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**AN EQUITABLE DISTRIBUTION OF
HUMAN ORGANS FOR TRANSPLANTATION**

Sale of Organs from a Living Donor for Transplant:
Motivation and Decision-Making

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*Shabtai A. Rappoport**

The discovery of techniques enabling organ transplants from both living donors and cadavers is one of the most significant medical advances of the second half of the twentieth century.¹ It has also started vibrant discussions of novel medical ethics as well as religious issues. One of these is generated by the relative scarcity of available organs, together with the realization of many patients that for them organ transplant is the only remaining treatment. These inevitably lead patients and their families to search for creative ways to obtain a life-saving organ. In our society, where every conceivable commodity is available, provided the right price is paid, it was only natural that a price would be offered for organs, which would balance supply and demand.

The proponents of legalizing a market for human organs address the horror this concept arouses by putting the importance of saving life above all other considerations. Such an approach seems plausible in Jewish law, where *pikuach nefesh* – the obligation to save life – supersedes most objections and legal prohibitions.² This approach, however, needs careful investigation, since apart from the life and

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1 The first successful living donor transplant was performed between 23-year-old identical twins in 1954. Dr. Joseph E. Murray at Peter Bent Brigham Hospital in Boston, Massachusetts transplanted a healthy kidney from Ronald Herrick into his twin brother, Richard, who had chronic kidney failure. Richard Herrick went on to live an active, normal life, dying eight years later from causes unrelated to the transplant.

2 "There is nothing that can stand before [the duty of] saving life, with the exception of idolatry, incest, and bloodshed." *Babylonian Talmud*, Yoma, 84b

health of the patient who is in dire need of the organ, the life, dignity, and health of the person who provides this organ should be considered as well.

"One is prohibited from injuring³ oneself as well as one's fellow man. Not only a person who causes injury, but also one who beats an innocent person of Israel, be it a minor or an adult, man or woman, in a quarrelsome way [or: in a debasing way⁴] transgresses against a negative precept, as it is written:⁵ 'and not exceed beat[ing] him';⁶ if the *Torah* warned us against exceeding in the beating of a sinner, this prohibition extends a *fortiori* to beating an innocent person."⁷

A person may not put his or her own life at risk, either.⁸ The dilemma that arises when the only way of saving another person's life is by risking your own, or by suffering an injury, is discussed in the responsa literature, where a responsum by Rabbi David Ben Zimra⁹ is much quoted.¹⁰

The question regards a person who was told by the local despot: "Let me cut off a limb of yours, which will not kill you, or I shall execute your fellow Jew." Is that person obliged to agree to this atrocious deal?

3 The term "injury" throughout this discussion applies to any physical trauma, including surgery of any kind.

4 From a footnote in the Warsaw-Vilnius common edition of Maimonides' *Laws*. Rabbi Moshe Feinstein, in *Igrot Moshe Yore De'ah*, Part III, 36, notes that both versions are correct and define the prohibition of causing an injury. It is not allowed to injure or beat a person either in a quarrelsome way or in order to debase him. This excludes injury for medical or even aesthetic reasons (i.e., surgery). *Igrot Moshe, Choshen Mishpat*, Part III, 66.

5 Deuteronomy 25:3.

6 The full text (*ibid.* 1-3) goes: "If there is a controversy between men, and they come to judgment, that the judges may judge them; then they shall justify the righteous, and condemn the wicked. And it shall be, if the wicked man deserves to be beaten, that the judge shall cause him to lie down, and to be beaten in his presence, by a certain number according to his fault. Forty stripes he may give him, and not exceed; lest, if he should exceed, and beat him above these with many stripes, then your brother should seem vile to you."

7 Maimonides, *Laws of Injury and Tort*, V, 1.

8 Maimonides *Laws of Murder and Preserving Human Life*, XI, 4-5.

9 Born Spain 1479, died Zefat 1573. He was exiled from Spain in 1492, and settled in Zefat. In 1513 he immigrated to Egypt where he served as a head of the Jewish community, a Rabbi, Chief of the Rabbinical Court, head of the local Yeshiva, and was in charge of local charity. In 1553 he returned to Zefat. Ben Zimra is credited with more than 10,000 responsa, as well as a commentary to Maimonides' *Laws*.

