

# Current Jewish Questions

## Organ Donation

### I. Live Organ Donation

<p><b>1. Leviticus 19:16</b> Do not go about spreading slander among your people. <u>Do not stand over the blood of your fellow.</u> I am the Lord.</p>	<p style="text-align: right;"><b>ויקרא יט, טז</b> לא תלך רכיל בעמך לא תעמד על דם רעהו אני יְקוּם :</p>
<p><b>2. B. Sanhedrin 73a</b> 'Whence do we know that if a man sees his neighbor drowning, mauled by beasts, or attacked by robbers, he is bound to save him? From the verse, 'Thou shalt not stand by the blood of thy neighbor.' But is it derived from this verse? Is it not rather from elsewhere? Viz., Whence do we know [that one must save his neighbor from] the loss of himself? From the verse, And thou shalt restore him to himself! — From that verse I might think that it is only a personal obligation, but that he is not bound to take the trouble of hiring men [if he cannot deliver him himself]: therefore, this verse teaches that he must.</p>	<p style="text-align: right;"><b>תלמוד בבלי סנהדרין עג:א</b> מנין לרואה את חברו שהוא טובע בנהר או חיה גוררתו או לסטין באין עליו שהוא חייב להצילו תלמוד לומר לא תעמד על דם רעהו. והא מהכא נפקא? מהתם נפקא: אבדת גופו מניין - תלמוד לומר והשבתו לו! - אי מהתם הוה אמינא: הני מילי - בנפשיה, אבל מיטרח ומיגר אגורי - אימא לא, קא משמע לך.</p>
<p><b>3. Igrot Moshe Y.D. 2:174.4</b> <b>July 15, 1968</b> Regarding if there is an obligation to remove an organ to save the life of his friend, since there is a rabbinic disagreement on this we do not obligate following the Radbaz (YD 157:15), and it is beyond this scope to elaborate on his words. And it seems that the reason is because of "do not stand by over the blood of your fellow" is like all prohibitions that one is obligated to spend all his money in order that he does not violate it, as we find in Ramo 157:1. And the Shach (157:3) writes that if there is a danger of a loss of limb, it needs to be investigated if it's comparable to losing one's life or money and he concludes leniently. And it seems the reason is that even the Ramo did not conclude that one has to donate an organ so as not to prevent violating a negative prohibition, this it seems that donation an organ is not an obligation, even when it is not dangerous to donate the organ.</p>	<p style="text-align: right;"><b>שו"ת אגרות משה יורה דעה חלק ב סימן קעז</b> בדבר אם יש חיוב לאחד לחתוך אברו בשביל הצלת נפש של חברו, כיון שפליגי רבוותא בזה אין לחייב כהרדב"ז בתשובה שהביא בפת"ש יו"ד סימן קנ"ז ס"ק ט"ו ואין בידי הספר לעיין בדבריו, ונראה שהטעם הוא משום דלא תעמוד על דם רעהו הוא ככל הלאוין שמחוייב להוציא כל ממונו כדי שלא לעבור על לאו כדאיתא ברמ"א סימן קנ"ז סעיף א', וכתב הש"ך שם סק"ג ואם יש סכנת אבר צ"ע אי דמי לנפש או לממון ומסיק דנראה לקולא, ונראה שהוא מטעם שלא נקט הרמ"א רבותא דאפילו אבר צריך לחתוך כדי שלא לעבור אלאו, אלמא דלחתוך אבר אינו מחוייב בשביל לאו ויעבור ולא יחתוך אברו אף שהוא אבר שאין בו סכנה.</p>

## II. Brain Death and Organ Donation

### 4. RCA Clarifies Its Stance Regarding Brain Stem Death and Jewish Law

<http://www.rabbis.org/news/article.cfm?id=105607>

Jan 7, 2011 -- The recent release to our membership of the RCA Vaad Halacha's study on the issue of brain stem death has engendered strong reactions from many quarters. Because of the delicacy of the halachic issues involved, and in light of their extraordinary ramifications, we are taking the unusual step of issuing the following clarifications.

1. The RCA takes no official position as an organization on the issue of whether or not brain stem death meets the halachic criteria of death. The study disseminated by the Vaad Halacha was the product of many years of exploration by that committee and was meant to serve as an informational guide to our membership.

