



## Skip to the Head of the Line?

Generally, medical services are a finite resource; many treatments and tests have a long waiting list, sometimes weeks or months, especially in a single-payer or socialized medicine system. Although it may be possible to obtain some of these services “privately”, there are tests and procedures that cannot be done outside of the “system” to shorten the wait.

Generally, cases of *Pikuach Nefesh* are given precedence, and limited appointment slots are kept open for emergencies. However, this only applies to true emergencies, not to every case considered “*Pikuach Nefesh*” by Halacha. For example, if there is a concern for malignancy and imaging is urgently needed, the patient will usually need to wait in line along with everybody else, even though we would even desecrate Shabbos to avoid an exacerbation of his condition due to *Safek Pikuach Nefesh*.

In these cases, some people are willing to do anything necessary to push to the front of the line, paying no heed to the others waiting. Let us imagine 65-year-old Reuven, a 65-year-old man with severe abdominal pain that brought him to the emergency room. Initial scans were not diagnostic and after treatment of his acute symptoms he was released but there was a grave concern of cancer and an MRI scan was scheduled a month later. Reuven, who was extremely concerned that he had cancer and that it would spread in the interim, was in a state of “*Safek Pikuach Nefesh*” (his life was potentially in danger). Therefore, he did not hesitate to use his connections to attain a scan just three days later. However, this caused the appointment of another dangerously ill patient to be delayed.

Reuven is certainly correct that anyone would do anything to save his life, as *Chazal* say, “*Chayecha Kodmin*” (Your life takes precedence over that of someone else’s) (*Bava Kama* 62a). This would surely include the patient whose appointment was delayed. Moreover, a medical appointment is not a monetary possession such that delaying it would constitute theft. Furthermore, the other patient may have been waiting for routine testing, which is not a matter of *Pikuach Nefesh*.

However, all of the above are no more than arguments, but to be valid they must be based on the relevant *Sugyos* in *Shas* and the rulings of the *Poskim*. The following discussion does not constitute a *Psak Halacha*; it is simply an examination of two relevant *Sugyos*.

***Bava Kama 60b: "Matzil Atzmo b'Mamon Chavero"***

The Gemara relates that *Dovid haMelech* was in battle and needed to appropriate the possessions of other Jews to save his life. He consulted the Sanhedrin and they issued a ruling. What was his query and what was their ruling?

1. According to Rashi, the question was whether a person is permitted to take other peoples' possessions to save his life, and Sanhedrin ruled that it is forbidden.

2. According to *Tosfos* and other *Rishonim*, the question was whether a person who appropriated someone else's possessions to save his life must reimburse the owner. *Tosfos* imply (and other *Rishonim* explicitly state this) that the act of taking the possessions in the first instance was certainly permissible, "for nothing stands in the way of *Pikuach Nefesh*" (*Rosh, Bava Kama 6:12*).

Many of the *Acharonim* struggle to understand Rashi's approach. All but the three cardinal sins (murder, *Avoda Zara*, and illicit relations) are waived for *Pikuach Nefesh*; why should theft, which is only a *Lo Sa'ase*, be any different?

We should point out that the position of the other *Rishonim* is also somewhat difficult to understand. Though they state that it is permissible to steal to save one's own life – in fact, according to the *Rashba* (*Shu"t 4:17*) this was so obvious that the *Sanhedrin* did not even need to discuss it – according to many *Acharonim* this is not the case if one knows that one will not have the means to reimburse the owner (see *Binyan Tzion 170* and *Sdei Chemed Klalim 1:16*). They contend that this was the *Sanhedrin's* response: it is only permissible to save one's life by taking another person's possessions if he will certainly reimburse the owner.

If so, even according to these *Rishonim*, the principle that "*nothing stands in the way of Pikuach Nefesh*" is not as broad as first thought – in this case, it only permits "*Gezel Al Menas l'Hachzir*" – theft with the intention of reimbursement, not outright theft.

This appears even more incongruous considering that the obligation to save lives includes spending money, as stated by the Gemara in *Sanhedrin* (73b) that derives this from the Pasuk "*Lo Sa'amod Al Dam Rei'echa*". Though the *Rishonim* rule (see the *Rosh*, for example) that the rescued person must reimburse his rescuer, most *Poskim* hold (including the *Chafetz Chaim* in *Sefer Ahavas Chesed 20:2*) that a person must attempt to save another's life even if he is certain that he won't be reimbursed. This obligation may even require him to use all of his money in the attempt, as is the case for avoiding any of the *Issurim* of the Torah.

This raises an obvious question (outlined in its most basic form in the *Sefer Prashas Derachim* 19): If one person is obligated to spend his money to save another's life, why can't the endangered person take it himself?

