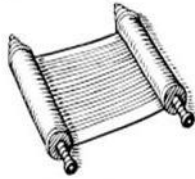


Center for Modern Torah Leadership



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"Taking Responsibility for Torah"

CMTL Yom Kippur Reader

2021 Edition

<u>FASTING AND LONG COVID – Part 1 - INTRODUCTION</u>	<u>p. 2</u>
<u>FASTING AND LONG COVID – Part 2 - A STANDARD SHORT OF DEATH</u>	<u>p. 7</u>
<u>FASTING AND LONG COVID – Part 3 - RISK AND PROBABILITY</u>	<u>p. 11</u>
<u>FASTING AND LONG COVID – Part 4 – SHIURIM AND “Shiurim”</u>	<u>p. 15</u>
<u>FASTING AND LONG COVID – Part 5 – CRAVINGS</u>	<u>p. 18</u>
<u>FASTING AND LONG COVID – Part 6 – RESPONSUM</u>	<u>p. 22</u>
<u>A REPENTANT DAYAN EXPLAINS HOW A RECENTLY ADOPTED BEIT DIN PRACTICE OPPRESSES CONVERTS, and WHY WE CAN CHANGE IT BACK TOMORROW</u>	<u>p. 25</u>

All articles by Aryeh Klapper

FASTING AND LONG COVID – INTRODUCTION

In late summer, a woman experiencing serious long-term symptoms from COVID asked me to publicly address the implications of this for fasting on Yom Kippur. Investigation confirmed the need for a public response; I kept meeting people who were afraid that rabbis would dismiss their illness, or would ask only whether their doctor would say that fasting might kill them. Some of those people planned to eat anyway, but had lost confidence in and respect for ordinary halakhic processes; some of them planned to fast, despite knowing that this would have serious and sustained adverse health consequences.

You'll find my public responsum at the end of this series of essays, which were published weekly before Rosh HaShannah. I think reading them has value both as pure Talmud Torah and as offering insight into how psak is refined from the raw source material (whether or not one thinks I did it properly, or reached the correct result. I've edited the essays slightly and inserted a few comments to make the overall product more coherent.)

Here are the questions I started with:

- 1) Must a medical fact-pattern be a potential proximate cause of death to fall under the rubric of *pikuach nefesh*? For example: Is it *pikuach nefesh* to prevent a 30 year-old from developing a cardiac condition that will make them significantly more vulnerable to fatal heart disease, but only after they turn 60?
- 2) How does halakhah relate to medical fact-patterns that have only recently emerged, and therefore whose long-term effects (if any) simply cannot be known at this time?

Mishnah Yoma 82a states:

A *choleh* (=ill person; the Hebrew neuter translates into English as masculine) – we feed him (on Yom Kippur) at the direction of *beki'in*/experts:

If no *beki'in* are present – we feed him at his own direction, until he says “Enough”.

The mishnah does not specify how ill a *choleh* must be – the **standard** for eating. The plain meaning of the Mishnah appears to be that the question of whether this *choleh* meets the standard of illness necessary to make eating permissible is best determined by experts, although the *choleh's* subjective opinion is sufficient when no experts are available.

However, Rabbi Yannai on Talmud Yoma 83a offers a very different interpretation:

אמר רבי ינאי:
חולה אומר צריך, ורופא אומר אינו צריך –
שומעין לחולה,
מאי טעמא? לב יודע מרת נפשו.
פשיטא?
מהו דתימא? רופא קים ליה טפי –
קא משמע לן.
רופא אומר צריך וחולה אומר אינו צריך –
שומעין לרופא.
מאי טעמא - תונבא הוא דנקיט ליה

Said Rabbi Yannai:

If the *choleh* says “I need (to eat), but the *rofei* (=doctor) says “He does not need” – we heed the *choleh*.

Why? *The heart knows the bitterness of its soul* (Mishlei 14:10).

This is too obvious to bother saying!?

What would I have said? That *rofei kym lay tfay* (approx. “knows better”) - this teaches us otherwise.

If the *rofei* says: “He needs (to eat)”, but the *choleh* says “I don’t need” – we heed the *rofei*.

Why? (The *choleh*) has been taken by a stupor.

The simplest reading of Rabbi Yannai is that the *choleh* himself or herself is best equipped to determine whether he or she is ill enough to permit eating on Yom Kippur. The Mishnah’s preference for expert direction therefore relates to what and how to eat, not whether to eat. However, a doctor’s opinion can also justify a leniency, even when it contradicts the *choleh*, owing to the risk that illness may affect the *choleh*’s ability to realize the seriousness of their own condition.

On this understanding, neither the Mishnah nor Rabbi Yannai provides any information about the **standard** for eating.

However, our text here is surprisingly inelegant. Experienced readers of Talmud would expect the reasons for and analysis of the first and second parts of Rabbi Yannai’s statement to be literarily parallel. Instead, the first half’s rationale is a verse from Proverbs, whereas the second’s is formulated in colloquial Aramaic; and the first rationale is challenged as making the statement *peshitta*, whereas the second is not.

One manuscript (Munich 6; other ms. have parts of this addition; see [Friedberg Jewish Manuscript Society](#)) inserts a parallel *peshitta* challenge and response to the second rationale.

רופא אומר צריך וחולה אומר אינו צריך –
שומעין לרופא.

מאי טעמא - תונבא הוא דנקיט ליה
פשיטא!?

מהו דתימא? חולה קים ליה טפי -
קא משמע לן ספק נפשות להקל

If the doctor says: “He needs (to eat)”, but the *choleh* says “I don’t need” – we heed the doctor.

Why? He has been taken by a stupor.

This is too obvious to bother saying!?

What would I have said? That the ill person *kym lay tfay* (and therefore should be followed against the opinion of the doctor) – this teaches us otherwise, that in cases of *safek nefashot* one must rule leniently.

Safek nefashot is generally understood to mean that there is some chance that the issue is life-or-death. (Note also that the phrase *safek nefashot lehakel* appears directly after the rationale “He has been taken by a stupor” in several other manuscripts, with no intervening *peshitta* challenge.) So this version suggests that the standard for being fed on Yom Kippur is an illness with some chance of being fatal.

A quite different version of the text was available to a medieval halakhist whose first name was likely Yitzchak and to Rabbeinu Tam, as preserved (with variations) in Or Zarua, Mordekhai, Rosh, Hagahot Maimoniot, Tosafot Yeshanim, and Tosafot HaRosh, and cited by Beit Yosef. This version replaces the *peshitta* challenge to the first rationale entirely, and may in fact have omitted the rationale and had the *peshitta* challenge following directly from Rabbi Yannai's statement. (The rationale is also omitted in several Talmud manuscripts. As it appears in a similar structure later in the sugya, one can easily argue that it was accidentally moved up by a copyist.)

אמר רבי ינאי:
 חולה אומר צריך, ורופא אומר אינו צריך –
 שומעין לחולה,
 מאי טעמא? לב יודע מרת נפשו.
 פשיטא? ספק נפשות הוא?
 מהו דתימא? איבעותי מיבעית, סבר אי לא אכיל, מיית -
 קא משמע לן

If the *choleh* says “I need (to eat), but the doctor says “He does not need” –
 we heed the *choleh*.

Why? *The heart knows the bitterness of its soul* (Mishlei 14:10).

This is too obvious to bother saying!? It is a case of *safek nefashot*!?

What would I have said? He is terrified, thinking that if he doesn't eat, he will die -
 this teaches us otherwise.

This version seems to explicitly assign the case as one in which the *choleh* claims to have a possibly fatal illness. That is how Rabbeinu Tam's interlocutor read it.

Rabbeinu Tam read it very differently. Here is the report of his position in Or Zarua (Laws of Yom Kippur) Section 280:

ולישנא ד"מיית" אל יטער -
 שכן לשון התלמוד;
 דא"כ דדייקת לישנא, מאי "ספק נפשות היא"!?
 אלא, האי "מיית" = שמתירא לחלות ולקלקל

Let the language “he will die” not mislead you –

as that is (just) the way of Talmudic language;

as if your close reading was correct, why would the Talmud describe this as “*safek nefashot*”!?

Rather, “he will die” = that he is afraid of becoming ill and deteriorating.

Rabbeinu Tam offers this reading in support of his practical legal ruling, directly opposing Rabbi Yitzchak, that the *choleh* can eat on the basis of claimed illness even without claiming that the illness is fatal.

