<u>In Case of Emergency: Who pays the Bill?</u>

By Dayan Baruch Rubanowitz

Introductory Anecdote

Abby Sunderland, the 16-year-old yachtswoman who has a passion to be the youngest person to circumnavigate the world, must be relieved that The International Convention for the Safety of Life at Sea was adopted back in 1914. In response to the Titanic disaster, the Convention mandated safety regulations and dictates that any ship in the area of a distress call will divert to assist that ship. Furthermore, rescues at sea are a no-cost agreement under conventions regarding maritime search and rescue operations.

Recently Abby was stranded in the Southern Ocean. On the first day that Australia's rescue agency detected her emergency beacon, they chartered a jet to fly over the area where her beacon was activated. The 11-hour flight cost an estimated $94,500 U.S. dollars.

On the day after locating her, the agency sent another plane to coordinate her pickup by ships racing toward her damaged and drifting yacht.

The Australian military also deployed two Orion aircraft to wait on an Indian Ocean island in case an airdrop or further assistance was needed. An Orion costs about $25,000 an hour to operate.

In the meantime, the French territory of Reunion Island diverted three ships to Sunderland's location. The fishing vessel that reached her first lost at least three days of work; a commercial ship also sent to her rescue added three days of travel time to its intended destination.

Ethically, I believe we, as humans, did the right thing to create these types of agreements. Although there are doubts regarding the wisdom of allowing this type of trip in the first place, still, even those who favor preventing such adventures and consider her attempt reckless or irresponsible would have a hard time justifying inaction and abandoning her life.

In the absence of the convention for a no-cost agreement for rescue at sea, considering halachic principles relevant to Jews, let us consider who would have been responsible to pay for these rescue costs.

Take Action, Spend Money, to Save a Fellow Jew's Life at Risk

During a medical crisis, many people can stay focused solely on saving lives without concern for who is going to pay costs. Often, however, such attempts do cost money, and after the crisis has passed, the bills need to be sorted out.

It is every Jew's responsibility to do whatever he or she can to save the lives of other Jews without endangering them any further. Sometimes a person who is not trained in medical matters can save lives by himself. A rescuer can remove a victim from an inferno or throw a life preserver to someone who is drowning. Sometimes there may be expenses involved. Does the rescuer have to pay for the *mitzvoh* he is performing? Sometimes the victim needs trained medical care and it is forbidden for an unlicensed practitioner to get involved since he might worsen the situation. In such a case, it becomes necessary to call trained and licensed medics to the scene. Who should cover any expenses incurred?

Who Pays the Costs?

1. Is the Jewish **medic** supposed to offer his services for free?
2. Is the person who called the ambulance responsible for all charges? (hereafter the **helper**)
3. Perhaps the **patient** has to cover his own care?

Copper Snakes

In *parshos Chukas*, Hashem asks Moshe Rabbeinu to save the lives of his fellow Jews after venomous snakes bit them. Hashem instructs him to fashion a replica of a snake and place it high up so that all the dying people can gaze at it and thereby survive.[1] Surely there were costs involved. Moshe even considered using gold as the appropriate material but reconsidered and decided to use copper.[2] Should the

[1] Might this be the source of the Rod of Asclepius as a symbol of medicine and healing? Sources I have seen refer back to Greek mythology and its symbols but no further. This symbol may have nothing to do with Greek mythology, but even if it does, perhaps this aspect of Greek mythology had its root in this scene from the Torah. If the rod and snake together were originally the symbol of medicine and healing, it might refer to the elevated rod on which the image of the venomous snake was lifted. According to the Midrash, however, there was no rod as the copper snake suspended miraculously in the air. The Torah does refer to the image of the snake to be placed by or on a *ness* (Bimidbar 21:8), which can be translated as a miracle or rod.

[2] See Sforno.

beneficiaries—the bitten people who were healed—cover the cost of their own care? The Gemoro reads the text as saying that Moshe was to make the copper snake from his own assets.[3] Does this imply that the beneficiary need not pay?

The Victim (or Patient)

In Sanhedrin (73a), we learn that although one does not have to spend any money to return a lost item to its rightful owner, nevertheless when a person is in a position to save another Jew's life he must lay out money to do so.[4]

The Gemoro seems to indicate that along with the responsibility to save lives comes financial liability to pay for the fulfillment of the *mitzvoh*.[5] This might explain why the

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[3] The Torah writes *Aseh lecho sorof*. In Avodoh Zoroh 44a, the Gemoro learns from the extra word *lecho* that Moshe should make it from assets that belong to him, *mishelcho*. The Malbim (Melochim II 18:4) explains that although Moshe's copper snake was extant for generations and was worshipped as a healing idol, due to a halachic argument it was not destroyed as *avodoh zoroh* until the reign of Chizkiyohu. Jewish rulers up until Chizkiyohu's reign figured that since Moshe had used his own material, the copper snake belonged to Moshe and therefore the idolatrous practices of others cannot alter the copper snake's halachic status as non–*avodoh zoroh*. Chizkiyohu disagreed and ruled that the idolaters had done enough to the snake for it to be considered theirs. Since, at least with regard to the laws of *avodah zoroh*, the copper snake is considered belonging to them, therefore any subsequent worship done to what was later to be named Nechushtan, made it into an object of *avodah zoroh* and forbidden.