10 *Shot Radvaz*, Part III, 627.

An anonymous source is cited as claiming that since the rescuer will not be killed, the obligation to save life supersedes the loss of limb suffered by him.¹¹ Ben Zimra counters this argument and concludes that a person is not obliged to sacrifice a limb in order to save another life.¹² However, if one chooses to practice such pious conduct, beyond

11 The argument goes as follows: The laws of Shabbat may not be violated in order to rescue a limb if there is no danger to life, but must be violated in order to save life. Hence, the obligation to save life that supersedes the laws of Shabbat, supersedes, *a fortiori*, the loss of a limb.

12 The responsum contains a series of counter-arguments, some of which will be referred to later in the discussion. The lines printed in italics are my comments attempting to illustrate the points made in the responsum and help understand its structure and reasoning.

a. When the function of a limb, or even the limb itself, might be lost as a result of a disease or an accident, Shabbat laws may not be violated, because that danger is a given circumstance. But it does not imply that Jewish Law should ever require someone to actively sacrifice a limb even in order to save life.

In Jewish Law when a certain dire circumstance exists, and in order to extricate himself, a person commits a crime, he is not considered to have been forced to take that action, and is fully accountable for the consequences (Maimonides, Laws of The Foundations of The Torah V, 6). However, when one is put in a dire situation in order to force him to commit a crime, he is exonerated (ibid. V, 4). Similarly, a person may not violate the Laws of Shabbat in order to rescue a limb that is already in danger, but will not be held liable when he violates the laws of Shabbat under threat of losing a limb. Thus, he does not have to actively sacrifice a limb to save life.

b. *Even if the above is rejected – claiming that even though one is threatened that a limb of his will be cut off if he observes the laws of Shabbat, he must observe these laws – it does not imply that one should agree to the cutting off of a limb in order to save life.*

The reason is that potentially any cut may cause uncontrollable blood loss and consequently death, a possibility that must be taken into account – unlikely as it is. The Talmud (*Pesachim* 25b) prohibits one person from killing another in order to save his own life: “One came before Raba and said to him, ‘The governor of my town has ordered me, ‘Go and kill so and so; if not, I will slay you.’ He answered him, ‘Let him rather slay you than that you should commit murder; who knows if your blood is redder? Perhaps his blood is redder.’” It could similarly be said to a person who nobly volunteers to have himself killed in order to save another: “Who knows that his blood is redder? Perhaps your blood is redder.” Hence, one is prohibited from doing so. It follows, according to Ben Zimra, that one does not have even to put his life at risk in order to rescue another. He saw a person who bled to death after his ear was cut to let some blood. The risk of bleeding to death is obviously much greater from cutting a limb than from bloodletting, and this risk exempts one from volunteering to have a limb cut off, even to save another life.

- c. *Even if the above argument is rejected – claiming that the risk of death resulting from blood loss, in these circumstances, is negligible – the extent of one's obligation to observe the religious laws of Shabbat is not the same as the personal obligation to save life.*

The *a priori* reasoning to obligate a person to sacrifice a limb in order to save life was a deduction from the assumption that one has to sacrifice a limb in order to observe the laws of Shabbat. Even if that assumption will be deemed correct, the deduction, however, is wrong. The commitment to observe religious laws, including the laws of Shabbat, is an infinite and absolute commitment derived from the relationship between the Creator and his chosen nation. The only reason a person does not have to sacrifice his life for the observation of most of these laws is that the law itself prohibits him from doing so. But sacrificing a limb for Shabbat observation might be required.

Saving life, however, is a relative obligation, taking into account the relative risks to the rescuer and to the rescued. Sacrificing one's life to save another person has no point even in as an *a priori* argument (see b above). Hence, no deduction can be made from the obligation to observe the laws of Shabbat, to the obligation of saving life.