One might understand Rabbeinu Tam as relating only to the *choleh*'s **claim**, but that observers must still conclude that the *choleh* is **describing** a potentially fatal illness. However, this does not seem a plausible interpretation of (what may be) Rabbeinu Tam's position as presented by Rabbeinu Asher (Yoma 8:13):

ואפילו לספרים שכתוב בהן "אי לא אכילנא, מייתנא" –
 אין ללמוד מזה דדוקא על ספק מיתה מאכילין,
 דלישנא ד"מייתנא" - לאו דוקא,
 אלא שדרך החולה לומר כן מחמת פחד מיתה

Even according to the mss. which have written in them “If I don’t eat, I will die” – one should not learn from this that we feed someone only when there is a *safek* of death, because the language “I will die” is not intended rigorously, rather it is the way of a *choleh* to say that out of fear of death.

Rosh clearly understands (the position that may be) Rabbeinu Tam as permitting a *choleh* to eat on Yom Kippur even when there is objectively no *safek* that fasting will cause death.

The obvious problem is that Rabbeinu Tam must have **some** standard other than mere illness to permit eating on Yom Kippur. Moreover, why should the standard for eating on Yom Kippur be different than for violating other prohibitions, such as those of Shabbat, where it seems clear that we require the *choleh* to be *yesh bo sakkanah* = “dangerously ill”?!

Rav Shaul David Botschko shlita cites (<http://www.toraisrael.com/lesson.asp?id=2156>) his father Rav Mosheh z”l’s brilliant solution to the second question. Rav Mosheh Botschko argued that the Torah does not directly prohibit “eating” on Yom Kippur; rather, it obligates one to “afflict one’s soul” by fasting. He further pointed out that at least one other required “affliction” on Yom Kippur, that of not-washing, creates a prohibition that is conditional rather than absolute: only washing-of-pleasure (*rechitzah shel ta’anug*) is prohibited, and one is therefore permitted to wash for the purpose of removing unpleasant things from one’s skin. Perhaps, then – even though everyone agrees that the prohibition against eating and drinking is more severe than the one against washing, and even according to those who hold that all the afflictions are *deoraita*, and even though everyone agrees that the general standard for violating a Biblical prohibition (including those against eating) is *safek nefashot* – the prohibition against eating on Yom Kippur similarly applies only to eating that removes affliction. Eating in response to serious illness, even when the illness is not potentially fatal, might be the equivalent of washing-not-of-pleasure.

I have loved each of the (too few) ideas I’ve so far read in the name of Rav Mosheh Botschko, and I’m also greatly enjoying and immensely benefiting from the recent privilege of corresponding with Rav Shaul David, and of learning more of his Torah. But even if I became convinced that this was Rabbeinu Tam’s intent, and/or that the Shulchan Arukh rules in accordance with this understanding of Rabbeinu Tam, and that it has legs in contemporary halakhah – I would still need to develop a clear standard for when eating is permitted, and in what amounts.

P.S. For those of you who think (like Einstein) that elegance and truth are related, here is one version of what a symmetrical version of the sugya might look like:

אמר רבי ינאי:
חולה אומר צריך, ורופא אומר אינו צריך - שומעין לחולה.
פשיטא?! ספק נפשות להקל!
מהו דתימא? רופא קים ליה טפי -
קא משמע לן.
רופא אומר צריך וחולה אומר אינו צריך - שומעין לרופא.
פשיטא?! ספק נפשות להקל!
מהו דתימא? חולה קים ליה טפי -
קא משמע לן.

If the *choleh* says “I need (to eat), but the doctor says “He does not need (to eat)” –
we heed the *choleh*.

This is too obvious to bother saying!? *Safek nefashot lehakel!*

What would I have said? That the *rofei*’s knowledge is more certain -

This teaches us otherwise.

If the *rofei* says: “He needs (to eat)”, but the *choleh* says “I don’t need (to eat)” –
we heed the *rofei*.

This is too obvious to bother saying!? *Safek nefashot lehakel*

What would I have said? That the *choleh*’s knowledge is more certain -

This teaches us otherwise.

Here is another:

אמר רבי ינאי:
חולה אומר צריך, ורופא אומר אינו צריך - שומעין לחולה.
מאי טעמא? חולה קים לחה טפי.
רופא אומר צריך וחולה אומר אינו צריך - שומעין לרופא.
מאי טעמא? תונבא הוא דנקיט ליה.

If the *choleh* says “I need (to eat), but the doctor says “He does not need (to eat)” –
we heed the *choleh*.

Why? The *choleh*’s knowledge is more certain.

If the *rofei* says: “He needs (to eat)”, but the *choleh* says “I don’t need (to eat)” –
we heed the *rofei*.

Why? (The *choleh*) was seized by a stupor.

FASTING and LONG COVID - Part 2 – A STANDARD SHORT OF DEATH

Vayikra 18:5 states that “You must keep my *chukim and mishpatim* which a person must do (=asher yaaseh otam hoadam) and live by them (*vochai bohem*)”. Talmud Yoma 85b derives that “one should *chai* by them – and not die by them”. However, this derivation does not apply to all *chukim* and *mishpatim*. Implicitly, there are commands that a person must do even if they lead to death.

Three sins famously are *yehareg v'al ya'avur*, meaning that Jews are obligated to die rather than actively transgress them. That list can be expanded somewhat, for example to include commands that entail warfare, but the clear implication is that to preserve one's life (and consensus halakhah extends this to others' lives), one may and generally must violate all Torah mitzvot not on the list.

The general halakhic term for preserving life is *pikuach nefesh*. Halakhah generally treats *safek pikuach nefesh* as the equivalent of *pikuach nefesh* (and generally sets a very low bar in the realm of *pikuach nefesh* as to the probability necessary to be considered a *safek*). *Safek pikuach nefesh* is therefore **sufficient** to permit violations of all mitzvot that are not *yehareg v'al ya'avur*.

It does not follow that *safek pikuach nefesh* is **necessary** to permit **any** such violations.

We saw in Part 1 that ROSH permits eating on Yom Kippur in situations that fall short of *safek pikuach nefesh*. ROSH (Yoma 8:13) states that

“Even according to the manuscripts that have written in them “If I don't eat, I will die” – one should not learn from this that we feed someone only when there is a *safek* of death”.

My conclusion was that “Rosh clearly understands Rabbeinu Tam as permitting a *choleh* to eat on Yom Kippur even when there is objectively no *safek* that fasting will cause death”.

Yehuda Gale corrected my assumption that ROSH is channeling Rabbeinu Tam rather than offering his own position. The truth is that ROSH makes no mention of Rabbeinu Tam, nor does he quote the colorful rhetoric attributed to Rabbeinu Tam on this subject: (“Are ill people prophets?!”).

Yehuda also correctly noted that Rabbeinu Tam, as cited by Hagahot Mordekhai Shabbat 463, Or Zarua Hilkhhot Yom Kippurim 280, and Hagahot Maimuniot Hilkhhot Shevitut Asor 2:5, explicitly frames his standard as permitting violations of Shabbat as well as of Yom Kippur. His position therefore cannot be explained the rationale we cited from Rav Mosheh Botschko z”l's for why eating on Yom Kippur could uniquely be permitted at a standard below *safek pikuach nefesh*.

ROSH himself does not mention Shabbat, and the citation of Rabbeinu Tam in Recanati 266 also doesn't mention Shabbat. So Rav Botschko's explanation can explain ROSH, and perhaps that was also Rabbeinu Tam's true position. However, Beit Yosef OC 618 conflates ROSH's position with that of Rabbeinu Tam as brought in Hagahot Maimuniot, which does mention Shabbat. It therefore seems unlikely that post-Shulchan Arukh halakhah developed on the basis of a claim that the lower standard applied only to eating on Yom Kippur and not to violating Shabbat.

Let us therefore assume that ROSH and Rabbeinu Tam, and Beit Yosef, allow violation of all non-*yehareg v'al ya'avur* prohibitions even when there is objectively no *safek* that observing them will cause death. What is their standard for permitting such violations, and how do they derive that standard?

A possible derivation appears in a 1935 responsum written to the Sridei Eish by the [Kozhilglover Rav, the Holocaust martyr Rabbi Aryeh Tzvi Frommer](#). While developing his position on the kashrut of animals that are stunned before shechitah, Rabbi Frommer states:

על כן נראה לענ"ד דהראב"ד ז"ל נחית לדברינו הנ"ל דמסוכן הוא חיות בלתי שלם,
וכיון דלא חשיב חי - הוא ג"כ בכלל הדרשא ד"וחי בהם - ולא שיסתכן בהם",
וע"כ לא צריך ספק מיתה כלל!
כל שהוא בגדר מסוכן - מאכילין אותו לשוב להיות בגדר חי

It therefore seems in my humble opinion that the RAAVAD z"l reached our opinion above that to be a *mesukan*/endangered is to be incompletely alive, and since the *mesukan* is not considered חי/alive, the *mesukan* is also included in the midrash halakhah that “one must live by them – and not be endangered by them”. Therefore, there is no need of a *safek* of death at all! Anyone in the category of *mesukan* – we feed them so that they can return to being within the category “*chai*”.