[4] Saving a life from danger (e.g., bandits or drowning; cases mentioned in the Gemoro) is also included in the *mitzvoh* of *hashovas aveidoh* since preventing the body from separating from its soul is considered equivalent to returning the body to its owner. The halachic distinction between saving a life and returning lost items is due to an extra verse in the Torah that requires us to take action and not stand by when a life is at risk.

[5] הנה לשון הגמרא אבדת גופו מנין ת"ל והשבותו לו אי מהתם ה"א ה"מ בנפשיה אבל מיטרח ומיגר אגורי אימא לא? קמ"ל. ונחלקו הראשונים בפירוש הגמרא. ביד רמ"ה מדייק לשון הגמרא דלא קאמר הגמרא סד"א דא"צ לקיים המצוה בממונו קמ"ל, דלישתמע דלענין הצלת נפשות חייב להוציא ממונו אלא קמ"ל דבעינן למיטרח ולהשכיר פועלים אחרים שיצילו, אבל באמת אין עליו חיוב להוציא ממונו, ואם יודע שהניצול לא יחזיר לו הוצאותיו פטור מלהציל. ונראה דס"ל דקרא דלא תעמד על דם רעך אינו ל"ת בפנ"ע שחייב להוציא ממונו לקיימו אלא הוא גילוי קרא להוסיף על מצות השבת אבידה דלענין אבידת גופו מחוייב לחזור על כל הצדדים להשיב גופו לנפשו לטרוח ולשלם לפועלים עבורו היכא דבטוח שיחזיר לו מעותיו. וכ"כ בשו"ת חו"י מסברא דנפשיה בסימן קמ"ו. אלא דסיים שם דכל הפוסקים חולקים ע"ז פה אחד וס"ל כדעת הרא"ש פ"ח דסנהדרין ס"ב דכשיש לניצול ממון חייב להחזירו למציל אבל כשאין לניצול ממון עדיין חייב להצילו מממונו הביאו המ"מ ספ"א מהלכות רוצח, וכ"ה במאירי שם וכ"פ הטור בח"מ סימן תכ"ו ובסמ"ע שם, וכ"ד הח"ח בספרו אהבת חסד בהערה ה' בפתיחה ויותר מבואר בח"ב פרק כ' ס"ב. ונראה דס"ל דאין מצות הצלת נפשות הנלמדת מקרא דלא תעמד על דם רעך סניף של השבת אבידה אלא ל"ת בפנ"ע ודינו כשאר מל"ת דצריך להוציא ממון לקיימם, וכבר פסק הח"ח דצריך להוציא **כל** ממונו להציל נפש מישראל (אלא דע"ע בחידושי רע"א ליו"ד סימן

people dying in the desert were not responsible for the cost of the copper snake. Moshe, who was given the method and *mitzvoh* of saving them, was responsible to cover the costs.

The Rosh, however, rules that in the cases mentioned in the Gemoro (i.e., seeing someone in the process of drowning, being dragged by wild animals or about to be attacked by bandits), should the victim have the funds to pay for the costs of the rescuer's expenses, the rescuee must reimburse the rescuer.[6] If so, the question returns: would people in the same situation as those healed in the desert be required to cover the expenses involved?

Although the Rosh does prove his point, he does not offer an explanation as to which halachic process he is employing that obligates the rescuee to reimburse the rescuer.[7]

קנ"ז ס"א בהא דנחלקו החו"י וריב"ש לענין ל"ת שמקיים בשוא"ת אי חייב בחומש נכסיו או כל ממונו וע"ע במ"ב סימן תרנ"ו סק"ט).

[6] בפסקים בסנהדרין פ"ח סימן ב' ומובא בסמ"ע ריש סימן תכ"ו. וכעי"ז אפשר לפרש הא דמצאנו בשו"ת הרא"ש סימן פ"ה ס"ב, הובא ברמ"א בסימן ק"ח ס"א בקרובי משפחה ששלמו הוצאות רפואיות עבור חולה, ובתוך הדברים הוסיף הרא"ש דה"ה כל אדם שהוציא הוצאות עבורו מפני פיקו"נ, דלאחר שנתברר שהוציאו סכום מסוים ולא נפרעו יכולים לגבותו מהיורשים מאחר דהחולה היה חייב בהם. וצ"ב מדוע חייב החולה שמת לשלם עבור הוצאות רפואיות שלא בקש מהם שיעשו ולא הועילו, ולכאורה דמי לירד שלא ברשות ולא השביח דאין לו אלא הוצאות שיעור שבח, וכשמת ואין שבח אין מגיע לו שום הוצאות. וי"ל דעכ"פ הועילו הרפואות להאריך חייו, וכיון שנהנה מהטיפול הוי כיורד שלא ברשות והשביח דמשלם הוצאות שיעור שבח, ולכן החולה חייב לשלם לקרובים, וממילא גובין מנכסיו שירשו יורשיו. אולם בהמשך כתבתי דרך אחרת לבאר דברי שו"ת הרא"ש דחייב אף שלא הועיל התרופות והטיפול משום דחשיב כשדה עשויה ליטע דחייב כשתלי העיר אף בלא השביח, עיין ציון 23.