2. It is true that many halachic authorities of our day, including Rav Hershel Schachter, Rav Mordechai Willig, Rav J. David Bleich and others maintain that brain stem death does not satisfy the halachic criteria for the determination of death. It is also true, however, that many other halachic authorities, including Rav Gedalia Schwartz, Rav Moshe Tendler, and the Chief Rabbinate of Israel maintain that brain stem death does qualify for the determination of death in Jewish law.

3. In light of this ongoing halachic dispute, and out of respect for these various halachic authorities, the RCA maintains that its membership is best served by allowing each Rabbi to determine for himself, based upon his own study, consultation with halachic authorities and his own conscience, which halachic position he will adopt in this extraordinarily difficult and important area of Jewish law.

4. While debate continues over the issue of brain stem death, much greater consensus exists concerning the issue of organ donation. Almost all authorities maintain that organ donation, under halachically permitted circumstances, is not only allowed, but a Mitzva- when such donations are applied towards saving the life of another. It should be noted, however, that those who do not accept brain stem death as meeting the halachic criteria for the determination of death will consequently be more limited in the cases of allowed organ donation.

Live organ donations, such as kidney donation, are halachically permitted and praiseworthy, as life-saving measures presenting only minimal risk to the donor. Most authorities also encourage post-mortem corneal transplants, based upon the principle that saving someone's sight is akin to saving their life.

5. We will continue in the future to disseminate information representing various points of view on the issue of brain stem death in order to assist the members of our organization in the proper guidance of their communities.

May God grant us the wisdom to determine His will in this frighteningly important area of Jewish law.

### 5. RCA Study

[http://www.rabbis.org/pdfs/Halachi\\_%20Issues\\_the\\_Determination.pdf](http://www.rabbis.org/pdfs/Halachi_%20Issues_the_Determination.pdf)

## Sources Opposing Halakhic Brain Death / Organ Donation

<p><b>6. Avoda Zara 29b</b> It is forbidden to derive benefit from a corpse</p>	<p><b>6. תלמוד בבלי עבודה זרה כט:ב</b> מת אסור בהנאה</p>
<p><b>7. B. Bava Batra 154a</b> It once happened at Bene-Berak that a person sold his father's estate, and died. The members of the family, thereupon, protested [that] he was a minor at the time of [his] death. They came [to] R. Akiba and asked whether the body might be examined. He replied to them: You are not permitted to dishonor him</p>	<p><b>7. תלמוד בבלי בבא בתרא קנד:א</b> מעשה בבני ברק באחד שמכר בנכסי אביו ומת, ובאו בני משפחה וערערו לומר קטן היה בשעת מיתתו, ובאו ושאלו את רבי עקיבא: מהו לבודקו? אמר להם: אי אתם רשאים לנוול</p>
<p><b>8a. M. Yoma 8:7</b> If debris fall on someone, and it is doubtful whether or not he is there, or whether he is alive or dead, or whether he be an Israelite or a heathen, one should open [even on Sabbath] the heap of debris for his sake. If one finds him alive one should remove the debris, and if he be dead one should leave him there [until the Sabbath day is over]</p> <p><b>8b. B. Yoma 85a</b> Our Rabbis taught: How far does one search? [If the person buried under the debris gives no sign of life at the point at which debris have been removed from him.] <u>Until [one reaches] his nose. Some say: Up to his heart.</u> If one searches and finds those above to be dead, one must not assume those below are surely dead.</p> <p>Once it happened that those above were dead and those below were found to be alive. Are we to say that these Tannaim dispute the same as the following Tannaim? For it was taught: From where does the formation of the embryo commence? From its head, as it is said: Thou art he that took me [gozi] out of my mother's womb, and it is also said: Cut off [gozi] thy hair and cast it away. Abba Saul said: From the navel which sends its roots into every direction!</p> <p>You may even say that [the first view is in agreement with] Abba Saul, inasmuch as Abba Saul holds his view only touching the first formation, because 'everything develops from its core [middle]', <u>but regarding the saving of life he would agree that life manifests itself through the nose especially, as it is written: In whose nostrils was the breath of the spirit of life.</u></p> <p>R. Papa said: The dispute arises only as to from below upwards, [If the person under the debris has his feet up and his head down. According to one view, one must examine the core, i.e., the heart; according to the other, even though the heart seems to have suspended action, the definitive diagnosis depends on the action or failure of the function of the nose] but if from above downwards, one had searched up to the nose, one need not search any further, as it is said: 'In whose nostrils was the breath of life'.</p>	<p><b>8. משנה יומא ח:ז</b> מי שנפלה עליו מפולת ספק הוא שם ספק אינו שם ספק חי ספק מת ספק עובד כוכבים ספק ישראל מפקחין עליו את הגל מצאוהו חי מפקחין עליו ואם מת יניחוהו:</p> <p><b>תלמוד בבלי יומא פה:א</b> תנו רבנן: עד היכן הוא בודק? עד חוטמו, וש אומרים: עד לבן. בדק ומצא עליונים מתים - לא יאמר: כבר מתו התחתונים. מעשה היה, ומצאו עליונים מתים ותחתונים חיים. נימא הני תנאי כי הני תנאי, דתניא: מהיכן הולד נוצר - מראשו, שנאמר +תהלים עא+ ממעי אמי אתה גוזי ואומר +ירמיהו ז+ גזי נורד והשליכי. אבא שאול אומר: מטיבורו, ומשלח שרשיו אילך ואילך. אפילו תימא אבא שאול, עד כאן לא קא אמר אבא שאול התם - אלא לענין יצירה, דכל מידי ממציעתיה מיתצר. אבל לענין פקוח נפש - אפילו אבא שאול מודי דעקר חיותא באפיה הוא, דכתיב +בראשית ז+ כל אשר נשמת רוח חיים באפיו. אמר רב פפא: מחלוקת ממטה למעלה, אבל ממעלה למטה, כיון דבדק ליה עד חוטמו - שוב אינו צריך, דכתיב כל אשר נשמת רוח חיים באפיו.</p>