I am not aware of any prior or subsequent halakhic authority explicitly making this argument within the derivation from *vochai bohem*. But regardless, Rabbi Frommer provides us with potential language for the standard we are seeking approach – a person can be *mesukan*/endangered without being in a “*safek* of death”, and one can violate Shabbat or Yom Kippur in order to remove a person from the status of *mesukan*, or (presumably) in order to prevent them from reaching that state.

Is there evidence for a halakhically significant status of *mesukan* distinct from that of *safek nefashot*? Is there evidence that *mesukan* is the correct standard for permitting violations of Shabbat and Yom Kippur? The full citation of ROSH provides very strong evidence for both these claims.

ROSH writes as follows:

כתבו התוספות:
הא דקאמר הש"ס "חולה אומר צריך אני" -
היינו שאומר שהוא ירא שאם לא יאכל - שיכביד, ויהיה מסוכן למות.
ויש ספרים שכתוב בהן [בתר] מילתא דרבי ינאי
"פשיטא! ספק נפשות להקל!?"
מהו דתימא? האי דקאמר חולה 'צריך אני' - בעותי הוא דקא מבעית; סבר: אי לא אכילנא, מיתנא.
קא משמע לן.
אלמא דוקא משום ספק מיתה מאכילין אותו
עד כאן.
ונראה לי
דחומרא גדולה היא זאת בספק
דאין לך רופא שיאמר 'אם לא יאכל - שמא ימות'
אלא הרופא דרכו לומר 'אם לא יאכל - אפשר שיכביד חליו ויסתכן'.
ואפי' לספרים שכתוב בהן 'אי לא אכילנא מיתנא'
אין ללמוד מזה דדוקא על ספק מיתה מאכילין, דלישנא דמיתנא לאו דוקא, אלא שדרך החולה
לומר כן מחמת פחד המיתה.

The Tosafists write:

"When the Talmud says 'the *choleh* says: I need to be fed' -

it means that he is afraid that if he doesn't eat - his illness will intensify, and he will be *mesukan lamut* (= in danger of death).

There are (also) manuscripts in which it is written [after] the statement of Rabbi Yannai:

"That is too obvious to bother saying! *Safek nefashot lehakel?!*

What would I have said? That when the *choleh* says 'I need (to be fed)' – they are (merely) being terrified, thinking that if they don't eat, they will die –

So (Rabbi Yannai's statement) teaches us that this is not so.'

So it seems that it is only because if a *safek* of death that we feed (the *choleh*)."

This ends Tosafot's words.

But it seems to me that this is a great stringency in the matter of *safek*, because you will not find a doctor who will say 'if (the *choleh*) does not eat, maybe he will die';

rather, the way of the doctor is to say 'if (the *choleh*) does not eat, his illness may intensify and he will be endangered/*yistaken*'.

Even according to the manuscripts in which is written "If I don't eat - I will die", one should not learn from this that we feed (the *choleh*) only when there is a *safek* of death,

because the language "I will die" is not intended rigorously, rather it is the way of the *choleh* to say this out of fear of death.

ROSH thus distinguishes between the statements "maybe he will die" and "I will die" on the one hand, and "his illness may intensify and he will be endangered/*yistaken*" on the other. This exactly parallels Rabbi Frommer, and sets *sakanah*/endangerment as the proper standard for allowing eating on Yom Kippur. ROSE is cited by Beit Yosef and codified in Shulchan Arukh OC 638:1.

However, while *sakanah* is clearly different than *safek nefashot*, it's not clear what it means.

One possible source for the category is Tractate Gittin chapter 6. Mishnah Gittin 6:5 records the position of R. Shimon Shezuri that if a *mesukan* orders someone to write a get for his wife, without saying "write and give it", one can nonetheless give it to the wife so that she is actually divorced, as this is considered "a command given in contemplation of death". The Yerushalmi cites a beraita that says the same is true of a *choleh*, then comments:

מה בין מסוכן מה בין חולה?

חולה - כדרך הארץ; ומסוכן - כל שקפץ עליו החולי.

What is the difference between a *mesukan* and an (ordinary) *choleh*?

A *choleh* – in the ordinary way; a *mesukan* – one who had the illness "jump on him"

Rambam Hilkhoh Gerushin 2:12 expands on the Yerushalmi:

מסוכן, והוא אדם שקפץ עליו החולי במהרה והכביד חליו מיד

The *mesukan*, he being a person whom the illness jumped upon rapidly and intensified the illness for him immediately.

(cf. Rambam Hilkhoh Zekhiyyah uMatonoh 8:24 עליו חליו והכביד עליו החולי והוא שקפץ עליו החולי)

ROSH Gittin 7:15 quotes the Yerushalmi. ROSH Berakhot 2:15 and Yoma 8:1 also state that because washing on Yom Kippur is *derabannan*, one can wash for anything that is medicinal even if not for a *sakkanah*; the implication is that the standard for violating a *deoraita is sakkanah*.

So perhaps a *mesukan* is anyone whose illness intensifies rapidly, and one can eat or drink on Yom Kippur to prevent such an intensification, even though there is no short-term risk that one will die as the result of failure to eat or drink. Such intensification is also the standard for violating Shabbat and other transgressions which are not *yehareg v'al ya'avur*.

But even if one accepts this argument fully, we still need a definition, or at least a diagnostic, of what sort of intensification of what sort of illness is necessary to permit non-fasting.

FASTING AND LONG COVID - Part 3 – RISK AND PROBABILITY

The halakhic principle *safek nefashot l'hakel* is generally understood to mean “Where there is doubt regarding danger to human life, protect human life even if that requires violating halakhic prohibitions (other than those one must die before violating)”.

“*Safek*” in most halakhic contexts refers exclusively to 50/50 scenarios. Even 51/49 generate a *rov*/majority, and halakhah treats the more likely scenario as true. Rabbinic law often requires that the less-likely scenario not be a *miut hamtzui*, usually set somewhere between 5-15%. But 96/4 odds are certainly good enough to invoke *rov*.

The problem is that another halakhic principle states that “*ein holkhin b’fikuach nefesh achar harov*”, which is understood to mean that one can violate halakhah even to protect against a one in a thousand chance of human death, and perhaps even one in a million. So which is it, *safek lehakel* or *ein holkhin achar harov*?

One resolution references another halakhic context in which *safek* may mean “any chance at all”, namely *mamzerut*. Igrot Mosheh EH 4:17 argues that Halakhah generally accepts statistically projected majorities (*ruva d’leta kaman*) heuristically, to make decisions in cases of *safek*. But in contexts that have a specific rule governing cases of *safek*, such as “(the Torah means) a definite *mamzer*, not a *safek mamzer*”, statistically projected majorities are irrelevant.

“*And live by them* - and not die by them” therefore means that statistically projected majorities are irrelevant to cases of *safek nefashot*. Regarding *mamzerut* and *pikuach nefesh*, then, *safek X lehakel* and *ein holkhin b’X achar harov* both require accounting for extremely unlikely cases.

Rav Moshe notes that formal majorities are different. For example, if experience has shown that most cows in the world are kosher, then any cow one meets can be treated as kosher – that is a statistically projected majority. But if two definitely treyf cows and one definitely kosher cow are in an enclosure, and we cannot know which is which, and one cow emerges – that cow is treyf because of a formal majority. Similarly, if two definite mamzers and one uncertain mamzer are in an enclosure, and we cannot know which is which, and one person emerges – that person is a definite mamzer. So too, if two healthy people and one deathly ill person are in an enclosure, and we cannot know which is which, and one person emerges – one cannot violate *deoraita* halakhah in order to treat that person.

In practice, the task of a competent posek in such cases is to find reasonable arguments for transforming formal majorities into statistically projected majorities. Anyone using formal majorities to rule that a specific person is a mamzer, or to forbid treating a specific patient, is generally demonstrating incompetence. Yet I think the formal rules serve the purpose of preventing people from trampling all of Halakhah in the name of *pikuach nefesh*, or from regarding sexual sin as without consequences.