I heard my rebbi, Horav Zalman Nechemiah Goldberg, apply this law to a case brought to him in which a person driving down the road saw a young man (about 15-years-old) run into the street right in front of his car. In order to avoid running him over he swerved the car and crashed it into a wall destroying the car but saving the boy's life and luckily his own as well. The question presented was whether or not the young man is responsible to pay for the damage to the car? Upon hearing the case, rebbi recounted this Rosh and drew a comparison. The driver was halachically required to damage his car to save the boy's life. However, the driver is entitled to be reimbursed for his loss expended on behalf of saving the boy's life. When the young man has assets to pay the value of the damage to the car, he must do so.

[7] הרא"ש מוכיח דינו מהא דנרדף ששיבר כלים של אחרים בברחו מפני רודפו חייב, ואם ממון של כל אדם מחוייב להציל אחרים, היה הנרדף צריך להיות פטור משבירת כלים כשנעשה לצורך הצלתו כיון שנעשה ברשות, אלא ע"כ שאין ממונו מחוייב להצלת נפשות.

ואפשר דהיד רמ"ה החולק על הרא"ש היה דוחה הראיה, דכשהאדם לא ראה ולא שמע שחבירו בסכנה לא נתחייב כלל בהצלתו ואין ממונו משועבד בקיום המצוה כיון שבעליו עדיין לא נתחייב. רק היכא דכבר נתחייב האדם להציל, א"כ מוטל עליו כל טצדקי בכדי שינצל חבירו ואפילו להוציא מממונו.

The rescuee may not have requested the intervention, and although surely afterwards he is grateful, on what legal grounds can the rescuer demand compensation for his expenses?[8]

Perhaps the Rosh can be understood in light of the laws of *yored* (found in C.M. 375). In many areas of halochoh we find that when Reuven provides an unsolicited, and unanticipated service, or improvement to the value of Shimon's assets (at a cost to himself), Reuven is entitled to some payment *provided* that Shimon benefits.[9]

However, if the unsolicited and unanticipated action is ineffective, Reuven receives nothing for his expenses or opportunity costs since Shimon did not benefit. See note for examples.[10]

אמנם לא נתברר לדעת הרא"ש, איך נתחייב הניצול לשלם למציל עבור דבר שלא בקש שיעשה עבורו. וע"ז כתבתי למעלה באנגלית מדין יורד שלא ברשות בשדה שאינה עשויה ליטע שהשביח.

[8] נראה דכל עוד שלא שילם המציל ההוצאות יש מקום לחייב הניצול על התשלום מדין כופין אותו להציל את נפשו מממונו, וכעין מה שפסק הרא"ש בפ"ד מכתובות סי"ב אם אמר אדם כשאמות על תקבורני מנכסי אין שומעין לו דלאו כל הימנו שיעשיר את בניו ויפיל את עצמו על הציבור, וכעי"ז בהג"א שם מכאן פסק מהר"ם מי שנתפס ויש לו דיו משלו וצוה שלא לפדותו משל עצמו שפודין אותו בע"כ, ועיין במרדכי שהביא פסק מהר"ם שם סימן קנ"ו. ובהגהת מרדכי שם אות קנ"ו (בפ"ד מכתובות) נשאל לר' חיים וכו' אם שומעין לאלמנה שלא לקבור בעלה מנכסים שאין בהם כדי כתובה וכו' יקבור מנכסים שהם משועבדים לקוברו ומפקיעים ירושה דאורייתא (וע"ע בש"ך סימן ק"ז סק"ו). ועכ"פ נראה דיש מקום לומר דהאדם מחוייב להציל א"ע וממונו משועבד לכך, ואפשר לכופו להשתמש בממונו לשלם להצלת נפשו, אמנם נראה דבד"א כל עוד שעדיין לא ניצול, אבל לאחר שחברו כבר הוציא הוצאותיו וניצול או מת, מנין שנכסי הניצול בין בידו בין ביד יורשיו, משועבדים למציל. והרי השתא לא שייך לכפותו ולכאורה אין נכסיו משועבדים. והרא"ש בסנהדרין מיירי להדיא דהמציל כבר הוציא הוצאות, ומ"מ יכול לגבותם מהניצול, וע"ז אנו דנין איך נוצר חוב זה.

[9] The amount he is paid depends on a number of factors. If the added value not only was unsolicited but Reuven was justifiably able to assume that Shimon was not planning to do that which Reuven ultimately did, then Reuven deserves to receive either his expenses or the benefit to the recipient, whichever is less. If Reuven could have justifiably assumed that Shimon was interested in doing the type of service or added value that Reuven ended up doing, he is entitled to the going rate for the service he provided despite the fact that he was not asked to do what he did (See C.M. 375:1).

[10] There are numerous examples in halochoh in which a person spent money for another person or because of another person and he is unable to claim any of it back unless the other person benefited.

