

החידון המדע הירושלמי
Jerusalem Science Contest



Part 3, Slides 14 thru 21
Jewish Law Decisions



Halacha defining death

[Jewish Medical Ethics: The Brain Death Controversy in Jewish Law](#)

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The issues that need to be decided under Jewish Law.

1. Is irreversible dysfunction of the entire brain a valid criterion of death under Jewish Law?
 - a. If No, then, such a person is alive.
 - b. If Yes, the following issue must be decided:
2. Are the medical tests currently utilized in establishing such a condition valid indicators of its presence under Jewish Law?
 - a. Which Tests?
 - b. Are the tests being utilized in the patient's facility tests that qualify under Jewish law?



Mishnah Oholot 1:6

אדם אינו מטמא, עד שתצא נפשו. ואפלו מגיד, ואפלו גוסס. זוקק ליבום ופוטר מן היבום, מאכיל בתרומה ופוסל בתרומה. וכן בהמה וחייה אינן מטמאין, עד שתצא נפשם. התזו ראשיהם, אף על פי שמפרכסים, טמאים, כגון זנב של לטאה שהיא מפרכסת:

A person does not defile [as a corpse] until he dies. Even he is cut up or even if he is about to die, he [still] makes levirate marriage obligatory and exempts from levirate marriage, ... **If their heads have been cut off, even though they are moving convulsively, they are unclean, like a lizard's tail, which moves convulsively.**

Under Jewish Law.....

- Does irreversible dysfunction of the entire brain qualify as 'decapitation'?
- What defines 'convulsive movement like a lizard's tail'?
 - Unpredictable random body or limb movement?
 - Artificial heartbeat?
 - Lazarus reflex?



Talmud (Yoma 85a)

תנו רבנן עד היכן הוא בודק עד חוטמו ויש אומרים עד לבו בדק ומצא עליונים מתים לא יאמר כבר מתו התחתונים מעשה היה ומצאו עליונים מתים ותחתונים חיים

The Rabbis taught: If a person is buried under a collapsed building, until what point does one check to clarify whether the victim is still alive? Until what point is he allowed to continue clearing the debris? They said: One clears until the victim's nose. **If there is no sign of life, i.e., if he is not breathing, he is certainly dead. And some say: One clears until the victim's heart to check for a heartbeat.**



The Main controversy in Jewish law – a question of interpretation:

The Mishnah in Oholot 1:6 declares dual propositions:

1. A decapitated person as dead and
2. Subsequent convulsions after decapitation are not indicative of life

The Issue:

Is a dysfunctional brain-stem is equivalent to a decapitated one (physiological decapitation)?

Is subsequent "movement," whether the Lazarus Reflex or the heartbeat, falls into category of pichus?



Proponents of "brain death" argue

1. A dysfunctional brain-stem is equivalent to a decapitated one (physiological decapitation),
2. Destruction of the brain-stem inevitably means inability to spontaneously respire (meeting the criterion in Yoma).
3. Subsequent "movement," whether the Lazarus Reflex or the heartbeat, falls into category of pichus since such movement is not coordinated from a "central root and point of origin,"¹⁴ ie., the brain.

The counter – arguments are:



Tzvi Hirsch ben Yaakov Ashkenazi ([Hebrew](#): צבי אשכנזי – ^[2], 1656 ;May 2, 1718),^[3] known as the **Chacham Tzvi** after his [responsa](#) by the same title, served for some time as [rabbi](#) of [Amsterdam](#). (Wikipedia)

1. Physiological dysfunction is not the equivalent of anatomical decapitation.
2. The only phenomenon short of actual decapitation that might similarly qualify is total liquefaction (lysis) of the brain, something that probably does not occur until well after cardiac arrest.
3. The rhythmic coordinated beating of the heart and the maintenance of a circulatory system can hardly be characterized as pirchus (random uncontrolled reflexive movement) since such a heartbeat is life-sustaining and identical to that in a normally functioning individual.
4. Chatam Sofer and Chacham Tzvi who both write that it is only the cessation of respiration and pulse (heartbeat) allow for a determination of death.
5. The Talmud in Yoma merely creates a presumption that upon cessation of respiration and an appropriate waiting time, one is permitted to assume that heartbeat has stopped as well. Since this assumption is obviously not true in the case of "brain dead" patients hooked up to respirators whose heartbeats are monitored, such patients may not be declared as dead.