This interplay between formalism and common sense may be at the core of the Talmudic discussion regarding feeding the ill on Yom Kippur. Talmud Yoma 83a reads as follows:

(TEXT) Said Rabbi Yannai:

“If the ill person says “Need”, but the doctor says “Does not need” – we heed the ill person ...

If the doctor says “Needs” but the ill person says “Don’t need” – we heed the doctor ...”

(CHALLENGE) But the Mishnah says: “An ill person – we feed them at the direction of experts.”

(This implies)

At the directions of “experts”, but not at his own direction!?

At the direction of “experts”, but not at the direction of a single expert (which contradicts the first half of Rabbi Yannai’s statement)!?

(RESOLUTION) What case are we dealing with here (in the Mishnah)?

One in which the ill person said: “I don’t need”

(while in Rabbi Yannai’s case, the ill person says “Need”).

(CHALLENGE) Still, why not feed the ill person at the direction of a single expert!?

(RESOLUTION) Because (the Mishnah’s case is one in which) another expert is present and saying “Doesn’t need”.

(TEXT of MISHNAH) “We feed him at the direction of experts.”

(CHALLENGE) “This is too obvious to say (even when the ill person and one expert say “Doesn’t need”)!? It is a case of *safek nefashot*, and *safek nefashot lehakel*!?”

(RESOLUTION) It is necessary to say, because the case is that two other experts are present and saying “Doesn’t need”. Even though Rav Safra said that two witnesses equal one hundred, and vice versa – those words apply only to testimony, but with regard to estimation - we follow the majority of minds; but – those words apply only with regard to estimation in financial cases, but here – it is *safek nefashot*, (and so we apply Rav Safra’s rule).

(CHALLENGE) But the end of the Mishnah reads: “If no experts are present – we feed him at his own direction”, which implies that the beginning of the Mishnah (“An ill person – we feed him at the direction of experts”) is also a case in which he said: “Need” (meaning that we don’t feed a patient who says “Need” without expert corroboration)!?

(RESOLUTION) The Mishnah’s text is lacking, and must be paraphrased to mean the following:

‘Regarding what case were the words “one feeds an ill person at the direction of experts” (implying not at the direction of a single expert) said?

When (the ill person) said: “I don’t need” (and a single expert agreed);

But if (the ill person) said: “I need” – then if there aren’t two experts present (saying “Doesn’t need”), rather only one saying “Doesn’t need” – we feed (the ill person) at his own direction (despite the opinion of the single expert, as Rabbi Yannai said).

(CONTRARY OPINION) Mar bar Rav Ashi said:

“Whenever the ill person says “I need” – even if there are one hundred (experts) saying “Doesn’t need” – we heed (the ill person),

as Scripture says: *The heart knows the bitterness of its own soul*.

Here is my paraphrase:

Rabbi Yannai states that when doctor and patient disagree, we heed whichever one says that eating on Yom Kippur is necessary. This suggests that any possibility of danger is sufficient to permit eating! The Talmud responds that Rabbi Yannai allows us to heed a doctor's claim of danger over the patient's denial only when no doctor is supporting the patient. If a doctor supports the patient, then it is two (doctor plus patient) against one (doctor), and majority rules, and we may not feed the patient.

What about *safek nefashot lehake?*

That applies only when opinions are split 50/50.

What if there are two doctors on each side? Does the patient's opinion win because majority rules?

No, because two are formally counted as equal to infinity, so this is formally a 50/50 split.

But don't two count as infinity only when they are formally testifying, not when giving opinions?

No, only in financial cases; with regard to *nefashot*, they count as infinity even when offering opinions, so this is formally a 50/50 split, and *safek nefashot lehake*.

What if the patient says "need", and is opposed by two doctors? Shouldn't that be two against one, and therefore we may not feed the patient?

Yes, if one considers the patient and the doctors as "in the same enclosure". That's Rabbi Yannai's view. Mar bar Rav Ashi disagrees, because their opinions are derived via different epistemologies. Mar bar Rav Ashi holds that majority is irrelevant whenever the patient says "Need".

The upshot is that the Talmud leaves only one case in which the conclusion is that we don't feed the patient. That case is when the single doctor who says "Needs" is opposed by the patient and another doctor. But the practical solution to that case is obvious – bring in more doctors until a second one says "Needs"! Since two are infinite, the result will then be a *safek*, and *safek nefashot lehake*.

Maimonides, however, (as explained by Maggid Mishneh) understood Mar bar Rav Ashi as completely rejecting the application of "two equals infinity" to opinions. Maimonides therefore follows the majority of medical advice whenever the patient doesn't declare a need to eat.

However, Maimonides also introduces an antidemocratic variable – some doctors are more expert than others. Furthermore, some rishonim note that with regard to some common conditions, experienced laypeople may count as experts. The result is that if one is convinced that it is absolutely necessary, one can always feed the patient, but if one is not convinced, and the patient is also not convinced, one need not always feed the patient.

All the above assumes that *safek nefashot lehake* and *ein holkhin b'fikuach nefesh achar harov* mean the same thing. But we saw in Part 2 that the halakhic standard for violating prohibitions, and perhaps especially for eating on Yom Kippur, is formulated not as *safek nefashot* but rather as *efshar lavo liydei sakkannah* =the situation may become dangerous. So an alternate resolution is that *ein holkhin b'fikuach nefesh achar harov* applies to cases of informally defined probability, such as deciding which medical opinion to accept; whereas *safek nefashot lehake* applies in contexts where probability is formally defined (e.g. we know that X of the people in a specific room have been poisoned, but not which, and administering the antidote requires an *additional* deoraita violation of Shabbat for each person, e.g. grinding a subjectively adjusted mixture of herbs.) My sense is that this resolution will yield roughly the same bottom line as the ones above.

However, this entire discussion has been about the opinions of *cholim* (=ill people) and *beki'in* (=experts). One might argue that people cannot simply declare themselves *cholim*; maybe a *baki* needs to declare you a *choleh* before your opinion matters at all. Conversely, maybe doctors count as *beki'in* only when dealing with conditions with which the medical profession has extensive experience. With regard to new diseases, perhaps there are no *beki'in*.

FASTING AND LONG COVID - Part 4 – SHIURIM and “SHIURIM”

People for whom fasting on Yom Kippur is dangerous are often told to drink or eat “shiurim”. The point of this ironically named strategy is to NOT eat the *shiur* that renders one liable for *karet*. (The *shiurim* for eating and drinking on Yom Kippur are defined as amounts consumed within a set time.)

Conventional analysis distinguishes between halakhot that are *dechuyah* with regard to *pikuach nefesh*, and those that are *hutrah*. A *dechuyah* halakhah may be violated only to the extent necessary to save a life, whereas a *hutrah* halakhah simply doesn’t apply in the context of lifesaving. So the requirement of “shiurim” apparently demonstrates that eating on Yom Kippur is *dechuyah* rather than *hutrah*. A Soloveitchik tradition reports that Rav Chaim Brisker ruled *hutrah* and never recommended shiurim. On this understanding, “shiurim” is always a strategy rather than a psak. The underlying psak for anyone told to eat “shiurim” is that they can and must eat the amount necessary to avoid any risk defined as *pikuach nefesh*.

Rav Shaul Dovid Botschko shlita suggests a way that “shiurim” can be understood as a psak, meaning that some people are permitted to eat less than a *shiur* (= *chatzi shiur*) even though their medical condition would not justify violating the *karet* prohibition, and even though we rule like Rav Yochanan that *chatzi shiur* is a Torah prohibition. This position seems explicit in Sefer HaChinukh (Emor #313):

with less than (these amounts) – there is no *karet* prohibition, rather this is like a *chatzi shiur*.

Therefore, someone who is ill, even though not in a complete danger/sakanah g’murah,

if he is very weak – it is proper to feed him and give him to drink little by little.

So “complete danger” is needed to permit eating a full *shiur*, whereas an “incomplete danger” suffices to permit eating *chatzi shiur*. However, Minchat Chinukh (note 5) comments:

It seems from the words of the rabbi/author (of Sefer HaChinukh) that there is a distinction between the (full) *shiur*, which one feeds only in a context of danger,

and less than a *shiur*, which one feeds even in a context where there is no danger.

But the truth is that I have not seen this distinction made anywhere,

as certainly no Torah prohibition is permitted where there is no danger . . .