1. Reuven and Shimon both had donkeys by the river. Reuven's donkey is worth 200 and Shimon's is worth 100. Shimon can only save one donkey. Should Reuven accept an offer by Shimon that Shimon will save Reuven's donkey if Reuven will agree to pay Shimon 100 for the loss of Shimon's donkey, then if Shimon is successful and is able to retrieve Reuven's donkey, Reuven owes Shimon 100. If, however, Shimon is unsuccessful, Reuven only owes him the amount he would pay to hire a worker to rescue his donkey. Yet, if Shimon never made an offer to Reuven and instead of going after his own donkey, he went after Reuven's

There are *poskim* (Maharashdam and Rav Waldenberg, see note) who explain the Rosh based on this principle. Expenses laid out to fulfill the *mitzvoh* to save another Jew should be no different than other cases of benefiting others where there is no *mitzvoh* to act. The rescuee is responsible to reimburse the rescuer because the operation was successful and the rescuee benefited. Accordingly, should the rescue operation fail, the rescuer would not be entitled to any reimbursement for losses or money spent.[11]

If this analysis were correct, it would have interesting ramifications. Imagine Yehudis tried to save Esther's life (e.g., Esther was choking) by calling an ambulance, and the medics came as fast as they could but could not be of service (Esther either died or did not need assistance e.g., someone dislodged the obstruction before the ambulance arrived). Since medics generally charge a fee for the call itself even if they do not

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donkey, should Shimon return empty-handed, he cannot claim anything from Reuven despite the fact that he could have retrieved his own donkey and instead went after Reuven's (Ramo C.M. 264:4).

2. Reuven owns property all around Shimon's property and fences three sides leaving the fourth side open, Shimon does not owe anything to Reuven towards the cost of the fence. In this case, Reuven felt compelled to fence his property because of Shimon; nevertheless, since Shimon did not benefit from Reuven at all, Reuven owes Shimon nothing (Gro 264:7).
3. Reuven enters Shimon's abandoned home, buys black paint, and paints Shimon's house without his permission. Reuven is not entitled to be reimbursed for the cost of the paint. Since there was no benefit to Shimon, Shimon does not need to pay the expenses (based on Nesivos 264:7).

[11] The Maharashdam (Y.D. 204) responded to case where a young man joined a group of misdirected people and left religion. Some righteous people devised a plan to retrieve him from the cult he fell in and spent money implementing their strategy. Although they captured the young man, ultimately, their plan proved fruitless and they were required to release the person to his own inclinations. Still, they approached the young man's father claiming reimbursement for their expenses. The Maharashdam ruled that since they were ineffective, the father is not obligated to reimburse them since he did not benefit from them. The Maharashdam concludes by differentiating between his case and that of the Rosh who requires the victim to reimburse by assuming that in the case of the Rosh the rescuer was successful in his mission.

Rav Waldenberg (Tzitz Eliezer vol. 10, 25:29) uses this approach to reject the claim of a good person (Reuven) who heard that a young boy was dying in a nearby village and needed medical attention. The *tzaddik* Reuven, called for an ambulance and doctor on Yom Kippur to treat the sick boy. The doctor came and tried to help but was unsuccessful and the boy died. Reuven sued the father of the young boy for his costs. Rav Waldenberg argued that since the boy did not recover, the father did not benefit from the attempt to save his son's life and he is not obligated to pay. The Rosh that requires one to pay for a rescue is only because the mission was successful.

provide any service to the patient, would Yehudis need to pay and be unable to reclaim anything from Esther?

Another example actually took place in Israel. A person with vascular problems went to a hot mikve and a blood vessel burst. Some of the other people in the mikve, frightened by the enormous amount of blood, wanted to call Hatzoloh but the man protested and said he was accustomed to the problem and could deal with it himself. He proceeded to take out bandages from his bag and bandaged himself. The other people were concerned that he might be unaware of the danger he was in and called an ambulance, which arrived to do absolutely nothing.[12]

Who should pay? Should the **patient** pay since the call was made on his behalf? Alternatively, perhaps the **caller** obligated himself by making the call? Is it possible that neither has to pay and the **medic** must suffer the lost income?

In the aforementioned scenarios in which the victim did not benefit from the medics, according to the Maharashdam and Rav Waldenberg, the victim would not have to pay. Would the helper be required to pay because they made the call for the ambulance?

The Helper

The helper would surely maintain that he did it on the victim's behalf and has no interest in the ambulance service for himself. Nevertheless, if he was the one who made the call, then he effectively hired the ambulance and medics and should have to pay the expenses.

This, however, would make many people think twice before calling for help. Performing the *mitzvoh* could cost them a significant amount of money. There is an exemption for a person who has to damage property in order to save someone.[13] For

[12] Should medics arrive and perform an exam to ascertain that there is no cause for concern, it appears to this writer that such care should be considered medical care from which the patient benefited (provided that the patient is relieved to have had the confirmation of his good health). Even though no treatment was given, ruling out danger is part of medical care and would consequently obligate the victim to pay the relevant costs, even according to Maharashdam's interpretation of the Rosh. Similarly, if Reuven harms Shimon and Shimon is taken to the hospital for tests and evaluations, it stands to reason that the attacker should cover such expenses despite the fact that no medication or treatment was administered at the hospital.

[13] ב"ק קיז: וסנהדרין עד. רודף להציל ששבר כלים של כל אדם פטור שאם אי אתה אומר כן אין לך אדם שמציל את חבירו מיד הרודף.

example, if a baby is locked in a car and Reuven needs to break the window to save the baby, although it is permissible to damage the property, were it not for the special exemption Reuven would have been required to compensate the owner of the car for the damage. This, however, would have the effect of making people hesitate before saving lives; therefore *Chazal* made a dispensation for such circumstances and ruled that no money is owed for such damage.

The Bobover Rebbe, Horav Shlomo Halberstam, used this argument to explain why he was not halachically responsible for repaying loans he took out during the war in order to save Jews in Europe.

It would seem that this exemption would be appropriate for the person who called the ambulance. If they were going to be held financially responsible for an ambulance call, people might hesitate to respond to medical emergencies.

