CLASS 7

VI. Halachic & ethical questions raised by specific applications of genetics:
Marrying a [Permitted] Relative

A. The science: why relatives are at higher risk for genetic disease

1. Relatives share more of their DNA
First cousins share about one eighth of their DNA. An uncle and a niece share about one quarter. So if one of them carries a rare recessive mutation inherited from a shared ancestor, the chance that the other carries the very same mutation is much higher than for an unrelated person.

2. How much higher is the risk to the children?
For first cousins, the risk of a child being born with a serious birth defect or genetic disease is about 1.7 to 2.8 percentage points higher than the general population's risk of about 2% to 3% (*National Society of Genetic Counselors*, 2002; see Additional Resources.) The great majority of children of cousins are born healthy.

B. The first question: May we prohibit marriage of those relatives whom the Gemara permits (and encourages) to marry in light of modern genetic science?

1. *Tzitz Eliezer 15:44. Rav Eliezer Yehudah Waldenburg zt'l* (1917-2006)

ש א ל ה .

לכבו' מורי ורבי הרב **אליעזר יהודא וולדינברג**
שליט"א.

שלום וכל טוב סלה.

בעבודתנו אנו נתקלים במקרים של עוורון בגיל רך או מבוגר שהוא כתוצאה מפגם תורשתי הרבה יותר שכיח בנשואין של קרוב משפחה, ובעיקר אצל בני דודים.

אמנם מן התורה אין איסור לנישואי בני דודים, או לנישואין של דוד ואחייניתו.

אבל האפשרות של עוורון תורשתי הרבה יותר שכיח בנישואין של קרובי משפחה כל כך קרובים.

שאלתי היא, האם יש לאסור מבחינת הדין נישואין כאלה, בהם הסכנה של עוורון היא הרבה יותר שכיחה.

בברכה ותודה מראש

ד"ד **אלחנן ידוואב**

[The question posed to Rav Waldenburg by Dr. Elchanan Yedwab, in 1982:]

In our work, we encounter cases of blindness, at a young age or in adulthood, which result from a hereditary defect and which are much more common in marriages between relatives, especially first cousins. Granted, according to the Torah there is no prohibition against marriage between first cousins, or between an uncle and his niece. But the possibility of hereditary blindness is much more common in marriages between such close relatives. My question is: should such marriages, in which the danger of blindness is much more common, be prohibited according to Halachah?

2. Gemara, Yevamos 62b-63a (see also Sanhedrin 76b)

האוהב את שכיניו והמקרב את קרוביו והנושא את בת אחותו
והמלוה סלע לעני בשעת דחקו עליו הכתוב
אומר יאז תקרא וה' יענה תשוע ויאמר הנני:

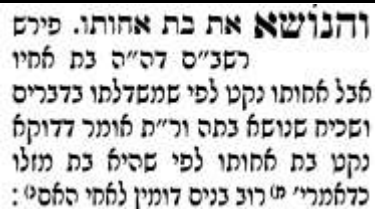
> [Our Sages taught (in a Beraisa)...] One who loves his neighbors, one who draws his relatives close, and one who marries his sister's daughter… about him the verse says, “Then you will call, and Hashem will answer; you will cry out and He will say, ‘Here I am’” (Yeshayahu 58:9).

Rashi there

והנושא בת אחותו. גענועי אדם רבין על אחותו יותר מן אחיו, ומתוך כך נמצא מחבב את אשתו.

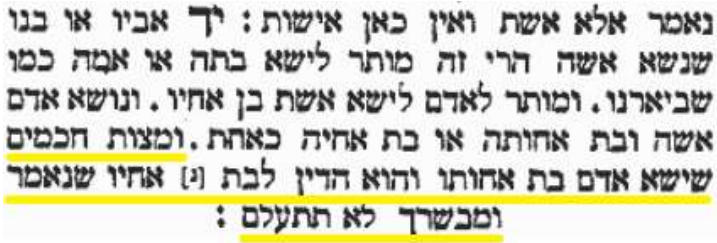
And one who marries his sister's daughter. A person's affection for his sister is greater than for his brother, and as a result he will cherish his wife.