- d. *Even if the above argument is rejected – claiming that saving life should be considered not only a personal obligation but also a religious obligation to the Creator, just like observing the laws of Shabbat – nevertheless, the conclusion that one must sacrifice a limb in order to save life cannot be proven.*

The assumed obligation to sacrifice a limb in order to save another life was inferred from an assumed obligation in the laws of Shabbat. However, the Talmud (*Sanhedrin* 54a) rules that an offense established by inference (from minor to major) is not punishable. In order to be punishable the offense must be stated positively. Since cutting off a limb should be considered a most severe penalty, the obligation to sacrifice a limb to save life must be stated positively and not merely inferred from the laws of Shabbat.

- e. *Even if we regard saving life and the sacrifice it may involve as a positive obligation rather than as punishment, and hence not covered by the above mentioned rule – still, according to the accepted norm, cutting off a limb should legally be considered as potentially fatal, even though the statistical medical risk is very small as pointed out in c above.*

The biblical punishment (*Exodus* 21:24-25) – “Eye for eye, tooth for tooth...burning for burning, wound for wound, bruise for bruise” was interpreted (*Bava Kama* 84a) as relating to pecuniary compensation rather than corporal punishment. The statement “eye for eye” is interpreted as meaning “no more than an eye for an eye,” and not “life and eye for eye.” If “eye for an eye” means corporal punishment, the defendant may lose his life as a result of having his eye taken out, and he will end up paying with his life for an eye. The same should apply to the other punishments mentioned – burning, wounding and bruising. Namely, even these cannot mean corporal punishments because they risk the defendant's life.

Hence, if the risk to life caused by any burning, wound, or a bruise is legally considered to be real and significant, how much more so for cutting off a limb.

- f. Another proof that the danger of losing a limb is legally considered to be tantamount to risking life itself comes from the laws of Shabbat. Some of the negative precepts in these laws are biblical and others are rabbinical. Only a real danger to life permits transgressing the biblical prohibitions. A danger of losing a limb, however, permits transgressing the rabbinical prohibitions (Rabbi Moshe Ben Nachman, *Torat Ha'adam* [Code of Man], Matter of Disease, Writings of Rabbi Moshe Ben Nachman, Mosad Harav Kook, 1964, vol. II, p. 21).

On the face of it this argument is very odd, because it shows just the opposite – that the danger of losing a limb is not equivalent to a real danger to life. The obligation to sacrifice a limb in order to observe the biblical laws of Shabbat was the basis of the argument Ben Zimra tried to oppose.

The explanation for this argument seems to be one that is based on an analysis developed by Rabbi Avraham Borenstein in his commentary on the laws of Shabbat, "Eglei Tal" (Labor of Grinding 38b, p. 91a).

According to the rabbinical laws of Shabbat, labors that should not be done by a Jew should also not be done by a non-Jew for a Jew, or obeying an order from a Jew. However, the Babylonian Talmud (Gittin 8b) states that a non-Jew who is told to do so by a Jew can draw up a sales contract for land, which is bought from a non-Jew in the Land of Israel, even on the Shabbat. This exemption from the regular law is likened to another such exemption. Usually the laws of Shabbat may be violated only when there is a distinct danger to life. Still, when a person is sick to the extent that he must lie down in bed, a non-Jew may perform labors that are usually forbidden, in order to help alleviate his disease. These are unique exemptions. Usually labor of a non-Jew on Shabbat is forbidden, even when necessary to perform a biblical command like circumcision. An explanation is needed for these two exemptions.

The Jerusalem Talmud (Moed-Katan II, 4) explains the exemption of drawing up a contract discussed above, citing the story of Jericho that was conquered by Joshua on the Shabbat. The meaning of this citation is that since the actual conquest of the Land of Israel could proceed even on the Shabbat, even though the laws of Shabbat were violated, similarly the purchase of a house from a non-Jew, which is akin to conquering the Land in a small way, may proceed even on the Shabbat, even though a rabbinical prohibition is being violated.