However, this exemption may not be applicable. Rav Moshe Feinstein told the Bobover Rebbe that he had erred in his interpretation of the Gemoro. According to Rav Moshe, the only dispensation is for damage to property blocking the way to saving a Jew. If one took out a loan or stole in order to save other people, he must pay it back.[14] A person who calls 911 or Hatzoloh is deemed to be employing a service-provider and, according to Rav Moshe, there is no dispensation in such circumstances.

Still, it seems to this writer that the Nesivos Hamishpot supports the position of the Bobover Rebbe. The Nesivos applies the exemption to someone who borrows a sword without permission (which is akin to stealing) and in the course of battle to save others, the sword is seized by the enemy. According to the Nesivos, he is not responsible for paying the owner due to the exemption mentioned above.[15] It would seem to follow that if the Nesivos extends the dispensation to stealing, it should be extended in the case of the Bobover Rebbe and in our cases as well.

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[14] אגרות משה ח"מ ח"ב סימן ס"ג. ע"ש דאפילו נזק אחר שעשה להצלת נפשות חייב אלא א"כ היה נזק שנעשה על דבר המונע דרכו של המציל להגיע אל יעד ההצלה או להציל. אבל כגון מה שמסופר בב"ק ס: לרב הונא שהפלשתים הטמינו א"ע בגדישי שעורים של ישראל ללחום נגד ישראל, ונשאלה שאלה האם מותר להציל רבים מישראל בממון חבירו, והתשובה היא שאסור רק משום מלך פורץ גדר, וכתב ר' משה דגם לאחר התקנה שפטור על מזיק להציל נפש, מ"מ כה"ג חייב, דאי"ז אלא מזיק כדי לגלות האויבים ואינו מזיק כדי להציל.

[15] נתיבות המשפט סימן ש"מ סק"ו. חיובו בכה"ג הוא מדין גזלן או שומר שנאנס ומ"מ פוטרו ע"פ התקנה, ולפי דברי הגרמ"פ זצ"ל כיון דאי"ז חיוב מזיק שנעשה כדי להגיע אל ההצלה, חייב.

If so, the patient is not responsible, nor is the caller. Must the medics suffer a loss of income for the work they did?

The Medics

If the patient were exempt because he didn't benefit, and the helper is exempt because of the enactment to indemnify all who act to save lives, then the poor medic and ambulance service would have no one to claim the charges from. By default, they would be unsuccessful in a Beis Din.

Revisiting the Patient

However, there is another, perhaps more accurate, way of understanding the Rosh mentioned earlier which yields the conclusion that under all circumstances whenever someone spends money trying to save a life, he can claim reimbursement if the rescuee has the funds to pay, regardless of whether the mission was successful or not. Furthermore, due to an inconsistency in the explanation of the Maharashdam and Rav Waldenberg of the Rosh, which the Maharashdam himself raised and did not resolve, this approach remains weak.[16] The Rosh in a written responsa also seems inconsistent with their interpretation of the Rosh in Sanhedrin.[17]

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[16] The argument to exempt the victim whenever the mission was unsuccessful went as follows: Generally, whenever the recipient does not benefit from the attempted input of the helper, the recipient is not obligated to cover the expenses or opportunity costs. The most similar case to saving a life is the example mentioned in note 10.1 where Shimon tried to save Reuven's valuable donkey and was unsuccessful and in the course of the attempt lost the chance to retrieve his own donkey (Ramo 264:4). Similarly, the assumption is that saving a life should be no different. However, there is room to distinguish between the two cases. In the case of the donkey, Shimon was not required to attempt saving Reuven's donkey since he would have lost the chance to retrieve his own in the process. In the case of saving a life, one is required to take the initiative and attempt to save a life. Perhaps, one cannot demand reimbursement in the case of the donkey because he is not responsible to take action and the rescue mission is at his own risk, whereas regarding saving a life, where all are required to attempt to save a life, one is entitled to recompense even if unsuccessful because one had to do what he did. Both *poskim* consider this distinction and rejected it immediately. They argue that this distinction only serves to *lessen* the chances of the rescuer to receive reimbursement. Since he is required to do what he did, he should be viewed as acting on his own behalf, for his own agenda. Consequently, he should have no right to claim anything from the victim. The Maharashdam acknowledges that this response is too good since according to his logic there is no basis to collect expenses even if the mission were successful. The Rosh clearly does award expenses from the victim when he has it. Therefore, either way you look at it, their thesis is problematic.

נראה דהחילוק של המהרשד"ם הוא שמאחר שחייב לעשות ההצלה מדין לא תעמד שוב אינו נחשב כעושה הפעולה עבור הניצול אלא לצורך עצמו, וכל כה"ג אינו חייב לשלם מדין יורד כמבואר בש"ך, נתיבות כדלקמן. אלא דאם כן, ה"ה היכא דנהנה והשביח אינו משתלם מהניצול כיון דלא חשיב פועל שלו. וז"א, אלא אע"פ שעושה מחמת החיוב מ"מ עדיין עושה לצורך האחר ולטובתו וכוונתו להשתלם ממנו ואינו דומה לכל הני דפטר בהם הש"ך והנתיבות. ונראה דהמהרשד"ם מודה לזה, שהרי הרא"ש מחייב היכא דהוציא הוצאות שהיה מחוייב להוציא בכדי להציל נפש ומ"מ ס"ל דהניצול צריך לשלם למציל. ואם כן, ה"ה היכא דלא עזר הפעולות אין סברא לפוטרו מחמת שהיה חייב לעשות כן. וא"כ הדק"ל, איך מדמה הא דמציל נפשות להא דרמ"א ברס"ד ס"ד דפטור כשירד להציל ולא הציל הרי התם אינו מחוייב להציל ואפשר דמשו"ה פטור משא"כ היכא דחייב להציל ראוי להשתלם מהניצול.