One can impose this meaning on the language of the rabbi/author, but his words are a little confused

Minchat Chinukh sees Sefer HaChinukh’s position, as he understands it, as unprecedented. However, Rav Botschko points to Tosafot Shavuot 23b. Talmud Shavuot 23b wonders how a Mishnah can state that an oath not to eat forbidden foods is binding, when

a. redundant oaths are not binding, and

all oaths not to violate prohibitions are redundant, because all Jews are considered sworn to obey them since Sinai?!

Resh Lakish responds that the Mishnah is discussing a case of *chatzi shiur*, while Rav Yochanan offers a different solution. The Talmud’s offers a very weak explanation for why Rav Yochanan rejects Resh Lakish’s solution. Tosafot ask: Why didn’t the Talmud instead explain that Rav Yochanan’s rejection of Resh Lakish’s response stems from their disagreement about *chatzi shiur*, namely that Rav Yochanan holds that *chatzi shiur* is Biblically prohibited, and therefore oaths not to violate via *chatzi shiur* are redundant?! Tosafot answer:

since this is only a ‘mere prohibition’ – it is not considered sworn from Sinai . . .

Even though (the principle that “Torah prohibitions do not apply redundantly”, which can be understood as a special case of ‘sworn from Sinai’,) means that prohibitions phrased by the

Torah as DON'Ts don't apply when redundant with prohibitions phrased as DOs (which implies that even prohibitions phrased as Dos are 'sworn from Sinai') . . .
Nonetheless, *chatzi shiur*, which lacks even a DO, rather is just a mere prohibition/*issur b'alma* – is not considered 'sworn from Sinai'.

I cannot at this point make sense of the position that some Torah prohibitions are not be 'sworn from Sinai'. Nor do I have any idea where the boundary is between those prohibitions that are 'sworn' and those that are 'not sworn', nor how to tell which is which, except that those punished by *karet* are 'sworn'. I don't know why 'not sworn' Torah prohibitions may be violated at a standard lower than *pikuach nefesh*. Regardless, the existence of Tosafot's position makes it likely that Chinukh should be taken at face value as allowing a *chatzi shiur* at a lower standard than is necessary to permit a full *shiur*.

(Rav Botschko argues that because one may opt not to fulfill a DO if the cost would be greater than 10% of one's property, and one ought not to fulfill it at a cost of greater than 20%, Tosafot's standard for violating *chatzi shiur* must be lower than "health damage that you would pay 20% of your property to prevent". However, it seems to me that this depends on whether that principle applies to prohibitions derived from DOs. See e.g. Mishneh Berurah OC 656:9 for an indication that the relevant axis is passive vs. active rather than DO vs. DON'T.)

I have additional evidence for the existence of a position that the standard of "danger" necessary to permit a Torah prohibition varies with the severity of the prohibition.

Talmud Ketubot 61a relays a series of anecdotes:

Said Rav Anan bar Tachalifa:

I was standing before Mar Shmuel, and they brought him a mushroom stew, and had he not given me (some to eat) – I would have been endangered/*istakani*.

Said Rav Ashi:

I was standing before Rav Kehana, and they brought him turnip slices in vinegar, and had he not given me (some to eat) – I would have been endangered/ *istakani* . . .

The context of these stories is an obligation to allow waiters to serve themselves before serving foods that induce cravings. One might therefore dismiss the word "endangered" as hyperbole, especially as all the food involved was kosher. But the last story in the series undercuts any such dismissal:

Ameimar and Mar Zutra and Rav Ashi were sitting at the entrance to King Izgur's palace.

The king's seneschal passed by (carrying food for the king).

Rav Ashi saw Mar Zutra's face turn white. He took (some of the king's food) with his fingers and put it on (Mar Zutra's) mouth.

The (seneschal) said to Rav Ashi: You have destroyed the king's meal!?

The (guards) said to (Rav Ashi): Why did you do this?

He replied to them: A dish prepared like this is not fit for the king.

They said: Why?

He said: I saw "something else" (Rashi: meat from a leprous pig) in it.

They checked and did not find anything.

(Rav Ashi) took their fingers and put them on one piece. He said: Did you check this one?

(A miracle occurred for him) and they found it in that piece.

The Rabbis said to Rav Ashi: Why did you rely on a miracle?

He said to them: I saw a spirit of leprosy/*ruach tzora'at* spreading over (Mar Zutra).

Here the food is presumably not kosher, and yet Rav Ashi feeds it to Mar Zutra. So the “danger” involved must be great enough to permit violating a Torah prohibition. Is this sort of craving a threat to life in the sense of *pikuach nefesh*? More likely “danger/*sakkanah*” here means something short of a threat to life, and yet Rav Ashi fed Mar Zutra.

One might argue that these stories are *aggada* rather than *halakah*. But RIF and ROSH both cite Rav Anan bar Tachalifa!

One might still argue that they cite him specifically in the context of obligations toward waiters. But Korban Netanel and many other rishonim reject this:

RIF and ROSH cite this story to teach us that this situation is a *sakkanah* for him, and he is treated like a pregnant woman who has smelled (something that induces cravings), as (the obligation to feed those who smell crave-inducing food) applies not only to waiters but to anyone.

The remaining question is whether this sort of craving represents the standard for violating all Torah prohibitions, or only some. Rabbeinu Manoach, commenting on Rambam Hilkhos Shevitut Asor 2:9, cites R. Yitzchak b’R. Avraham citing the story of Rav Ashi and Mar Zutra, then comments

There are those who say that they were lenient only with regard to a DON’T prohibition (not having a specific punishment) and (in such cases) the Sages equated the law of a pregnant woman who smelled (and developed a craving) with that of a healthy man who smelled (and developed a craving),

but that with regard to a *karet* prohibition, such as here – we only feed a pregnant woman who has cravings, because it is ordinary for her to be endangered when she smells a food but does not eat it, but a healthy man, if he smells on Yom Kippur – we don’t feed him, as he is obligated to settle his mind.

It is good to be strict about this because of the tricksters.

This seems to be the position of Rambam . . .

Rabbeinu Manoach has no uniform standard for violating Torah prohibitions; rather, it depends on their severity. Minchat Chinukh’s incredulity therefore seems overstated. The position that the standard for eating a *chatzi shiur* is lower than that for eating a full *shiur* cannot be summarily dismissed. One might even argue that the best way to read the story is that Rav Ashi fed Mar Zutra only a *chatzi shiur*.

FASTING and LONG COVID - Part 5 - CRAVINGS

Earwitnesses report that Rav Chaim Brisker claimed never to have instructed a dangerously ill person to eat only 'shiurim' on Yom Kippur. He also emphasized the importance of this psak to his son and successor R. Moshe Soloveitchik. In PART 4, I used this tradition to illustrate the position that eating on Yom Kippur is "*hutrah*" rather than "*dechuyah*" with regard to *pikuach nefesh*, meaning that so long as a situation is defined as *pikuach nefesh*, there is no prohibition of eating.

SBM alum Rabbi David Fried challenged my presentation of Rav Chaim:

"What I was always taught by 'my rebbeim is that Rav Chaim distinguished between when there's actually *sakanat nefashot* right now, and when a person needs to eat to prevent an underlying condition from potentially worsening into a situation of *sakanat nefashot*, and only in the former would 'shiurim' not apply."

Rabbi Fried's version is confirmed by Chiddushei Maran RYZ HaLevi (CMRYZH) to Rambam Shevitut Asor 2:8. (See also the other report of Rav Chaim's position in Hamoadim baHalakhah p.82; I am not fully convinced this distinction was Rav Chaim's.) CMRYZH explains the position as follows:

If a person *is* deathly ill, we treat the person and not the disease – anything that improves the patient's health diminishes the risk of death, and eating full shiurim is always better for their overall health than eating 'shiurim'. However, if the person *is in danger of becoming* deathly ill, then we violate Torah prohibitions only in order to prevent the illness, not to treat the patient's overall condition, and 'shiurim' are preferable.

This sounds like a conceptual distinction, but on careful examination, Rav Chaim's contribution turns out to be purely empirical. R. Chaim held that eating full shiurim rather than 'shiurim' improved outcomes for deathly ill patients, but did not affect whether patients became deathly ill.

"... it emerges that the entire danger is generated solely by prevention of eating, and in such a case, since this danger can also be prevented by 'shiurim', it is forbidden to feed him a full shiur'."

CMRYZ contends that this fits beautifully with Sefer HaChinukh (#313)'s position that one may eat 'shiurim' for a condition that is less than "*sakanah gemurah*".