This explains the association between treating a sick person and drawing up the contract on the Shabbat made by the Babylonian Talmud. A disease which is life threatening should be treated on the Shabbat, even though laws of Shabbat are violated. A disease that is not life threatening should not be thus treated, but since it is akin to a life threatening disease in a small way, it might be treated even though a rabbinical prohibition would be violated. This very deduction is the one that permits drawing up the contract. In both cases the nucleus (conquering the land, or saving life) is important enough to violate the biblical laws of Shabbat, hence the peripheral action (purchase of land from a non-Jew, or treating a non-dangerous disease) is important enough to violate rabbinical prohibitions.

The Talmud (Eruvin 68a) draws a distinction between a rabbinical prohibition that involves a manual act and one that involves no such act, such as a mere verbal instruction to a non-Jew. Rabbi Moshe Ben Nachman (ibid.) concludes that in order to treat a mere disease only a rabbinical prohibition that involves no manual

the requirements of the law, one may do so and will be blessed. Still, if there is a significant medical¹³ risk, someone who practices such

act may be violated. However, when a danger of losing a limb exists, even a rabbinical prohibition that involves a manual act might be violated.

A danger of loss of a function of an organ, or the organ itself, according to the above reasoning, is closer to the nucleus of a danger to life than a mere disease. The reason seems to be that the loss of an organ is regarded as a partial death, since the body consists of organs and somatic death is the death of all the organs. A similar argument can be found in the Talmud (Bava Kama 65a). "If a man shall steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep... If the theft be at all found in his hand alive, whether it be ox, or ass, or sheep; he shall restore double" (Exodus 21:37-22:3). The Talmud quotes Rab as saying: "The principal is reckoned as at the time of the theft, whereas double payment or four-fold and five-fold payments are reckoned on the basis of the value when the case was brought to Court." The Talmud questions that statement: "[If a thief misappropriated] a fat animal and caused it to become lean, he has to pay double payment or fourfold and five-fold payments according to the value at the time of theft. [Does this not contradict the ruling enunciated by Rab?]" The Talmud replies: "There also [the thief has to pay thus] because we argue against him 'what is the difference whether you killed it altogether or only half-killed it' [The liability thus began at the time when the thief caused the animal to become lean]." The notion that irreversible bodily damage amounts to "half-killing" should apply in the case of a loss of a human organ as well. Hence, since usually there are no irreversible damages resulting from a "normal" sickness, it is further removed from danger to life than a risk to irreversibly lose a function of a limb or the limb itself, the latter being "half-death." That is why rabbinical prohibitions that involve manual acts may be violated in order to save a limb from irreversible damage, and not to treat a sick patient where there is no danger to his life.

Hence, Ben Zimra's argument seems to be that since the danger of losing a limb is legally tantamount to a danger to life in the framework of the Laws of Shabbat, the same consideration should apply the rule that one life may not be taken to save another – "Who knows that his blood is redder? Perhaps your blood is redder" – to losing a limb. Thus, a limb should not be sacrificed to save another life.

- g. *Even if all these arguments are not accepted, and the a fortiori argument (see 12 above) holds in law as well as in logic, the following legal conclusion that one must sacrifice a limb in order to save another life is inherently wrong.*

The Bible says (Proverbs 3:17): "Its ways [i.e., of wisdom, Torah] are ways of pleasantness." Hence, the decisions of our Torah should be in accordance with good judgment and common sense. It is inconceivable that a person should let his eye be put out, or his hand or leg be cut off in order that his fellow man would not be put to death.