{ואזכיר קצת מענין של יורד לשדה חבירו לטובת עצמו שהארכתי בו במקום אחר (במאמר על מקח טעות באופנוע).
בש"ך סימן שצ"א סק"ב דכתב דטעמא דיורד שלא ברשות כיון שמתכוין להשביח חייב לשלם לו. ומיירי הש"ך בדין בראובן שהאכיל בהמת לוי באוכלין של שמעון, ודן האם לוי חייב לשלם לשמעון. וכתב דמדין יורד לא שייך לחייב כיון ששמעון לא נתכוין להשביח בהמת לוי, ולכן אין לו אף יציאותיו מדין יורד.
ונראה לבאר טעמא דמילתא דיורד הוי כמו פועל וחשיב כאילו הוציא הוצאות על פיו, וא"כ אינו פועל אא"כ כוונתו להשתלם ממנו, אבל כשעושה לעצמו ואינו מתכוין להשתלם מבעה"ב, לא מיקרי פועל שלו.
וכ"ד הנתיבות בכמה דוכתי. עיין רל"ו סק"ז בדין מי שקנה שדה מגזלן נכרי צריך להחזיר השדה לבעלים, דלא נתייאש מזה, ואם יש יציאות שהוציא הלוקח אין הנגזל צריך להחזיר ללוקח אא"כ טוען לטובה נתכוונתי להשביח לנגזל.
ע"ע בנתיבות סימן קנ"ח סק"ח בסו"ד דכל דמשביח אדעתיה דידיה ולא אדעתיה דחבריה אין בעל הקרקע חייב לשלם.
(ואע"פ דהתם כתב דשבח אין לו אבל הוצאות יש לו, י"ל דאינו חייב בהוצאות מדין יורד (ר"ל פועל) אלא מדין נהנה, היכא דאיכא שבחא בגוף החפץ ונהנה ממנו.)
וכ"כ הנתיבות בסימן קס"ד ס"ק י"א לענין בית ועליה שנפלו ובנה בעל העליה את הבית ומעכב בעל הבית לגור שם עד שישלם הוצאותיו ואז ממשיך לבנות העליה, והקשה הנתיבות כיון דניחא ליה לבעל הבית וגר בבית לאחר שנבנה מחדש, מ"ט אינו משלם גם השבח, ותירץ כיון דהיורד עשה לטובת עצמו כדי לבנות עליה אח"כ, אינו זוכה בעל העליה בשבח.
(וא"ת מ"ט מקבל יציאות, הרי בנה הבית לצורך עצמו כדי להוסיף ע"ז עליה, וברל"ו כתב דבעושה לצורך עצמו אף יציאות אין לו, וי"ל דלא היה משקיע הוצאות אא"כ חשב להשתלם מהם מבעל הבית, וא"כ ההוצאות היו לטובת בעה"ב, אמנם הטירחא ועבודה שלו עשה לעצמו, וא"כ אינו מקבל שבח מבעה"ב אף שגילה דעתו שניחא ליה בכך. ועוד י"ל, דמשלם הוצאות מדין נהנה מגוף הבית, וכמש"ל.)
ובנד"ד לא שייך לחייב מדין נהנה כיון דליכא חפץ מסויים שהושקעה, אלא הוציא הוצאות בעלמא, ואפשר לחייב רק מדין פועל. ומה בכך שחייב לעשות הפעולה מקרא דלא תעמד, מ"מ עושה עבור אחר, ואי"ז סבה למנוע ממנו שכר פעולתו. ואדרבה, י"ל דהיכא דמחוייב להוציא הוצאות, מן הראוי שהניצול יחזירם לו משא"כ בירד להציל חמור ולא הציל דפסק הרמ"א דאין לו הפסדו}

[17] The Rosh in responsa (85:2) seems to contradict their thesis. The Rosh is addressing a query about relatives who financed the medical care of a dear relative on his deathbed. After he died, the relatives claimed expenses from the rightful inheritors. The Rosh ruled in their favor since the debt had been accrued in the lifetime of the deceased. (The Ramo in C.M. 108:1 brings this ruling.) On the face of it, the therapy was ineffective and the man died despite the medical care. Nevertheless, the Rosh considered the debt to have been established and the orphans need to pay those costs. If this analysis is correct, then the Rosh in Sanhedrin cannot be interpreted to require repayment only when the mission is successful. Rav Waldenberg himself asks this question and posits that in the case of Rosh in responsa, the medical therapy had limited success to stall the demise of the relative. This can

The law regarding offering unsolicited services or attempting to improve the quality of someone's assets draws a distinction between a case in which the service or improvement was to be anticipated or whether it was not anticipated.[18] If it was unsolicited and not anticipated, the rule is that the helper receives either his costs or the added value whichever is less, as mentioned earlier. When there is no benefit the helper gets nothing. If the unsolicited service or improvement was anticipated (i.e., the circumstances suggest that such service or improvement would likely have been employed) then the helper is considered to have been hired *ex post facto* by the recipient and earns a wage according to the market price of the service or improvement he provided. Whenever someone is hired (explicitly or by implication) for a certain job, once he fulfills his responsibility, he has earned his wage, regardless of the usefulness to the employer.