ובפחות מכאן - אין בו איסור כרת, אלא דינו כחצי שיעור,
ולפיכך: מי שהוא חולה, אף על פי שאין בו סכנה גמורה,
אם יהיה חלוש הרבה - ראוי להאכילו ולהשקותו מעט מעט

"less than (these amounts) – there is no *karet* prohibition, rather this is like a *chatzi shiur*.

Therefore, someone who is ill, even though not in a complete danger/sakanah g'murah, if he is very weak – it is proper to feed him and give him to drink little by little."

CMRYZ understands this to mean that where there is only the potential of developing a fatal illness, eating "*shiurim*" is appropriate, **unless full shiurim are necessary to prevent the development of a potentially fatal illness**; but where potentially fatal illness is already present, one must go straight to full shiurim.

By contrast, we saw in PART 4 that Rav S. D. Botschko understands Sefer HaChinukh to mean that without *sakanah gemurah*, one may **never** eat full shiurim. Rav Botschko therefore concludes that the case of *ein bo sakanah gemurah* must not involve any risk of death at all.

We saw in PARTS 1-2 that ROSH requires neither a *choleh* nor a doctor to **claim** risk of death in order for eating to be allowed, only risk of *sakanah*. So perhaps Sefer HaChinukh means the objective correlate of ROSH; if neither patient nor doctor needs to claim risk of death, it follows that the situation need not actually involve “risk of death” to permit eating. On that basis, we could combine CMRYZ and Rav Botschko’s readings of Sefer HaChinukh to produce a third position, namely:

In situations that are defined as *sakanah*, even if they don’t involve actual “risk of death”, one should preferably eat “shiurim”, but one may eat full shiurim (or violate Shabbat) if necessary.

At first glance, this position seems a plausible match for the consensus halakhah as formulated by the Shulchan Arukh, as against Rav Chaim’s position that the strategy of ‘shiurim’ never applies where there is present danger, and Rav Botschko’s suggestion that ‘shiurim’ can be a *psak* rather than a strategy.

However, there are at least two compelling arguments against this position reflecting the actual halakhah.

The first is that Talmud Avodah Zarah 28b permits violating *deoraita* Shabbat prohibitions to treat various eye infections only because “the eyes connect to the heart”. This implies that even the threat of blindness is not by itself sufficient to permit such violations. If blindness is not sufficient, what conditions short of death could be sufficient? (Rav Botschko might claim that this passage applies only to *deoraita* violations involving full shiurim, but our position cannot claim this.)

The second is that we have no Biblical source for allowing transgressing for the sake of health beyond life (unless we read *vachai bohem* itself broadly, as per Rav Aryeh Tzvi Frommer in PART 2).

I therefore suggest that the best way to account for all the evidence is to say that all *sakanah* in this halakhic context involves danger to life.

However, it’s very important to translate *ba liydei sakanah* as “dangerous” rather than as “potentially fatal”, for the following reason: Pikuach nefesh includes not only risk of short-term death, but also risk of earlier death. This is why poskim ban smoking. The Rabbis held – and I think reasonably so – that a period of extreme weakness or chemical imbalance could lead to constitutional damage that would shorten life expectancy. (This may yield the result that the distinction between danger to life and danger to limb has little or no practical halakhic relevance.)

It’s also important to recognize that evidence of *sakanah* can be obtained in a variety of different ways, and there can be halakhic implications from the way in which we obtain the evidence.

רופא אומר "צריך" – מאכילין אותו ע"פ בקיאים = Way #1

A medical expert states that eating on Yom Kippur (or violating another Biblical prohibition) is necessary either to diminish a person's risk of dying from a specifically identified illness or injury, or else to prevent a condition from dangerously worsening.

ROSH's position, adopted by Shulchan Arukh, is that doctors tend to distinguish between the proximate cause of illness and the ancillary effects of fasting. Therefore a qualified doctor's statement that fasting could cause the patient's underlying condition to become dangerously worse suffices to establish risk of death, even if the doctor will not say that fasting is itself dangerous.

חולה אומר "צריך אני" – מאכילין אותו ע"פ עצמו = Way # 2

A severely ill person declares that eating is necessary for them.

Rabbeinu Tam sharply noted that patients are not prophets. Nor are they medical experts, and furthermore, they are under enormous stress. All they can report is how they feel. Halakhah presumes that patients who say "I must eat" are reacting to internal symptoms at least equivalent to a doctor's estimation that they are at risk of developing a condition that could shorten their lives. (Note that this mode requires that the patient be diagnosed as severely ill, or else obviously so. Apparently healthy people who simply claim a need to eat cannot be **fed** by others; I'm not sure what halakhah would say about such a person feeding themselves.)

עוברת שהריחה – מאכילין אותה עד שתשוב נפשה; וכן כל אדם. = Way #3

וכן מי שאחזו בולמוס – מאכילין אותו עד שיאירו עיניו

A person reacts to food, or presents generally, in a way that makes it clear even to nonexperts that their condition is dangerous.

We saw in PART 4 (based on Ketubot 61a) that the fact of pregnancy is not taken as halakhically significant. While pregnant women may be more likely to experience such craving, healthy men who experience cravings are given the same leeway to eat on Yom Kippur. The rule about the person seized by a *bulmus* fit reflects the same principle.

This formulation of *sakanah* runs a serious risk of abuse and error. Rabbeinu Manoach to Shevitut Asor 2:9 writes "It is good to be strict about this because of the tricksters". Where there was actually no *sakanah*, prohibitions may be violated accidentally or under duress. But these concerns must be balanced against Rav Chaim Soloveitchik's mantra that "I'm not being lenient about Yom Kippur; I'm being strict about *pikuach nefesh*".

The strategy called 'shiurim' is one of a group of strategies that the Talmud and subsequent Halakhah refer to under the general rubric "*hakal hakal techilah*" = the least serious violation should be violated first. These strategies often have two purposes – to minimize the prohibitions violated, and to make people less likely to sacrifice their lives as "pious fools" rather than violate prohibitions. Rav Chaim's wholesale rejection of the 'shiurim' strategy could chas veshalom backfire if a patient who would have been willing to eat small amounts now refuses to eat at all. On the other hand, ruling that a patient must try 'shiurim' first may entail a risky delay before eating as necessary.

Another halakhic strategy is called *lechishah*, whispering. This strategy is based on two narratives (Yoma 82b-83a) in which a rabbi whispers to a pregnant woman with cravings that the day is Yom Kippur. Does

this strategy work when the cravings are for foods that are permanently nonkosher? Is it relevant in the same way to people who deliberately violate Shabbat? (Note that some commentators think that we are whispering to the fetus, and others that we whisper the same things to men with cravings.)

Psak should perhaps be personalized, based on which error the specific asker is more likely to commit; on the other hand, general policies play a vital role in creating the background against which people ask questions.

FASTING AND LONG COVID – Part 6 - RESPONSUM

Dear Rabbi Klapper,

I had COVID last November, and have been enduring “long-COVID” ever since. Thank God, I feel that overall I am improving. However, I have “flares” in which I experience fatigue, chest pain, and shortness of breath, and I cannot ever exercise for more than 10-minute increments (which more than I was able to do just a few weeks ago, and vastly more than many with long COVID). I do not take care of my children alone, and I don’t read chapter books aloud to children because that causes shortness of breath. When I received my second COVID vaccine, I experienced a 3-week setback. While I have not experienced much post-exertional malaise in several months, that is probably because I have been so careful. I am very scared to test my body.

I have never been a good faster. When I fasted on Yom Kippur while nursing, it took me several days to recover even though I was otherwise healthy and spent the whole day in bed. One of the things I do to manage my illness is eating small quantities and drinking large quantities throughout the day. I fear that fasting on Yom Kippur this year would set me back for weeks at least.

Can you tell me how my situation affects my obligation to fast? I encourage you to publish a response as well. I think many people are in situations similar to mine, but either unwilling to ask or don’t think there’s a real question here.

With great appreciation,
Jane Doe

Dear Jane,

There is certainly a real question, and also a widespread impression that asking rabbis about it is pointless or counterproductive. I hope that my answer justifies your courage and confidence. Let me also wish you a *refuah shleimah umeheirah* along with all others suffering from COVID.

Here’s a brief statement of what it seems medicine can say with some confidence about Long COVID: Long COVID sometimes involves measurable damage to specific organs such as the lungs or heart, but in most cases all we can identify are symptoms. Regular eating and drinking are a standard mode of mitigation symptoms, and deviations from that routine can cause regressions for an extended period of time. If patients were not hospitalized during the initial infection, there is very little chance of a relapse leading directly to death.