Tosfos there, quoting Rashbam and Rabbeinu Tam


והנושא את בת אחותו. פירש
רשב"ם דה"ה בת אחיו
מכל מחותו נקט לפי שמשדלתו בדבריה
ושכיח שנושא בתה ור"ת אומר לדוקא
נקט בת אחותו לפי שהיא בת מזלו
כדאמרי' פ' רוב בניס דומין לאחי האם:

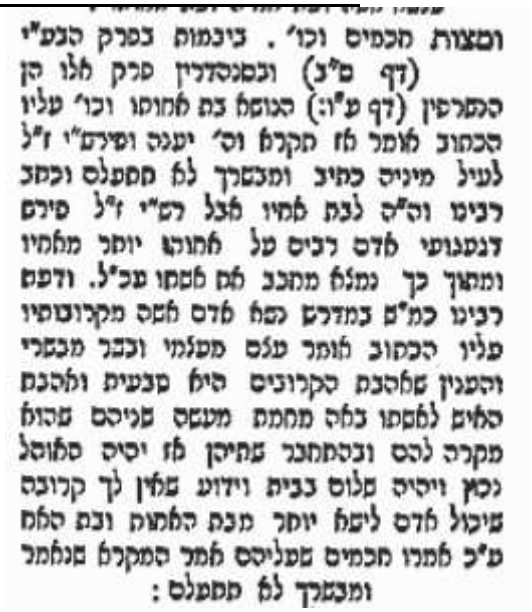
The Rashbam explains that the same applies to the daughter of one’s brother, but the Beraisa mentions his sister simply because it is more common that she persuades him to marry her daughter. Rabbeinu Tam says that the Beraisa specifically mentions his sister's daughter because she is *bas mazalo* (they share character traits), as we say (in Bava Basra 110a), “Most children are similar to the brothers of the mother.”

3. Rambam, Hilchos Isurei Bi'ah 2:14


נאמר אלא אשת ואין כאן אישות: יד אביו או בנו
שנשא אשה הרי זה מותר לישא בתה או אמה כמו
שביארנו. ומותר לאדם לישא אשת בן אחיו. ונושא אדם
אשה ובת אחותה או בת אחיה כאחת. ומצות חכמים
שישא אדם בת אחותו והוא הדין לבת [ג] אחיו שנאמר
ומבשרך לא תתעלם:

It is a mitzvah of the Sages for a man to marry his sister's daughter, and the same applies to his brother's daughter, as the verse says, "... and do not hide from your own flesh" (Yeshayahu 58:7).

Maggid Mishneh on the Rambam there



... The view of our master (the Rambam) is according to what is taught in the Midrash: "A man who marries a woman from among his relatives, about him the verse says, 'Bone of my bones and flesh of my flesh' (Bereishis 2:23)." The concept is that the love between relatives is natural, while the love of a man for his wife comes about through their actions, which is circumstantial. When the two are joined together, the home will be established and there will be peace in the home. And it is known that there is no closer relative that a man may marry than his sister's daughter or brother's daughter; therefore, the Sages said that in reference to them the verse says, "and from your own flesh do not hide yourself."

4. Me'iri, Yevamos there

ול"נ שדרך כלל הוא משבח זווג הקרובות מפני שטבען שוה ואהבתן מצויה ביניהם מתוך שווי הטבעית. ונקט בת אחותו מפני שהיא שוה לו בטבע יותר מכולן, וכמ"ש רוב בנים דומין לאחי האם.

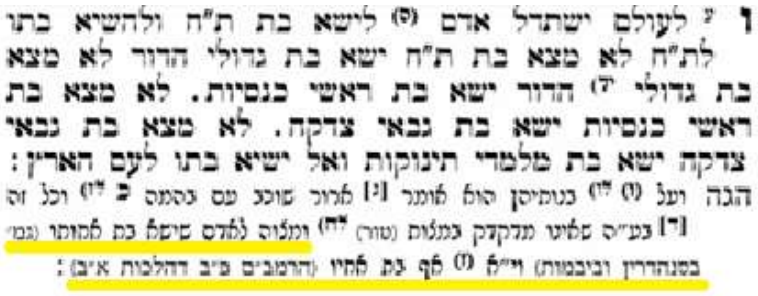
It seems to me that generally the Gemara praises marriage with relatives because their natures are alike, and so love is common between them because of their similar natures. The Gemara mentions his sister's daughter because her nature is more similar to his than any one else, as it is said, "Most children are similar to the brothers of the mother."

5. Rabbeinu Bachye, Bereishis 24:3

... ועוד יש בפרשה זו אזהרה לאדם שישא אשה מבנות משפחתו ושידבק בקרובותיו, כי כן עשה אברהם שנאמר כי אל ארצי ואל מולדתי תלך ולקחת אשה לבני ליצחק. וכן עמרם שכתוב בו (שמות ב א) וילך איש מבית לוי ויקח את בת לוי. כי כשהבריות מזדווגות כל אחד ואחד אל מינו השלום מתקיים ומתרבה בעולם....