Consider the case discussed in the Gemoro in which Reuven hires a messenger to deliver medicine to a sick person. By the time the messenger arrives, the patient is better or dead. Can the messenger claim his fee? The Gemoro concludes that since his job was merely to deliver the medicine regardless of the patient's condition, he deserves his wages.[19] Now consider a situation in which there was no verbal agreement to perform a specific act, but there is an understanding between two people that if one performs a service or improvement for the other, he shall be considered an employee. In this case as well, once the action they implicitly agreed upon has been performed, regardless of the benefit of the action, the "employee" is owed his wage.

Only in the cases in which there was no anticipation of services or improvement (as in the case of the attempt to save the donkey that fell in the river) does the helper receive reimbursement only if he benefits the recipient. Anytime there is an employment contract (implied or explicit), the contract is specific to the action and not the result.

In our society, it is reasonable to assume that should any situation arise that looks to most people like an emergency; people would count on others to act on their behalf

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be considered success and requiring reimbursement. This explanation makes an assumption that is not implied in the responsa and thus is suspect. In note 23, we shall revisit the Rosh's responsa and offer an alternative, less forced, explanation.

[18] היורד לתוך שדה חבירו שלא ברשות ונטעה אם היתה שדה העשויה ליטע אומדין כמה אדם רוצה ליתן בשדה זו לנוטעה ונוטל מבעל השדה. ואם אינה עשויה ליטע שמין לו וידו על התחתונה. שו"ע ריש סימן שע"ה.

[19] ב"ק קטז. ונפסק בשו"ע של"ה ס"ג.

and contact the emergency services as their agent. Should they call for help as an implied agent of the victim, the victim will be responsible for the costs regardless of whether he benefited from the call or not.[20]

I have heard that Horav Yitzchok Zilberstein ruled in the case of the burst blood vessel in the mikve that the patient is responsible for the call made by the bystanders.[21] Anyone with such a condition who enters a public area must be aware that such an episode will prompt people to call emergency services. When they do so, it is as if he had called the emergency services himself through his agents. The fact that the victim protested and said do not call the emergency services, is not enough of a reason to invalidate the implicit contract to act on his behalf to call emergency services. Often people say "Do not call emergency services" even when they really need them and it may be assumed that the victim may not be making a rational evaluation, relying instead on others to make that decision for him in such circumstances.[22] It is also recorded that Rav Zilberstein supported this thesis with the halochoh mentioned in the Ramo (C.M. 108:1) and the Rosh (in his responsa).[23]

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[20] ונראה דמצינו כה"ג גם בדין של ירד להציל הנ"ל. עיין סמ"ע רס"ד ס"ק י"ב דגם בירד להציל ולא הציל דפטור מלשלם היינו דוקא כשהיה הבעלים שם, אבל אם לא היו שם הבעלים חייב דהוי כמו שהתנו להציל. ובכסף קדשים שם הוסיף דאיירי באופן שיש אומדנא שההצלה קרובה דאז נחשב כהתנה אע"פ שלא התנה. הרי היכא דיש אומדנא דהוי כמו התנו, חייב לשלם ההפסד אף שלא נהנה.

[21] I consider all hearsay or even quotes written in books made in the name of others as unreliable. This article is meant as a halachic discourse on the subject, not definitive halochoh and I share what I have heard in the name of others as part of the discussion only. I do not mean to rely on the quotes as a definitive ruling; I shall attempt to deal with the sources and concepts quoted on their own merit. Should any relevant issue arise, the parties are recommended to seek counsel regarding their specific case from knowledgeable, G-d fearing, wise Dayonim, and not rely on this article to determine the halochoh on their own.

[22] Sometimes a person wishes to avoid drawing attention to himself and thus is not going to make a sound decision regarding his or her medical care. Sometimes, people are uneducated about medical emergencies and misdiagnose the episode. In these and other circumstances, they may depend on others to use their judgment whether to contact the emergency services despite their exhortations not to call. Therefore, it would seem to me, that should a person make a reasonable judgment that the correct thing to do is to call for help anticipating that later the victim will be grateful despite his present protestation, the caller should be considered an agent of the victim and not liable for a call that proved fruitless.

If a person wishes to commit suicide, and a bystander spends money to contact the appropriate services, despite the objection of the victim, in order to prevent the suicide, should the service prove unsuccessful, can the caller be reimbursed from the victim or his family? The answer would depend on whether the caller acted on behalf of the victim as his agent to stop the suicide from happening.

If, however, the call was made by an overly sensitive person who misread the gravity of the situation and thought it was worse than it really was, the caller was not within his mandate to act as an agent on behalf of the victim. The victim would then not have to pay the medics for the visit if they did not provide any service.

And getting back to the case of Abby Sunderland the yachtswoman mentioned earlier, given circumstances in which halochoh should govern (which seems unlikely), she would have been obligated to pay for all the reasonable expenses spent on her rescue whether she benefited from them or not.[24]

The Costs of the Copper Snake

If we consider the story in *parshos Chukas* in light of the principles mentioned here, why was Moshe asked to pay for the copper snake? Shouldn't the beneficiaries of the snake be required to reimburse Moshe? For we have learned that when a person

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In other words, did the bystander have a right to assume that this victim was saying one thing ("let me die, don't call anyone") but meant another ("I need help, please call someone")? It is likely that such a halachic question would need to benefit from an expert opinion in mental health before offering a definitive ruling.