The *Acharonim* suggest several answers to this question. In his *Sefer "Afikei Yam"* (2:32), Rav Michel Rabinowitz *Hy"d*<sup>1</sup> explains that the allowance to take another person's possessions to save one's own life is dependent upon that person's obligation to spend his money to rescue the endangered person. This is true according to both *Rashi* in *Bava Kama* and *Tosfos* and the other *Rishonim* there (as previously discussed).

*Tosfos'* position is straightforward. Since the Gemara in *Sanhedrin* rules that a person is obligated to spend his money to save a life, a person whose life is in danger may similarly appropriate the possessions of others to rescue himself. However, *Rashi* holds that the two questions are not entirely dependent on one another. The obligation to save lives does not create a "*Shibud Nechasim*" (a lien upon the other's property); the obligation rests upon the person, not his possessions. Thus, if he encounters a Jew in danger he must attempt to save him, even if that entails spending a lot of money. However, if he does not encounter anybody in danger he has no particular obligation, therefore, one may not appropriate his property.<sup>2</sup>

The *Afikei Yam's* approach logically implies that according to *Tosfos*, a person in danger could take another's possessions even if he knows he cannot reimburse them. This is at odds with the *Acharonim* who argue one is not obligated to expend resources to save a life without reimbursement. However, this is the position of the *Maharam Shik* (Y.D. 347 & 348).

The *Shulchan Aruch* rules (Y.D. 359:4): "*Even if his life is in danger and he needs to steal from another to save his own life, he may only take [the other's property] with the intention to reimburse him.*" The *Shulchan Aruch* only rules on the question of the obligation of reimbursement, which is agreed to by all the Poskim (and which he rules in several places elsewhere in *Shulchan Aruch* – see Y.D. 380:3 and 388:2). He does not clearly address the question of whether the endangered person may take someone's possessions when he knows that he will not be able to reimburse him, which is a matter of dispute among the Poskim, as stated above.

Holding a place in a line is not a monetary right, per se. The basic obligation to honor a person's place in a line stems from the Mitzva of "*Tzedek Tzedek Tirdof*" – the obligation to pursue justice. The *Meiri* explains (*Sanhedrin* 32b):

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<sup>1</sup> R' Yechiel Michel Rabinowitz *Hy"d* was the Rav of Stutchin and was murdered by the Nazis in September 1941.

<sup>2</sup> The distinction drawn between a case when the potential "rescuer" is present and one where he is not is based on the *Binyan Tzion* 2:173 in his explanation of the ruling of the *Ra'avad*.

*There are matters that the system of justice does not cover and one needs to decide which person has a greater right, and to decide the matter that the system of justice does not cover, in a manner of compromise and good traits... Whomever we discern is more able to tolerate the delay should be deferred in the face of his fellow. The same is true of a healthy person who should be deferred in the case of a sick person, and the like. Even concerning actual Din, it is said that if there are many litigants in front of a Dayan, he should give precedence to the orphan over the widow, the widow over the Talmid Chacham, the Talmid Chacham over an Am haAretz, and the woman before the man because she is more readily embarrassed. **And if all else is equal, we give precedence to the person who came first.***

In other words, we are obligated to honor a person's place in line even though it does not fall under the rubric of "Din".

A similar concept may be derived from the Halacha of "Ani haMehapech b'Charara". The Halacha is that a person may not push ahead and purchase an item that somebody else had already shown an interest in but should stay in his place in the line. This is not due to any monetary right held by the other person; after all, the seller may choose not to sell it to him (see the *Sema C.M.* end of 386, *Shu"t Maharshal* 36, *Chavos Yair* 42, and *Chasam Sofer C.M.* 175).

In theory, the same should be true of a line of patients waiting to see a doctor. The patients should honor each other's position in the line, but the doctor should have the right to give preference to a patient irrespective of his position in the line. However, contemporary Poskim maintain that in practice, our current medical system is based upon an expectation and understanding of "first come, first serve" – especially when appointments have been scheduled – and the doctor can only rearrange the order of the line based on acuity and not for any other reasons (see the *Tzitz Eliezer* 18:69:3, *Nishmas Avraham* 4, *Y.D.* 251:1, citing Rav Yehoshua Neuwirth *zt"l*, and 252 in a footnote citing Rav Shlomo Zalman Auerbach *zt"l*).