- 13 *Supra* n. 12b: any cut to the body presents a risk of uncontrollable blood loss and consequently death. Hence, the limitation set here that when there is risk to life the pious conduct is considered wrong, must mean a significant medical risk.

conduct is considered to be a foolish pietist.¹⁴ A person should first avoid even a probable risk to one's own life before risking it for the sake of another's.¹⁵

The above distinction between cases in which there exist no significant medical risks and cases in which they exist is unclear. Ben Zimra argued¹⁶ that the danger of losing a limb is *legally* equivalent to the danger to life. True, he reached his final conclusion even if that argument was ignored, but he should have taken this consideration into account when reaching the final decision. It should follow that it is "foolish piety" to sacrifice a limb to save another life, no matter whether it involves a significant *medical* risk or not. Legally speaking, risking one's life and sacrificing one's limb should be considered the same.

In order to address this issue we shall make a distinction between two prohibitions against risking one's life. Murder is an absolute prohibition that also applies to committing suicide.¹⁷ Endangering life – whether one's own, or another's – when the actual risk is significant, may result in murder and is therefore forbidden. There is no need for an explicit command against thus endangering life, because it follows from the basic prohibition against murder. As it is forbidden to murder in order to save life,¹⁸ it follows that endangering one's life to save another's is not allowed.

But there is another command against risking life. The biblical command "Only take heed to thyself and keep thy soul [life] diligently"¹⁹ is interpreted²⁰ as directing the removal of any hazards from one's property. There is a rabbinical command that extends the

14 Who along with a cunning rogue and others is considered to bring destruction upon the world? (*Sotah* 20a). An example of foolish pietist (*ibid.* 21b) is when a man seeing a woman drowning in the river says: "It is improper for me to look upon her and rescue her." Denoting a behavior as foolish piety is declaring it highly improper, if not strictly forbidden.

15 *Supra* n. 12b: "Who knows that his blood is redder? Perhaps your blood is redder."

16 *Supra* n. 12e and f.

17 Maimonides, *Laws of Murder and Preserving Human Life*, II, 3: "And surely your blood of your lives will I require' (Gen. 9:5) applies to one who kills himself."

18 Maimonides, *Laws of The Principles of the Torah*, V, 7; *Laws of Murderer and Preserving Human Life*, I, 9. See there, and *Sanhedrin* 72b, as to the difference between that and the obligation to kill a pursuer who threatens life.

19 Deuteronomy 4:9

20 Maimonides, *Laws of Murderer and Preserving Human Life*, XI, 4.

biblical one: "The²¹ sages prohibited many actions because they present a danger to one's life. Any person who transgresses these and says: 'but I am risking my own life, and why should others mind my actions?' or 'I do not think these actions risk my life' will be punished by flagellation for disobedience."²²

The above quotation from Maimonides cites the transgressor's *motivation* for risking his life. That motivation must be germane to the transgression, otherwise why should these be cited?

It seems that the second command does not stem directly from the prohibition against murder but has an additional message. One should "keep his soul diligently," as opposed to showing irreverence towards life. It is not the very act that is forbidden, but the attitude of not "paying heed" to one's soul. Hence, the transgressor's defiance of his obligation to preserve his life, either because he wants to risk it or because he disregards that risk, is an integral component of his offense.

This second command applies to hazards and risks that do not lead directly to the loss of life and belongs to a set of three.²³ The verse "When you build a new house, then you shall make a parapet for your roof, that you should not bring any blood upon your house, if any man falls from there"²⁴ contains the other two commands: building a parapet and not bringing blood upon one's house. Not building a parapet for the roof is not the direct cause of loss of life, but shows disregard to life, because someone may fall from there. It is clear that in essence all three commands are the same.

Hence, the difference between endangering life in an actual significant risk and showing irreverence to life by taking a small risk that tends to be ignored by people is whether the motivation is an essential component of the transgression. In the first case, the prohibition exists regardless of the motivation,²⁵ and taking such a risk is considered to be "foolish piety." In the second case, the motivation of

21 *Ibid.* XI, 5.

22 Punishment decreed by the Rabbis, usually for transgressing a rabbinical prohibition, as opposed to "stripes," ordained by biblical law.