Therefore, if the standard for allowing eating on Yom Kippur is that fasting would significantly increase one’s chance of dying in the short term, or even within the next year, then long COVID probably would not qualify for any leniency. This is true with regard to both eating normally and the strategy of “shiurim”, since we rule, following Rav Yochanan against Resh Lakish (Yoma 74a and others), that eating less than the amount necessary for punishment is still Biblically prohibited, and the source for violating any Biblical prohibition is *וְחַי בָּהֶם* = “*and live by them* – not die by them”.¹

¹See however Rabbeinu Manoach to Hilkhos Shevitah Asor 2:9, who contends that the standard is lower for prohibitions that carry lesser punishments; Rav Shaul Dovid Botschko (*Belkvot Hamechaber* vol. 2 p. 231-245) who suggests inter alia (based on Sefer HaChinukh Emor # 313 and Tosafot Shavuot 23b) that the standard may be lower specifically for “shiurim”; and Rav Aryeh Tzvi Frommer (published as Appendix 3 to Sridei Eish 2:4), who argues that “*and live by them*” extends to significant diminution of vitality short of death.

However, that is not the correct standard. The consensus position, articulated specifically by Rav Velvel Soloveitchik (GRYZ), is that “*and live by them*” applies to anything that has a halakhically significant impact on **lifespan**. *Safek pikuach nefesh* extends to the extremely long term.

However, there is no statistical or objective empirical basis for determining the effect on overall lifespan of a new and poorly understood condition, let alone for whether fasting will meaningfully affect that effect. We are roughly in the same scientific position as all our predecessors with regard to such conditions. Once a person is plainly ill, our fundamental criterion is how they feel. The halakhic challenge is to articulate a standard that either enables a person to determine for themselves whether their subjective experience warrants eating on Yom Kippur, or else enables a posek to evaluate the patient’s expression of how they are feeling.

What is the halakhic standard?

Mishnah Yoma 8:5-6 states that an *ubrah* (=pregnant woman) who experiences a food craving on Yom Kippur must be fed “until her *nefesh* is restored”, and a person in the throes of a fit (= *bulmus*) must be fed even nonkosher food “until their eyes light up”. A Talmudic narrative (Ketubot 61a-b) extends these rules to an ordinary man experiencing a food craving. In all of these cases, the agent of the psak is an outside party, and it seems that he or she is responding based on a visual evaluation of the patient’s condition, namely that the *ubrah*’s *nefesh* requires restoration, the eyes of the person in *bulmus* are dimmed, and on Ketubot 61a Rav Ashi saw a *ruach tzora’at* (=leprous spirit) spreading over Mar Zutra. It seems very unlikely that the last condition reflected an imminent danger of death. However, the Mishnah and Talmud provide descriptions of symptoms but no clear standard.

In between the *ubrah* and *bulmus* cases, the Mishnah teaches that in the absence of experts, a *choleh* (= ill person) must be fed on their own authority “until they say ‘Enough!’”. That is to say, the Mishnah gives an endpoint. What does the patient have to say in order to initiate feeding?

The ROSH and Rabbeinu Tam each report a Talmudic manuscript of Yoma 83a which apparently requires the *choleh* or experts to declare that not feeding the *choleh* carries a risk of death. Each then insists that the text must be either rejected or reinterpreted, on different but compatible grounds. ROSH declares that experts rarely make such a claim directly, while Rabbeinu Tam protests that *cholehs* are not prophets. The upshot of their position, which is adopted by Shulchan Arukh and to my knowledge undisputed in contemporary halakhah, is that the proper standard is “lest the illness intensify and put the *choleh* at risk”.

We must ask: “At risk” of what, if not of death? And how does this standard relate to the cases of *ubrah*, *bulmus*, and *ruach tzora’at*?

The best explanation is that *halakhah* recognizes that conditions which are not fatal in themselves may stress a person physically to the point that their constitution is damaged. This may cause either a short-term vulnerability to fatal illnesses etc., or else a long-term weakening that is likely to yield a shortened lifespan. I have confirmed with doctors that this concern still seems reasonable to contemporary medicine. Moreover, they agreed that long COVID is just the kind of condition likely to be a dangerous overall stressor in some cases.

The correct procedure for a person with Long Covid, therefore, is to ask them whether their past experience leads them to believe that fasting will risk causing that sort of intense short-term or sustained weakening. If it will, the second question is whether in their experience this risk can be prevented by eating as soon as certain cues are experienced, or whether such cues come too late or unreliably.

If they believe that fasting risks causing that sort of damage, and that they cannot reliably prevent the risk by drinking or eating on cue, then of course they must not even try to fast. If they believe that eating or drinking on cue is reliably effective, then they may wait to eat until they experience the cues.

The remaining question is what they should eat or drink, and in what amounts.

If they are fully convinced that eating or drinking “shiurim” will suffice, or that they will realize with enough advance notice when “shiurim” are insufficient, then they should begin with “shiurim”.

However, they should not take risks in this regard, any more than they should with regard to fasting completely.

If sufficient, they should drink only water².

If they are certain that this will not prevent them from drinking enough, they may try to ‘flavor’ the water with something that is not food and that almost no one would consume voluntarily except for medicinal purposes. But this is not necessary.

If they need more water than would be possible via the standard practice of “shiurim”, they should still drink in amounts of “shiurim” per drink, even if they will need to take many drinks in rapid succession³.

In principle, there is no need to involve a posek in these evaluations. However, for generally admirable reasons, many people will be too *machmir* on Yom Kippur, and too *meikil* on *pikuach nefesh*, if they take the entire responsibility on themselves. Also, I recognize that there are many conditions other than Long COVID that might be subject to the same psak. Therefore, *cholim* are welcome to contact me at moderntorahleadership@gmail.com to set up times to discuss their specific cases⁴.

² This is because Halakhot Ketanot 2:282 states that drinking water is not Biblically forbidden on Yom Kippur.

³ This is because “shiurim” are defined as amount/time, but the baseline halakhah likely has a minimal time for drinking, even though standard practice is to give eating and drinking the same length of time.

⁴ Rabbeinu Manoach to Rambam Shevitat Asor 2:9 expresses concern that people may tailor their symptoms to generate a leniency from a posek. However, it seems to me that he refers only to societies where eating on Yom Kippur carries a social cost. In a voluntary society, as confirmed by my experience, the risk of risky *chumra* is much greater than that of unjustified *kula*.

A REPENTANT DAYAN EXPLAINS HOW A RECENTLY ADOPTED BEIT DIN PRACTICE OPPRESSES CONVERTS, and WHY WE CAN CHANGE IT BACK TOMORROW

Dear Rabbi Klapper,

I am an Orthodox convert who recently went through an exceedingly bitter divorce. My husband Shimshon became abusive shortly after our marriage, and used his superior Torah knowledge as a means of controlling me. It took me a long time to realize this. I'm trying very hard to stop seeing halakhah that way, but for now, while I still believe in Torah intellectually, and I'm completely committed to being Jewish, I'm not emotionally able to follow the laws of Shabbes and kashrus punctiliously. I hope to do so again when I've healed.

Thank G-d, at the start of negotiations our lawyers insisted that we sign the Boston Agunah Task Force agreement binding us to complete our halakhic divorce before finalizing a settlement. So I didn't have to fight Shimshon for the *get* (halakhic bill of divorce).

When we came to beit din, though, I was very hurt and surprised when the rabbis asked me questions about my observance. I asked them why, and after a series of evasions, they replied that my husband had said that I no longer kept Shabbes, and if so, they needed to write my name in the get as *hagiyores* rather than as *bas Avrohom Avinu*.

This was shocking and deeply hurtful to me. I felt like my adopted family was abandoning me in my time of need. Worse, it felt like they were siding with my abuser. Did Avrohom Avinu, embodiment of chesed, really not want his name associated with mine?! What about all the times that rabbis had assured me that "convert" was a compliment, not a term of derision? What about all the laws against oppressing converts?

I was honest, and they wrote "hagiyores", and I took the get – I felt that I had no choice. I have a friend who walked away from the get process after a similar experience, and is now remarried without a get, with a child at risk of being declared a *mamzer*.

My question to you is – do all batei din do this, or were I and my friend just unlucky? It seems strange to me for halakhah to be so cruel to converts when they are so vulnerable, and to judge them so absolutely at a point that is obviously transitional. Is that what Hashem wants?

Sincerely,

Timna A. (Note: Timna A. is a fictionalized composite portrait.)