<p><b>9. B. Nazir 21b</b></p> <p>'Let my hand be a nazirite,' or 'Let my foot be a nazirite,' his words are of no effect. [But if he says,] 'Let my head be a nazirite,' or 'let my liver be a nazirite,' he becomes a nazirite. The rule is: <u>If the organ is one upon which life depends, he becomes a nazirite</u></p>	<p><b>9. תלמוד בבלי נזיר כא:ב</b></p> <p>ידי נזירה ורגלי נזירה - לא אמר כלום, ראשי נזירה כבדי נזירה - ה"ז נזיר, זה הכלל: <u>דבר שהנשמה תלויה בו - ה"ז נזיר</u></p>
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### Sources Supporting Halakhic Brain Death

<p><b>10. M. Ohalot 1:6</b></p> <p>A person can not defile [as a corpse] until his soul is gone forth, so that even if he has his arteries severed or even if he is in his last agonies he [still] makes levirate marriage obligatory and liberates from levirate marriage qualifies [his mother] for eating terumah and disqualifies [his mother] from eating terumah. Similarly in the case of cattle or wild animals, they cannot defile until their soul is gone forth. <u>If their heads have been cut off, even though they are moving convulsively, they are unclean;</u> [moving. That is to say.] Like a lizard's tail, which moves convulsively</p>	<p><b>10. משנה אהליות א:ו</b></p> <p>אדם אינו מטמא עד שתצא נפשו ואפי' מגוייד ואפי' גוסס זוקק ליבום ופוטר מן היבום מאכיל בתרומה ופוסל בתרומה וכן בהמה וחייה אינן מטמאין עד שתצא נפשם <u>הותזו ראשיהם אף על פי שמפרכסים טמאין כגון זנב של לטאה שהיא מפרכסת:</u></p>
<p><b>11. Rashi – B. Yoma 85a sv Ad Heichan Hu Bodek</b></p> <p><u>If he is like dead</u> that he does not move his limbs how much must one inspect to determine the truth?</p>	<p><b>11. רש"י יומא דף פה עמוד א</b></p> <p><u>עד היכן הוא בודק - אם דומה למת שאינו מזיז איבריו, עד היכן הוא מפקח לדעת האמת?</u></p>

For more information visit the resources at The Halakhic Organ Donor Society at <http://hods.org/>