[23] בשו"ת הרא"ש בסימן פ"ה ס"ב, הובא ברמ"א סימן ק"ח ס"א, מבואר דכיון דמנהג העולם שקרובי משפחה מטפלים בצרכי הרפואה שלהם, א"כ נתחייבו החולים לשלם להם. ולפ"ז, א"צ למש"כ לפנ"כ בציון 6 ו17 דמיירי שהועיל להם התרופות, די"ל דלא אהני כלל, שהרי מת, ומ"מ חייב החולה כיון שכולם עושים כן והוי כמינה אותם שליח לקרא לרופא ולקנות תרופות, וע"ש שהוסיף הרא"ש דלא רק בקרובים המטפלים אלא ה"ה בכל אחד שמקיים המצוה של הצלת נפשות יכול לקבל הוצאותיו אע"פ שהחולה לא בקש מהם שיעזרו. ונראה טעמא דמילתא כמש"כ, וכוונתו דלא רק קרובים חשבינן כשליחים אלא גם כל יהודי שבא להציל נפשו, דאע"פ דמחוייב מדינא לעזור, מ"מ כל שעושה לטובתו של החולה הוי כעושה בשליחותו, והוי כהתנו שיעשה כן וממילא כל ההוצאות על החולה. ואי"ז סותר לרמ"א ברס"ד דפוטר מלשלם היכא דלא נהנה דהתם מיירי היכא דלא הוי כאילו מינהו לשליח.

[24] ליכא חיוב לא תעמד מנכרי לנכריה מ"מ נראה דעדיין יחשב כשדה עשויה ליטע להצילה דודאי רצונה בכך והיתה שוכרת אחרים להצילה (ונראה דיהודי גם חייב להצילה משום איבה ודרכי שלום), ובפרט לאחר שיש אמנה בין כל ספינות הים לבא להצלת ספינה בסכנה. אמנם מה שנוגע בינם לבין עצמם תלוי לפי החוקים שקבעו לעצמם. ויש כללים באיזה חוקים לדון בין אנשים ממדינות שונות במקום שאינו שייך למערכת שיפוטית מסויימת. והכללם וחקי העולם התקפים, הם הקובעים ולא דיני התורה. ולכן דקדקתי לכתוב אילו היו שייכים דיני התורה, אבל כפי הנראה אין מצב סבירה שדבר הנוגע בין נכרים יוכרע ע"פ דיני התורה האמורים בין יהודים ליהודים, ובפרט בדבר של אומדנא דהוי כהתנו שיהיה פועל.

וגם אילו היה נוגע בין יהודים לנכרים, בין שהיהודי הוא המציל או הנצול, מותר לדון במערכת משפט של נכרים ואם באים לדין תורה נראה דדנין כמו מה שמבואר בגמרא בב"ק בדין ישראל ונכרי שבאו לדין.

וגם לענין עצם חיוב נראה דהיהודי הניצול אינו חייב ממון וכעין מש"כ הש"ך בסימן רכ"ז ס"ק י"ד דאין חובת השבה באונאת נכרי משום שבדיניהם אומרים פקח עיניך וראה. ואם היהודי המציל, אפשר דלולא האמנה היה יכול להביא הניצול לדין שלנו וידונו ע"פ דיני התורה. אבל לע"ע אי"ז מעשי כלל.

successfully performs medical treatment or saves someone in some other way, he deserves to be reimbursed.

According to our analysis, it would seem that under normal conditions anyone who did that which Moshe had done, would be entitled to be reimbursed at least by all those saved and perhaps by all who were bitten and dying. Nevertheless, Hashem instructed Moshe to pay for it on his own. Why? I do not have a satisfactory answer and would appreciate hearing your thoughts and research results.[25]

Summary: When a bystander evaluates a situation that would seem to many people as an emergency requiring intervention, all reasonable expenses incurred to save a life or generated by enlisting emergency services should be borne by the patient, whether the patient benefited from them or not.

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[25] Perhaps the point being driven home here is that Moshe did not heal. The snake was merely a meditative tool for the dying people to gaze upon so that they would do *teshuvoh*. If so, the people in effect healed their souls, which prompted Hashem to heal their bodies. For this Moshe cannot be reimbursed. Nor is he exempted by a dispensation enacted later in history to avoid hesitation in rescuing people. Thus, it is entirely reasonable for Moshe to have to pay for the copper snake out of his own pocket. It is his *mitzvoh* and he has to pay for it.

The difficulty with this conjecture is that even if Moshe did not heal, still he knew that placing this copper snake up for all to see was going to help heal them of their impending death. Why isn't that enough to warrant him receiving reimbursement just like a person who calls an ambulance?

Perhaps, calling for an ambulance is a clear step towards medical care whereas making a copper snake really has no true relationship with normal medical practices. Since it is a miraculous cure, Moshe is not viewed to have assisted their healing any more than if he had called a technician to the scene, and miraculously the technician's presence was instrumental in their own self-healing. But this is a forced answer. I prefer to leave the question open or hear your response. Please email your response to mohel@ravbaruch.com .