... This *parshah* also contains a directive to marry a woman from among his family, as did Avraham, as it says (in Bereishis 24:4), and as did Amram, as it says about him (in Shemos 2:1). This is because whenever people marry someone to whom they already have a natural affinity [such as members of their own family (excluding incest, of course)], peace and harmony are increased in the world.

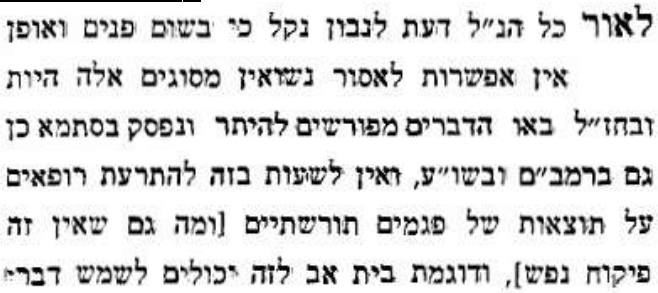
6. Rema, Shulchan Aruch, Even ha'Ezer 2:6



It is a mitzvah for a man to marry his sister's daughter, and some say his brother's daughter as well.

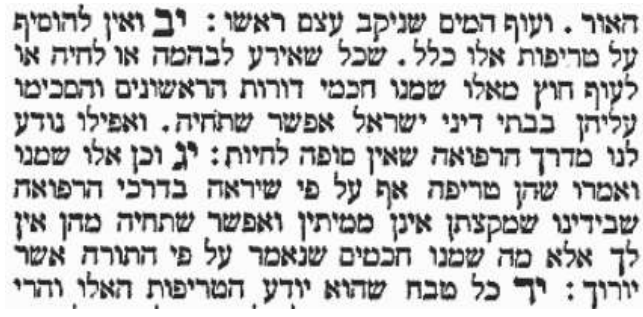
C. The answer to the first question

1. Tzitz Eliezer 15:44, section א



In light of all the above, it is easy to understand that there is no possibility whatsoever to prohibit marriages of these kinds, since the words of Chazal are explicit with regard to permitting them, and so it is ruled without qualification in the Rambam and the Shulchan Aruch. And we are not to heed the warnings of doctors about the consequences of hereditary defects in this matter [especially since this is not a matter of *piku'ach nefesh*].

2. Rambam, Hilchos Shechitah 10:12-13 (quoted by the Tzitz Eliezer)



יב) We may not add at all to these conditions that render an animal a tereifah, because any condition that occurs to a domesticated animal, a wild animal, or fowl aside from those listed by the Sages of the early generations and which were agreed upon by the courts of Israel – it is possible that it will live. [This applies] even if it becomes known to us according to medical science that it ultimately will not live.
יג) Similarly, those that they listed and said are *tereifah*, even if it appears from the medical knowledge we possess that some of them are not fatal and it is possible that the animal will live with them, you have [to follow] only what the Sages listed, as it says (Devarim 17:11), "According to the Torah which they will instruct you."

Tzitz Eliezer, there

ורק מעניין הדבר שהנז' בשו"ע נפסק רק ברמ"א,
אבל בטור ובמחבר לא נזכר מזה? ואולי כבר
חששו לאוהרת ר"י החסיד בזה (עיין לקמן) ולכן
נמנעו מלכתוב בזה לא איסור ולא היתר.

Just that the matter is interesting, that what is mentioned in the Shulchan Aruch is ruled only in the Rema, whereas the Tur and the Mechaber (the author of the Shulchan Aruch) make no mention of it? Perhaps they were already concerned about the warning of Rav Yehudah ha'Chassid (see below), and thus they refrained from writing about it at all, neither to prohibit nor to permit.

D. The second question: How did Rabbeinu Yehudah ha'Chassid prohibit marriage of those relatives whom the Gemara permits (and encourages) to marry?

1. Rabbeinu Yehudah ha'Chassid (1150-1217), Tzava'ah #22, & Sefer Chassidim #488

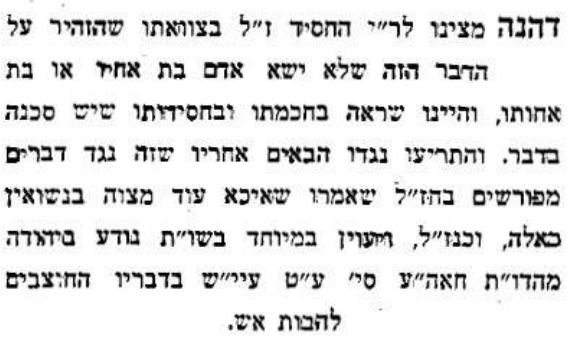
צוואה כ"ב

לא ישא אדם בת אחיו או בת אחותו[8].

