



## ***Mitzvos Leil haSeder for a Choleh or Mitzta'er***

As Pesach is approaching, this week's essay will attempt to provide guidance for those whose medical conditions do not allow them to drink the *Arba Kosos* or eat Matza or *Maror*.

There are many for whom the *Mitzvos* of the *Leil haSeder* can be challenging due to medical conditions, for a wide variety of reasons and with varied levels of difficulty. Some have medical conditions that will be exacerbated to the degree that their lives will be (or may be) endangered. There are others who will not be endangered but may nevertheless be exempt from the *Mitzva* due to their infirmity. Some otherwise healthy people are at risk of becoming seriously ill from the ingestion of Matza or drinking wine.

In order to address these issues, we must first outline the basic Halacha:

### ***Choleh sheYesh Bo Sakana***

In any case of *Sakana*, or even possible *Sakana*, the Halacha is clear – *Pikuach Nefesh* overrides all of the laws of the Torah. This is true of even the most stringent laws such as *Hilchos Shabbos* - and certainly affirmative commandments (*Mitzvos Aseh shehaZ'man Gerama*). In fact, not only would a person be exempt from the *Mitzva* in this situation, he would be *forbidden* to perform it due to the self-endangerment. If he does perform the *Mitzva* regardless, it would be considered a *Mitzva haBa'ah b'Aveira*.

Moreover, according to the *Maharam Shik* (O.C. 260) it would not even constitute a *Mitzva haBa'ah b'Aveira*, it would be just an *Aveira*. *Mitzva haBa'ah b'Aveira* only applies when a person performs a *Mitzva* while simultaneously committing an *Aveira*, such as using a stolen Lulav to fulfil the *Mitzva* of *Arba Minim*. Then, despite the fact that he certainly performed the "*Ma'ase haMitzva*", he does not fulfil his obligation. In our case, he is exempt from the *Mitzva* due to *Sakana*, and the act itself is an *Aveira*, not a *Mitzva*.



The *Shu"t Yehuda Ya'aleh*<sup>1</sup> (1, O.C. 160) adds that a person may not even make a Bracha on the Matza in these circumstances:

*Regarding a patient whose doctors have warned him not to eat Matza and Maror on the night of Pesach as they will endanger his life, but the patient wishes to be stringent and endanger himself by eating them. Should he make a Bracha?*

*It is clear that in this regard the Torah states, "Do not be overly righteous – why should you be ruined?"<sup>2</sup> This person is no "Chassid Shoteh" (a foolishly pious person), rather, he is committing a sin, as the Torah states, "These are the Mitzvos", from which we learn "and you shall live through them, and not die through them." This is the source of the ruling that "there is nothing that stands in the way of Pikuach Nefesh." Thus, one may actively violate any of the Torah's prohibitions where there is danger to life, and certainly [he must] refrain from performing the active commandments.*

*Therefore, if he does eat, he should not make a Bracha – he would not be blessing Hashem but angering him. For how can he state "and He [God] commanded us" when the Torah says "And you shall be very careful with your souls", and "...you shall live by them"? There is also no greater Mitzva than guarding one's health.*

The *Mahar"i Aszod* refers to the Gemara (*Bava Kama* 94a & *Sanhedrin* 6b) that rules that a person who steals a *Se'ah* of wheat, grinds it, bakes it, separates *Challa*, and recites a blessing, is not considered to be blessing Hashem but angering Him. Based on this Gemara, the *Rambam* (*Hilchos Brachos* 1:19) and *Shulchan Aruch* (O.C. 196:1) rule that one may not recite a blessing on a stolen item. The *Ra'avad* disagrees with the *Rambam*, arguing that it is inconceivable that a person would benefit from this world without reciting a blessing. However, he would agree that a person cannot recite *Birchas haMitzva* – which includes the words "and He commanded us" – on an act which is nothing more than an *Aveira* and certainly was not "commanded" by Hashem.

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<sup>1</sup> R' Yehuda Aszod (1794-1866) – known as the *Mahar"i Aszod* – was a Talmid of R' Mordechai Benet in Nicholsburg, Moravia and was considered the outstanding halachic authority in Hungary after the Chasam Sofer.

<sup>2</sup> *Koheles* 7:16



We have learned that in cases of *Pikuach Nefesh*, a person is exempt from Mitzva performance, is forbidden to perform them, and should not recite a Bracha if he does so. But if he does go through with the act anyway, does he fulfill the Mitzva?