23 Discussed together in Maimonides, *ibid.* XI.

24 Deuteronomy 22:8.

25 Rabbi Moshe Feinstein prohibited performing dangerous surgery attempting to save the patient's life, if survival chances are less than 50 percent (*Igrot Moshe*, vol. VI, *Yoreh Deah*, Part III, 36). Hence, even the most logical motivation for taking a significant risk – that of saving one's own life – does not permit it.

saving another life²⁶ certainly does not consist of showing disrespect to life, and even though one is not obliged to take such a risk (that is akin to a danger to life²⁷), still one may do so and is considered to be a pious person, who should be blessed for his courage and selflessness.

In the same vein, the prohibition against injuring another, or oneself, also seems to stem from the disrespect shown towards the injured person. The verse that is the source of this prohibition²⁸ ends with the reason "then your brother should seem vile to you." When injury to oneself is done to save life, it does not show such disrespect; on the contrary, it is a noble act, and rather than being forbidden, it constitutes "pious conduct."

However, the concept of the link between motivation and the prohibition to injure or risk oneself needs to be better refined. In another responsum,²⁹ Ben Zimra elaborates on the obligation to save life: "You should know that in order to save one's fellow man's life... even when there is a probable risk to one's life, one must rescue his fellow man..." But if the risk leans towards certainty (i.e., more than a 50 percent chance) one is not obliged to sacrifice oneself in order to rescue one's fellow man's life. Even at a balanced risk (i.e., a 50 percent chance) one is not obliged to sacrifice his life, because "who knows that his blood is redder? Perhaps your blood is redder."³⁰ However, when the risk is not balanced but leans towards rescue (i.e., less than a 50 percent chance), and one chooses not to take the risk and not save life, one transgresses the biblical prohibition³¹ "nor shall you stand by the blood of your neighbor."³²

This responsum seems to contradict the previous one. In the above responsum it was decided that where there is a significant actual risk

26 When the risk is so small that it is socially acceptable, it is permitted even in the course of one's job, when the motivation is simply to make a living: "And he setteth his soul [i.e., life] upon it: why did this man [the laborer] ascend the ladder, suspend himself from the tree, and risk death itself; was it not that you should pay him his wages?" (*Bava Metzia* 112a). See *Igrot Moshe* vol. IV, *Hoshen Mishpat* Part I, 104.

27 *Supra* n. 12e.

28 *Supra* n. 7.

29 *Shot Radvaz*, vol. V, 218.

30 *Supra* n. 12b.

31 Leviticus 19:16.

32 "Whence do we know that if a man sees his fellow drowning, mauled by beasts, or attacked by robbers, he is bound to save him? From the verse, nor shall you stand by the blood of your neighbor." (*Sanhedrin* 73a).

to the rescuer's life, the rescue consists of "foolish piety." A risk that is less than a 50 percent chance is, of course, still very significant. In the second responsum Ben Zimra concludes that a person is obliged to take such a risk to save life. Also, in the second responsum he decides that one is "not obliged" to take a 50 percent chance risk, but he does not say that one is "not permitted" to take such a risk, or even a greater one, as he does in the first responsum.

The answer must be that there is a scale to balance motivation against risk to life and injury to oneself. Two elements come in juxtaposition in actual death: the body is totally and irreversibly damaged³³ and life³⁴ is lost. An actual loss of a limb or an organ is considered partial death,³⁵ because it is an irreversible damage to the body, even though no life is lost. Undertaking a probable risk to life may result in death in the near future, hence its immediate effect is the shortening of life expectancy and is thus akin to death, even though, at the moment, there is no harm to the body.

Thus, both cutting off a limb that does not involve a probable risk to life and undertaking a risk to life that does not involve bodily damage do not come under the absolute prohibition of murder but under the commands not to injure oneself and keeping one's life diligently. Hence, these are permitted when necessary for saving life, since under these circumstances they do not consist of an undue disregard to one's life.

However, when the cutting of a limb does involve a probable risk to life, it consists of both elements of loss of life – partial loss of bodily function and shortening of life expectancy – and goes higher in the scale, closer to murder or suicide. Since there is an absolute prohibition against murder, the motivation becomes irrelevant, and the combined loss of the limb and actual risk to life is close enough to murder to be considered "foolish piety" under all circumstances. This was the conclusion of the first responsum by Ben Zimra.