Dear Timna,

I'm deeply sorry and profoundly embarrassed to hear your story. Yes, to the best of my knowledge that's what all American batei din do. Yes, this practice is an obvious violation of the Torah's many prohibitions against causing psychological distress to converts (*ona'at hager*). No, it is not halakhically necessary or even desirable.

But there is an even worse underlying truth. Israeli batei din may take the absence of "*ben/bat Avraham Avinu*" in a convert's get as a basis for challenging the validity of the conversion, even after several generations.

I write as a penance/*maaseh teshuvah* for having participated as a *dayyan* in this recently developed practice. I pray that this response to you, and the more comprehensive as-yet-unpublished article it is drawn from, will help generate a rapid return to tradition.

American batei din today conventionally distinguish two classes of converts when they write a get. Converts who are halakhically observant at the time of divorce are identified as "*ben/bat Avraham Avinu*". Those who aren't halakhically observant at the time of divorce are identified as "*hager/hagiyoret*", with no father's name.

This is intrinsically problematic – there is no reason for batei din to judge the observance level of anyone appearing before them for divorce (and batei din generally claim that they don't). It is also technically problematic: for example, the investigation is necessarily cursory and relies on a halakhically inadmissible confession (*ayn adam oseh atzmo rasha*) and/or testimony from an interested party (*nogeia badavar*). But the worst part is that some Israeli rabbinic courts and agencies may take the absence of "*ben/bat Avraham Avinu*" in a convert's *get* as a basis for challenging the conversion, sometimes even several generations down the line.

This is made explicit by Dayyan Mordekhai Ralbag in Avnei Mishpat 4:13:

"If the divorcing man or women are converts who observe the mitzvot – one should write *ben/bat Avraham Avinu*.

But if they do not observe mitzvot, **and there is a concern that at the time of conversion they did not intend to accept the yoke of the commandments and the conversion is not good and they are Gentiles** – one must hint at this in the get, and therefore one should write only their names and conclude with "*haGer/haGiyoret*".

Dayyan Ralbag's rule makes the presence of *haGer/haGiyoret* in a get a clear basis for challenging the presumed validity of a conversion⁵. (Dayyan Ralbag was recently appointed by his brother-in-law, Chief Rabbi Dovid Lau, to head the beit din system in Yerushalayim. The appointment is on hold because the Attorney General has charged that the process was nepotistic, but Rabbi Ralbag is certainly an intellectually impressive and influential dayyan).

Dayyan Ralbag was cited to just that end by Rabbi Shimon Yaakobi in his 2010 book ביטול גיור עקב חוסר כנות בקבלת המצוות (Nullification of Conversion Owing to Lack of Sincerity When Accepting the Mitzvot). Rabbi Yakobi argued that beit din records showing that the majority of Israeli gittin used "*hager/giyoret*" rather than "*ben/bat Avraham Avinu*" supported the decision by Rabbi Avraham Sherman of the Beit Din

⁵ Dayan Ralbag presents this rule as recording the practice of the Beit Din of Rav Shlomo Fisher. It is possible that Rabbi Fisher limited the use of *hager/hagiyoret* to cases where the conversion was questionable for reasons additional to the convert's present lack of full observance. However, in practice *batei din* make no investigation beyond asking the parties about their level of observance. (I thank Yael Klausner for raising this point.)

HaGadol to retroactively invalidate thousands of Rabbinite-authorized conversions en masse. (Rabbi Yakobi's statistical argument was compellingly refuted by Rabbi David Bass and Rabbi Mordechai Brully, as cited by Rabbi Yisroel Rozen, ואזהב גר, p. 217. Rabbi Sherman's own grounds are beyond the scope of this article. Regardless, his decision served notice that he and his supporters would not refrain from challenging Orthodox conversions even many years later. In other words, it put all converts in permanent fear of challenges to their own or their descendants' Jewishness. I can attest that it had this effect based on contemporary phone calls to the Boston Beit Din and many conversations in subsequent years. Sometimes the ends justify the means; but it would take ultimately important ends to justify such an enormous violation of *ona'at hager*.)

There is no historical precedent for the procedure Rabbi Ralbag records. The closest model is the late 18th century Toras Gittin (129:11), who insisted that one ought not write *ben/bat Avraham Avinu* for converts who subsequently apostasized, in other words who explicitly denied their connection to and membership in the Jewish people. The Tel Aviv beit din seems to have extended it to public Sabbath desecrators in the 1950s, and then at some later point to all converts who admitted not being *shomerrei Shabbat*. But no one argued that this practice was halakhically necessary, and empirical evidence shows that it is still not standard in Israel. However, Rabbi Yaakobi reports that it nonetheless became the recommended practice in several manuals of beit din practice.

I found two cases prior to Rav Yaakobi of *dayyanim* trying to use the language of the get as evidence. The first, from 1972, cited a 1950s Tel Aviv get's use of *ben Avraham Avinu* to support a claim that an alleged convert had never stopped being Christian and in fact had never appeared before a beit din. This argument was intended to prevent children born to the (deceased) convert's wife and another man before the get from being classified as mamzerim. The second cited a 1970s Tel Aviv get's use of *bat Avraham Avinu* as evidence that the convert must at least have claimed to be shomeret Shabbat. This was intended to enable the convert's granddaughter to be classified as Jewish. Neither case made a claim that went beyond the Toras Gittin, and neither made a claim about practice outside of Tel Aviv.

It seems that the Tel Aviv expansion of Toras Gittin reached these shores quite recently. Rav Gedaliah Felder's mid-20th century Nachalat Tzvi cites even Toras Gittin's position as "there are those who say", with a note that it applies only *lekhatchilah*. Similarly, Rabbi Ephraim Eliezer Yulis (Divrei Efraim Eliezer EH 219), Av Beit Din of Philadelphia, responded to a report of the first case above by noting that decisors throughout the ages had made clear that "*hager*" and "*ben Avraham Avinu*" were both valid for all male converts, so what evidence could be brought from the use of one or the other?!

Why did this practice spread to the US? It is implausible that there was newly heightened concern for the honor of Avraham Avinu. The universal practice in the United States is to write *ben/bat Avraham Avinu* for all converts in their *ketubahs*, and an Israeli Rabbinite official has confirmed to me that this is also the universal practice in Israel. With regard to Avraham Avinu's honor, what is the difference between a *get* and a *ketubah*?!

Rather, as the State of Israel became more central to world Judaism, American batei din realized that they needed their gittin to be accepted by the central Rabbanut bureaucracy. Somewhat ironically, they therefore became more likely to match the Rabbanut's officially prescribed procedures than the Rabbanut's own courts. This is true with regard to many issues.

Possibly some American dayyanim also meant to encode their qualms about specific conversions. But since they had other ways of conveying such concerns to fellow batei din, and because American batei din are generally horrified by attempts to invalidate conversions based on the converts' state of

observance years later (at least since the Tropper/Eternal Jewish Family scandals became public), I assume that the majority simply wanted their gittin to “look normal” in Israel.

Converts are not told why the questions about observance are being asked. They are not told that honest answers may lead the Israeli Rabbinate to treat their divorce documents as evidence against the validity of their conversions. In many cases, the beit din itself may not realize this. But it is nonetheless true.

The Israeli nonprofit ITIM, headed by Rabbi Seth Farber, has repeatedly sued the Rabbinate to prevent them from using the divorce process as an occasion to reopen question of Jewish status. Doing so is now illegal, [but it remains unclear whether the practice has ceased](#). Regardless, there is no bar to the Rabbinate using the divorce documents of converts as evidence in an initial inquiry into Jewish status, such as when converts from abroad apply for Aliyah.

In other words, distinguishing between “*hager/hagioret*” and “*ben/bat Avraham Avinu*” in gittin puts converts in permanent danger of challenges to their own or their descendants’ Jewishness.

American batei din have a moral obligation to return to the simple halakhah, which requires no such distinctions in the get, or at least to the narrow practice of the Toras Gittin. This change should be made publicly and transparently. Since no one contends that even following the Toras Gittin is necessary for gittin to be valid, and because gittin are never taken as positive evidence of halakhic Jewishness, the change should not create any issues with regard to the validity of gittin, either here or in Israel.

We should regardless not be asking anyone about their religious practice when they come for divorce, all the more so converts, all the more so without being transparent about the stakes. Asking such questions raises anxieties in every convert about every imperfection in their halakhic practice and violates *ona’at hager*. We certainly must not continue a practice that raises unfounded doubts about many legitimate conversions, aids and abets those who seek to invalidate conversions we regard as perfectly legitimate, and makes many converts and their descendants permanently insecure.