Given that precedence in the line is not a monetary right, stealing someone's place should not be considered "theft". [One could have argued otherwise. If a person schedules an appointment one could have considered his position in the schedule to be "Shaveh Kesef" – something worth money, which could be sold to others (in fact, a hard-to-get appointment may be worth a lot of money).] However, it would still seem that a person whose life is in danger may still not steal a person's place in a line or his appointment for medical treatment. Though it may not be considered a monetary right or "possession", a person is nevertheless not permitted to harm a person in any way to save his own life.

As explained above, the question of saving oneself by taking another person's possessions is directly connected to the question of the other person's obligation to

rescue him. Even those who permit someone to use another's possessions to save his own life only permit it if the other person must spend his money to save him. Given that even those who hold that a person is obligated to spend all his money to save another certainly agree that he is not obligated to risk his life to do so (at best, doing so is *Midas Chasidus*), the person whose life is in danger may certainly not take actions to save himself that risk the life of the other person.

In our case, the person whose appointment is being "stolen" is not present at the time or site of the "theft" and he is completely unaware of the machinations going on behind his back. Therefore, he has no obligation to save Reuven's life. As such, even if his appointment is not an urgent matter, it would be forbidden for somebody else to "steal" it to save his own life.

In particular, we should note that the damage caused to a person whose appointment is deferred is often not subject to reimbursement. As stated above, many hold that a person may not even take a person's money to save his own life if he knows that he cannot reimburse him.

#### ***Bava Metzia 62a: "Chayecha Kodmin"***

Rather than considering the means of saving one's life as belonging to another person or considering the impact it will have on the other person's life, we could consider it through the prism of the famous *Sugya* of "*Shnayim sheHayu Holchim baDerech*":

Two people are on a journey and one of them has a flask of water. If one of them drinks it, he will live and his colleague will die. If they share it, they will both die. According to *Ben Petura*, the person who has the flask is obligated to share it so that he "won't see the death of his colleague". The Halacha follows R' Akiva who rules that he is obligated to drink the water because the Torah states, "*And your brother shall live with you*", from which we derive, "*Your life takes precedence to that of your fellow*".

According to R' Akiva, would the person not holding the flask be permitted to steal it from his colleague? *Rashi* would certainly prohibit this, as one may not save his own life by stealing from another. Those who permit theft only when reimbursement is possible would likewise forbid such an action. Although the endangered person may intend repayment, his friend's impending death renders this impossible. The underlying principle is that *Pikuach Nefesh* does not nullify another's monetary rights. Consequently, one cannot abolish those rights even through the indirect mechanism of causing the owner's death.

The question is only relevant according to those who hold that one may steal to save one's own life even if repayment will be impossible. In this case, do we

consider stealing the flask of water to amount to monetary theft or “a theft of the other person’s life”?

This distinction becomes clear in a case where the flask does not belong to either of them, but one of them happens to be holding it. In that case, grabbing the flask would not amount to monetary theft as it does not belong to the person holding it. The only question is whether it should be considered “a theft of his life”.

In that case, the *Chazon Ish* states (*Y.D.* 69:2):

*It would seem that he is not allowed to steal the water. Though a person can use his fellow’s money to save his own life, in this case, the Din is already settled that “Chayecha Kodmin”. Therefore, somebody who steals [the water from him] is stealing life from his fellow.*

In other words, since the Halacha is that the person holding the water has the right to retain it due to the principle of “*Chayecha Kodmin*”, preventing him from utilizing the water would be considered “stealing his life”. The same would apply to a case when the flask belonged to a third party. Since *Chayecha Kodmin* dictates that the person holding the flask has the right to it, stealing it from him would be considered “stealing his life”.

What does the *Chazon Ish* mean by the phrase “stealing his life”? It is unlikely that he is invoking the concept of “*Gram Retzicha*” (indirect murder), rather, he must be referring to the concepts outlined above. In other words, even according to those who hold that a person may always take another’s possessions to save his own life, this would not be true at the expense of the other person’s life. As we explained above, since the permission to appropriate someone else’s possessions to save one’s own life mirrors the other’s obligation to use his possessions to save him, it would certainly not apply in a case where the other person will lose his life, since the other person is not obligated (or permitted) to sacrifice his life to save another.

This principle can be used to answer our original question. If a certain resource has been set aside for an individual’s use – to save his life, even if he does not have an actual monetary right to it, one may absolutely not take it away from him even to save one’s own life. Therefore, stealing somebody’s appointment is prohibited, even in a situation of *Pikuach Nefesh*.

As explained above, it is likely prohibited to steal somebody’s appointment even if he is not in a state of *Pikuach Nefesh*. Therefore, one cannot argue that it is permissible to steal somebody’s appointment because “*his situation may not be a matter of Pikuach Nefesh*”. Moreover, as explained at length above, the principle of “*Chayecha Kodmin*” does not apply in these circumstances.