The second responsum deals with a probable risk that its immediate

33 Innately, death consists of bodily damage even when circumstances of death were such that the body remained whole, because all bodily functions are lost.

34 The term "life" in this context pertains to the entire human being – a combination of body and soul. Since it consists of entire human endeavor, past and future, the loss of life could be interpreted as losing one's future. That is why shortening one's life expectancy is akin to a loss of life.

35 *Supra* n. 12e.

effect is the shortening of life expectancy, but without involving an irreversible bodily damage now. Such a risk may be taken in order to save life.

Since we have established that there is a scale of actions that are closer to murder and further from it, we may *a fortiori* conclude that there is a scale of disregard to life and injuring oneself that dictates whether an activity will be permitted.

One may risk one's life in order to make a living, and undertaking such a risk is not considered showing disregard for life.³⁶ However, this applies only to a risk of small probability that is socially acceptable. Undertaking a greater risk in order to make a living does, indeed, show a twisted value system and undue disrespect to life.

Similarly, sustaining a minor injury for the purpose of improving one's physical appearance³⁷ is permitted. Sustaining such an injury in order to earn a living is prohibited,³⁸ but if the injury is very minor it is permitted.³⁹ Hence, there exists some kind of cost-benefit ratio that tells what constitutes disrespect to one's body or life and what is justified. A very small injury is permitted to gain what is considered a relatively small benefit – earning a living, but a greater injury is prohibited for that gain. However, such an injury is permitted for the greater benefit of improving one's appearance.

It follows that donating an organ (e.g., a kidney) in order to save life is not obligatory (as Ben Zimra pointed out in his first responsum) but should be encouraged as a noble act of piety. Under proper medical care such organ donation does not pose a real medical danger. Still, such an act is not devoid of medical risk, and often a person who has one kidney may not fast on Yom Kippur, because he must maintain normal hydration of his body. However, it may be argued that the danger that may result from dehydration and other such circumstances does not bring kidney donation to the level of absolute prohibition discussed above.

When the motivation is earning a living, such a major injury, and the ensuing medical risk, organ sale is definitely forbidden. When the donor's motivation is compound – saving life and earning money –

36 *Supra* n. 26.

37 *Igrot Moshe*, vol. VII; *Hoshen Mishpat*, Part II, 66.

38 *Tosafot Baba Kama* 91b *Dibur Ha' Mathil Ella Hai*.

39 *Igrot Moshe*, vol. IV, *Hoshen Mishpat*, Part I, 103.

there is a test⁴⁰ that defines the motivation that the law considers essential. When there are two motives to an act, one should ask what would have happened if circumstances were such that only one of them was relevant. In our case what would have happened if life was not saved, but money was gained, or when life was saved but no money was gained. If the donor would sell his kidney in the first case, and not in the second, it defines his motive as financial gain alone.

Sacrificing a limb, and undertaking a definite – if small, but not small enough to be socially acceptable – risk to life for a financial gain, shows disregard towards life and body and is thus forbidden, even in order to save life, since the motivation is the deciding factor.

Society should not take part in a deal which is immoral and not allowed by law. Since an organ donation is impossible without society's participation through hospitals, either financed or at least licensed by society, a contract for organ sale should not be acted upon by the hospital.

40 This test seems to be the grounds for *Tosafot Pesachim* 65a that states that even though a person who sweeps an earthen floor intends to fill in holes in the floor, still does not need to fill them, and is thus not considered violating the laws of Shabbat. The meaning is that the compound motive of cleaning the floor and filling in the holes is not legally defined as such. For removing the dirt alone (had there been no holes in the floor) he would have swept the floor, but for filling the holes alone (had there been no dirt) he would not have done so. Hence, the only motive considered is cleaning the floor, and the filling of the holes that resulted only accompanied this cleaning.