cannot be dismissed as *Ma'ase Nissim*, miraculous. Therefore, the definition of *Terefa* for *Kashrut* must be fixed, based on the conditions at the time of the giving of the Torah.

In his discussion he writes[13]: "*Today this surgery has been done to millions [of people and animals and they lived] and certainly it cannot be considered a miracle or a minority*". Rav Feinstein's comments about considering something to be miraculous in respect to *Terefot* fit very well with Rav Wosner's assertion that artificial reproductive technologies cannot be considered miraculous.

In Conclusion

Based on these sources we could arrive at the following conclusion: Despite the fact that the *Kesef Mishne* and *Hacham Tzvi* viewed a heartless chicken as dead, they were referring to a chicken living without a heart at all. However, as qualified by Rav Emden, the *Hacham Tzvi* never considered an animal or person without a heart who is seemingly alive to be fundamentally dead, rather highly improbable and miraculous.

The new phenomena of a human being living on a heart-and-lung machine during an open-heart surgery or transplantation (and the heart subsequently being successfully restarted) is yet different than Rav Emden's discussion of the heartless chicken. The very fact that these procedures are commonplace with high success rates forces us to recognize these situations as a new reality. Therefore, although many sources point to the heart as the home of the soul, that is only as a general rule – when the heart is removed and there is no heart-and-lung machine. However, under these unique conditions we can consider the patient to be living, albeit without a heart.

Additionally, it could be argued that the machine can be viewed as part of the patient's body and therefore they are not completely without a heart. As such, we can consider a patient without a

heartbeat on a heart and lung machine to be very much alive and married!

Sources:

[1] Y.D. 40:5 [2] *Hilchot Shehita* 10:9 [3] *Siman* 74 [4] *Siman* 77 [5] Y.D. 2:174, H.M. 2:72 [6] 5:7 [7] 10:25.5-6, 17:66.1-2 [8] *Shu"t* 1:27 [9] *Even Ha'Ezer* 1 [10] *She'elat Ya'avetz* 1:121 [11] *Shevet HaLevi* 9:209 [12] *Igrot Moshe* E.H. 2:3.2, Y.D. 3:33, H.M. 73.4 [13] *Ibid.* E.H. 2:3.2, the *Hazon Ish* arrives at the same conclusion.

Property Management on Shabbat

By Dayan Baruch Levin

Q. I own an apartment building which is managed by a non-Jewish manager. He oversees all maintenance work, such as landscaping, gutter cleaning, snow removal, etc. Although I do not dictate to him when these tasks should be done, I happen to know that he often has workers get them done on Shabbat or Yom Tov. Am I required to ensure that this does not happen?

A. Generally speaking, one is prohibited from having a non-Jewish employee work for him on *Shabbat*. Doing so falls under the prohibition of *Amira L'Akum* – asking a non-Jew to desecrate *Shabbat* on your behalf. In your case, although you are not hiring the landscapers or snow removers directly, they are still considered your workers since you are the one paying them, and their employment would be subject to this prohibition. Nevertheless, the answer to your question would

primarily depend on the manner in which the manager hired these landscapers.

Halacha distinguishes between a *S'chir Yom* – a worker who is paid by the hour, such as an office worker – and a *Kablan*, one who is paid a set price for the job, such as a plumber.

Since a *Kablan* gets paid for the project, any *Melacha* that he performs on behalf of his employer on *Shabbat* is considered by *Halacha* as “his own doing”. Consequently, one is permitted to hire a gentile to work as a *Kablan* even if he is certain that the work will be done on *Shabbos*, as long as there is no stipulation that it be done specifically on *Shabbat*.

Conversely, a *S'chir Yom*, who gets paid based on his time and effort, is always considered by *Hachamim* as working on his employer's behalf. One is therefore prohibited to have such an employee do any *Melacha* on *Shabbat* as part of their work, even when there was no stipulation that the work specifically be done on *Shabbat*[1].

Accordingly, if your manager is hiring *Sechire Yom*, such as day laborers, to do landscaping – even if neither you nor him instructed them to do the work specifically on *Shabbat* or *Yom Tov* – you are required to prevent this work from being done on these days[2]. If, however, the landscaping is being done by a *Kablan*, such as a lawn-maintenance service, then it would be permitted, as long as you did not instruct the manager to have it done on *Shabbat*. This would be permitted even if the landscaping service has day laborers do the work, since these day laborers would not be your employees but rather those of the landscaping service.



It must be pointed out that even when even when one hires a *Kablan* in a permitted fashion, *Hachamim* were still concerned with *Mar'it 'Ayin*, the appearance of wrong doing. That is, a passerby may mistakenly assume that the worker is a *S'chir Yom*, which would in fact be forbidden[3].

Therefore, if the apartment building is located in an area where observant Jews may walk by on *Shabbat*, even if it is not public knowledge that the property belongs to a Jew[4], it would still be prohibited to have this work done. However, if the property is in an area where there are no observant Jews within the *Tehum Shabbat* (permissible walking distance), it would be permitted.

Footnotes:

[1] *Sulhan Aruch HaRav* 243:4 (and *Kuntres Aharon* 1) , see also *Igrot Moshe* 4:52. [2] The *Heter of Amira L'Amira* (not commanding the gentile directly, but rather directing a gentile to direct another gentile) however, may apply, since the Jew did not hire them directly. However, the *Poskim* only permit *Amira L'Amira* in extenuating circumstances. [3] Alternatively, they may assume that the *Kablan* was instructed to do the work on *Shabbat*. This concern is only when the work is being done in the Jew's house (*Mishna*

Berura 252:17) and not in his office. Additionally, if the nature of the work is such that the employer does not usually request for it to be done at a specific time, then this concern would not apply (Rav Moshe Feinstein ztz"l as quoted by Rav S.B. Cohen in his book, "The Sanctity of Shabbos"). [4] See *Mishna Berura* (244:18) who explains that we are still concerned with any neighbors or family members that may know that the employer is a Jew. *Sha'ar HaTziyun* quotes others as understanding this is a "*Lo P'lug*" – a blanket rule.

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