For example, if a person's life was in danger during the Seder, but he risked his life and drank the *Arba Kosos* and ate Matza and Maror, and later that night his condition improved and he was no longer in danger. Is he obligated to perform the Mitzvos again, or did he already fulfill his obligation?

The *Shu"t Oneg Yom Tov*<sup>3</sup> (41) discusses this question at length. His conclusion is that a person does not fulfill a Mitzva if he risks his life to perform it. One of his proofs is from the Gemara in *Yevamos* (64b) that discusses whether a *Chazaka* is formed after two instances of a particular phenomenon or three. R' Yitzchak bar Yosef related that R' Yochanan once ruled on a tragic case involving three sisters, two of whom had suffered the loss of their sons following Bris Mila. The third sister came to ask R' Yochanan whether she should give her son a Bris Mila and he replied that she should on that very day which was Yom Kippur and Shabbos. This appears to prove that according to R' Yochanan a *Chazaka* is only formed after three instances, for if it is formed after two instances the third sister would have not been permitted to perform a Bris Mila on her son.

Upon hearing R' Yitzchak bar Yosef's argument, Abaye noted that R' Yochanan had not only permitted a Bris Mila (and not considered it a danger) based on his view on *Chazaka* but also permitted the performance of a *Melacha* on Shabbos and Yom Kippur. If a *Chazaka* is formed after two instances, then it would have been forbidden to perform the Bris and it would have been considered a *Mila sheLo b'Zmana* for which one may not desecrate Shabbos or Yom Kippur.

Why would the Bris have been considered a *Mila sheLo B'zman*? We must conclude that if a Mitzva should not be performed due to *Pikuach Nefesh* then even if it is performed it is not considered to have been fulfilled. Therefore, although the Bris does mean that the baby is no longer an *Arel* (uncircumcised), it is considered a desecration of Shabbos.

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<sup>3</sup> R. Raphael Yom Tov Lippman Heilperin (1816-1879) was born in Lithuania and served as the rabbi of various communities in Poland and Lithuania. He began to serve as the Rav of Bialystok in 1859. *Shu"t Oneg Yom Tov* were published in 1880.



The same would be true in our case. If a person ignored the danger to his life and ate Matza and Maror, he would not fulfill the Mitzva, and would be obligated to perform the Mitzva again if the danger passes.

Rav Elyashiv *zt"l* (*Kovetz Teshuvos* 1:93) cites one who claimed that if a person was warned that eating Matza would endanger his life but who ate the Matza and wasn't harmed, it demonstrates that those who warned him were mistaken. Therefore, he should certainly have fulfilled his Mitzva. However, Rav Elyashiv wasn't convinced. Since he had been warned by medical experts to refrain from eating Matza – whether they considered it to be a certain danger to his life or a possible danger – he was exempt from the Mitzva. The fact that the Matza did not ultimately harm him is immaterial.

### **Choleh sheEin Bo Sakana**

Regarding a *Choleh sheEin Bo Sakana* there are a number of views among the Poskim:

The *Maharam Shik* (O.C. 260) we quoted earlier was asked whether a person who is warned by his physician that eating Matza and Maror would make him dangerously ill, but wishes to be stringent, may recite a Bracha? The question was whether he was merely *exempt* from the Mitzva, in which case, according to *Tosfos* (*Kiddushin* 31a), he would be permitted to recite a blessing if he voluntarily performs the Mitzva, or whether he was *forbidden* to perform the Mitzva in which case it would be a *Mitzva haBa'ah b'Aveira*. The *Maharam Shik* replied, as cited above, that it is a *Mitzva haBa'ah b'Aveira* and it is forbidden both to perform the Mitzva and to recite a blessing on it.

He also adds that if the Matza or Maror would cause him immediate harm, eating them is not even considered an act of "*Achila*" (see *Rambam, Hilchos Terumos* 10:8). However, if the harm will only ensue later, it is considered an *Achila*. This is why the *Shulchan Aruch* (O.C. 472:10) rules that if a person will suffer from drinking *Arba Kosos* he should nevertheless force himself to do so. The same would almost certainly apply to Matza and Maror, as long as he will not be actually endangered by it.

In his discussion of this question the *Maharam Shik* implies that a *Choleh sheEin Bo Sakana* is obligated to fulfill the Mitzvos of Matza, Maror, and *Arba Kosos*.