Moses Schreiber (1762–1839), known to his own community and Jewish posterity in the Hebrew translation as **Moshe Sofer**, also known by his main work **Chatam Sofer** ([Wikipedia](#))

Moshe Feinstein or Moses

Feinstein^[1] (Hebrew: משה פיינשטיין *Moshe Faynshteyn*; March 3, 1895 – March 23, 1986) was an Orthodox rabbi, scholar, and posek (authority on halakha—Jewish law), regarded by many as the *de facto* supreme halakhic authority for observant Jews in North America.



Brain Death - ?

Moshe David Tendler (born August 7, 1926) is an American rabbi, professor of biology and expert in medical ethics. Moshe David Tendler received his B.A. degree from New York University (NYU) in 1947, and a Master's degree in 1950. He was ordained at Rabbi Isaac Elchanan Theological Seminary in 1949, and earned a Ph.D. in microbiology from Columbia University in 1957.^[2] He is the rabbi of the Community Synagogue of Monsey, New York. He is a senior Rosh Yeshiva at Yeshiva University's RIETS and the Rabbi Isaac and Bella Tendler Professor of Jewish Medical Ethics and Professor of Biology at Yeshiva College. He is noted as an expert on Jewish medical ethics and their relationship to Halakha.¹



Brain Death - Yes



Brain Death - No

Judah David Bleich (born August 24, 1936, Tarrytown, New York^[1]) is an authority on Jewish law and ethics, including Jewish medical ethics. He is rabbi of Cong. B'nei Jehuda. He is a professor of Talmud (rosh yeshiva) at the Rabbi Isaac Elchanan Theological Seminary, an affiliate of Yeshiva University, as well as head of its postgraduate institute for the study of Talmudic jurisprudence and family law. At Yeshiva University, he holds the Herbert and Florence Tenzer Chair in Jewish Law and Ethics and also teaches at the Cardozo Law School. He is married to Dr. Judith Bleich, a historian of 19th-century European Jewry. Bleich brings an Orthodox perspective to governmental deliberations on bioethics. For example, in 1988 he served on the NIH Human Fetal Tissue Transplantation Research Panel ^[2] and testified before Congress on the Pain Relief Promotion Act.^[3] In 1984, New York's Mario Cuomo appointed Bleich to the Governor's Commission on Life and the Law.

Translated and annotated by
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[BRAIN DEATH AND] HEART TRANSPLANTS: THE [ISRAELI] CHIEF RABBINATE'S DIRECTIVES¹

Greater Jerusalem,
1 Heshvan, 5747

The Chief Rabbinical Council, which convened on 1 *Rosh Hodesh MarHeshvan*, 5747, unanimously confirmed the recommendations of [its] Transplant Committee, as follows:

1. The Chief Rabbinate of Israel was asked by the Ministry of Health to establish the *halakhic* position with respect to heart transplants in Israel. Towards this end the Chief Rabbinate appointed a joint committee of rabbis and physicians which studied the relevant medical and *halakhic* issues. The committee was aided with the advice and counsel of leading specialist physicians on the faculty of Hadassah and Sha'are Zedek Hospitals in Jerusalem.

2. With the dawn of the heart transplant era (17 years ago)² Rabbis Moshe Feinstein³ and Issar Y. Unterman⁴ ruled forbidding heart transplants. [They] regarded such procedures as tantamount to double murder: of the donor and of the recipient.⁵

In the last decade several fundamental changes have occurred with respect to the [relevant] medical facts regarding heart transplants:

- a. Operative success *vis* the recipient approaches 80% at one year ("*hayeh olam*")⁶ and 70% survival at five years.⁷
- b. It is possible today to confirm in an absolutely reliable and secure manner that cessation of respiration in a dying person is final and irreversible.⁸

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- c. Evidence has been brought before us that even Rabbi Moshe Feinstein, in later years, permitted heart transplant procedures in the United States.⁹ Similarly, we are aware of leading Rabbis who have actually advised cardiac patients to undergo heart transplantation.
3. Since this inquiry [literally] involves life and death decisions,¹⁰ it behooves us to formulate the *halakhic* position clearly and with confidence, in spite of the enormous difficulties.¹¹
4. Based upon the talmudic principles of *Yoma* 85,¹² and [ruled accordingly in Responsa] *Hatam Sofer* in *Yoreh De'ah* no:338, the *halakha* holds that death occurs with cessation of respiration. (See also Responsa *Iggrot Moshe*, *Yoreh De'ah* III, no: 132.) Therefore one must confirm that respiration has ceased completely and irreversibly. This can be established by confirmation of destruction of the entire brain, including the brain stem¹³ which is the pivotal activator of independent respiration in humans.
5. It is accepted in medical circles that such confirmation (as mentioned in paragraph 4) requires five conditions:¹⁴
 - a. Definite knowledge of the etiology of the brain damage.
 - b. Complete cessation of natural respiration.
 - c. Detailed clinical verification of brain stem destruction.
 - d. Objective and established scientific tests of brain stem destruction, such as BAER.¹⁵
 - e. Evidence of complete cessation of respiration and of absent brain stem function for at least 12 hours, in spite of continued standard intensive care.
6. After considering the proposals for establishing death according to the guidelines of the medical staff of Hadassah Hospital in Jerusalem dated 8 *Tammuz*, 5745, and submitted to the Chief Rabbinate on 5 *Tishre*, 5747, we find that these can be *halakhically* acceptable provided that we add a scientific objective test (BAER) of the brain stem.
7. In light of what has been said, the Chief Rabbinate of Israel is prepared to authorize heart transplants (from motor vehicle victims) at the Hadassah Medical Center in Jerusalem under the following conditions:
 - a. Realization of all the conditions for establishing death of the donor as stated above.
 - b. Participation of an appointee of the Chief Rabbinate of Israel as a full member of the committee which establishes donor death. This appointee shall be chosen by the Ministry of

Yoel Jakobovits

- Health from a list submitted to it annually by the Chief Rabbinate.
- c. Prior written consent for heart donation should be provided by the donor or his family.
 - d. The creation of a higher review committee on behalf of the Ministry of Health with the participation of the Chief Rabbinate to investigate all instances of heart transplants in Israel.
 - e. The Ministry of Health shall establish within the civil law all the above mentioned protocols.
8. Until the conditions specified in paragraph 7 are accepted there shall be no sanction of heart transplants in Israel.
9. When permission is granted, upon satisfaction of the conditions specified in paragraph 7, the Chief Rabbinate will establish a review committee to insure full compliance with the conditions of the sanction.



Applying Mishpat and Tzedaka

בראשית חי

Bresheet 18

יח 18 seeing that Abraham shall surely become a great and mighty nation, and all the nations of the earth shall be blessed in him?
יח וְאַבְרָהָם--הָיָו יְהִיָּה לְגוֹי גָדוֹל, וְעַצוֹם; וְנִבְרָכוּ-בּוֹ--כָּל, גּוֹיֵי הָאָרֶץ.

יט 19 For I have known him, to the end that he may command his children and his household after him, that they may keep the way of the LORD, **to do righteousness and justice**; to the end that the LORD may bring upon Abraham that which He hath spoken of him.'
יט כִּי יָדַעְתִּיו, לְמַעַן אֲשֶׁר יִצְוֶה אֶת-בְּנָיו וְאֶת-בֵּיתוֹ אַחֲרָיו, וְשָׁמְרוּ דְרָדָּה ה', לַעֲשׂוֹת צְדָקָה וּמִשְׁפָּט--לְמַעַן, הָבִיא ה' עַל-אַבְרָהָם, אֶת אֲשֶׁר-דִּבֶּר, עָלָיו.

ישעיהו א

Yeshayahu 1

יז 17 Learn to do well; seek justice, relieve the oppressed, **fight for the fatherless, plead for the widow.** {S}
יז לָמְדוּ הַיָּטִב דְרָשׁוּ מִשְׁפָּט, אֲשֶׁרוּ חָמוּץ; שִׁפְטוּ יְתוֹם, וְיָבּוּ אֶלְמָנָה. {ס}

ישעיהו נא

Yeshayahu 51

א 1 Harken to Me, ye that follow after righteousness, ye that seek the LORD; look unto the rock whence ye were hewn, and to the hole of the pit whence ye were digged.
א שְׁמְעוּ אֵלַי רְדֹפֵי צְדָקָה, מְבַקְשֵׁי יְהוָה; הַבִּיטוּ אֶל-צוּר חֲצַבְתֶּם, וְאֶל-מִקְצֶת בּוֹר נִקְרַתֶּם.

ב 2 Look unto Abraham your father, and unto Sarah that bore you; for when he was but one I called him, and I blessed him, and made him many.
ב הַבִּיטוּ אֶל-אַבְרָהָם אָבִיכֶם, וְאֶל-שָׂרָה תְּחוּלְלֶכֶם: כִּי-אַחַד קָרָאתִיו, וְאַבְרָכָהוּ וְאַרְבָּהוּ.