Rav Shmuel Vosner *zt"l* (*Shevet haLevi* 5:219) has a more general discussion as to whether a *Choleh sheEin Bo Sakana* is obliged to fulfil *Mitzvos Asei*<sup>4</sup>. He cites the *Chelkas Yoav* (*Kuntrus b'Dinei Ones* 7) who discusses the ruling of the Gemara in Sukkah (26a) which exempts a *Choleh sheEin Bo Sakana* from the Mitzva of Sukka. The *Chelkas Yoav* wonders whether this exemption is due to a condition in *Hilchos Sukka* of "*Teshvu k'Ein Taduru*" which absolves a person of doing anything that he wouldn't do in his regular living quarters, or due to a general exemption of a *Choleh sheEin Bo Sakana* from performing *Mitzvos Asei*. To avoid transgressing *Mitzvos Lo Sa'asei*, a person is expected to tolerate a great deal – up to the point of death – but perhaps *Mitzvos Asei* are more lenient and a person is exempt as soon as their fulfilment would entail great difficulty. Rav Vosner himself argues that there is no difference between *Mitzvos Asei* and *Lo Sa'asei*, and a person is only exempt if it is a matter of *Pikuach Nefesh*.

*HaGaon* Rav Asher Weiss *Shlit"a* (*Minchas Asher, Bereishis*, new version 59) discusses this topic at length. He cites the ruling of the *Rema* (*O.C.* 656) that while a person is obligated to spend all of his money to avoid violating a *Mitzvas Lo Sa'asei*, he needn't do so in order to fulfill a *Mitzvas Asei*. Does this also mean that a person is not obliged to endure *Tza'ar* and *Tircha* (suffering or bother) to fulfill a *Mitzvas Asei*? In this regard, Rav Asher cites the aforementioned *Chelkas Yoav* before adducing proof from the ruling of the *Mishna Berura* (473:43) that a *Choleh sheEin Bo Sakana* is exempt from eating Maror.

Rav Asher also cites a *Tosfos* in *Yevamos* (70a) who rule that a *Tumtum* is not obliged to remove the covering of his genitalia to see whether he is obliged to undergo Bris Mila. It is unlikely that this is due to the *Sakana* of the procedure as *Tosfos* only say that "he is *likely*" not obliged to undergo the procedure. If there would be any possible danger, *Tosfos* would have said that he is certainly exempt. Therefore, it would seem that his exemption is due to the suffering involved, which exempts him from performing a *Mitzvas Asei*.

[However, according to the *Avnei Nezer* (*E.H.* 1), while a person is not obliged to spend all of his money to perform a *Mitzvas Asei*, he must do so if otherwise he would be unable to perform a certain Mitzva throughout his life. If so, he would also be obliged to tolerate *Tza'ar* and *Tircha* so that he can perform a Mitzva. *Tosfos* who

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<sup>4</sup> Obviously, the question is only whether he is exempt due to the great difficulty in fulfilling these Mitzvos due to his illness, even if he won't be endangered.



exempt a *Tumtum* from undergoing a painful procedure must have reasoned that a person is nevertheless not obliged to medically alter his state so as to perform a Mitzva.]

Rav Asher concludes by ruling that a person is not obliged to endanger a limb of his body or risk causing himself irreparable harm, to perform a *Mitzvas Asei*. Doing so may even be prohibited as a person may not wound himself (*Bava Kama* 91b), even to perform a Mitzva. However, if due to the Mitzva, he will only suffer *Tza'ar*, or temporary mild illness, it is certainly *Midas Chasidus*, and sometimes even an obligation, to perform the Mitzva.

We see that although Rav Asher agreed with the premise of the *Chelkas Yoav* that it is not only *Sakana* that exempts a person from *Mitzvos Asei*, he nevertheless rules that it may be an obligation or *Midas Chasidus* for a person to suffer *Tza'ar* or temporary mild illness in order to perform a Mitzva.

Truthfully, a *Choleh sheEin Bo Sakana* who won't be endangered by performing a Mitzva, can often exert himself to do so. Unlike a *Choleh sheYesh Bo Sakana*, who is exempt from the Mitzva, a *Choleh sheEin Bo Sakana* is only "not obligated" to perform the Mitzva due to the *Tza'ar* or *Tircha* entailed. Therefore, if he does exert himself, he has certainly fulfilled a Mitzva (just like a person who spends a lot of money on an Esrog, who may not have been obliged to do so, but who certainly fulfills a Mitzva).

We should add that there are often methods that help a person to fulfil a Mitzva without as much *Tza'ar* and *Tircha*. For example, a person may consult his doctor to see whether he would experience less discomfort by eating Matza that is crushed, or eating it together with water, or even soaking it in water just before eating it (or perhaps even in fruit juice). He can also eat the absolute minimum *Shiur* (approximately 20g of Matza), and still fulfill the Mitzva admirably.