Sefer Chassidim:

תפח (נ) כתיב כי יסיתך אחיך בן אמך וכתיב מי יתנך כאח לי יונק שדי אמי יוב בנים ד'טים
ואחי האם ולכך אמרו הנושא בת אחותו והוא חסיד הוא טוב שבשכולידים בנים נכבת
שתו ודרי יהיו חסידים כמותו מפני שיוב בנים דומין לאחי האם אבל אם (ד) (יש רשע) מתכוין
להנאתו שדיה לו בת אחותו יפה ולא לקחה לשם מצוה זה אינו טוב אבל מי שאינו מרקדק
בזה בידוע ש"הוא צדיק נמור אבל רשע הלוקח בת אחותו הוא יהיה רשע ככיתו (ה) ואם אמא
נשואה לבעל אחר כגון אלמנה או גרושה ואותו בעל היה אכזר ובניו רעים או אם לוקח בת
אחותו מאמי יהיו רעים אע"פ שהוא טוב :

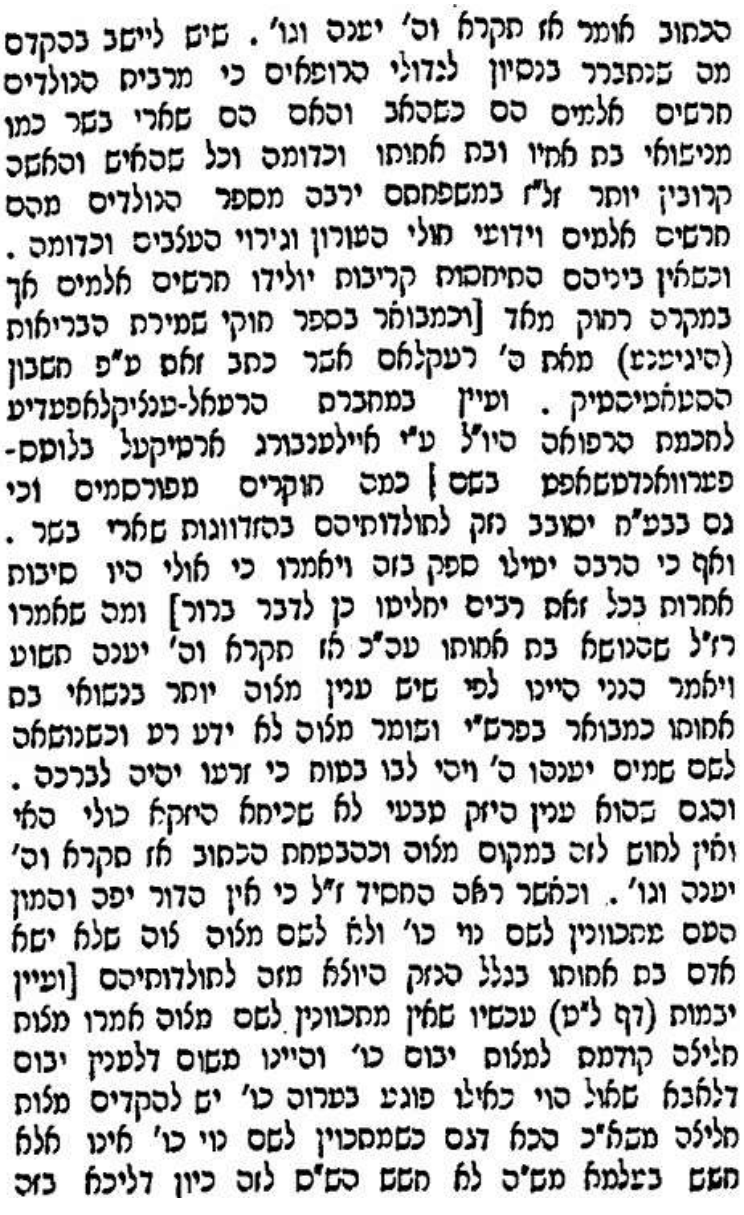
2. Tzitz Eliezer 15:44, section ב



We find that Rav Yehudah ha'Chassid, in his ethical will, warned about this matter, that a man should not marry his brother's daughter or his sister's daughter. That is, he saw with his wisdom and his piety that there is danger in the matter. The later authorities strongly protested against him, since this contradicts the explicit words of Chazal, who said that there is even a mitzvah in such marriages, as mentioned above....

E. The answer to the second question

1. Even ha'Roshah #31, Rav Eliyahu Klatzkin (quoted by the Tzitz Eliezer)

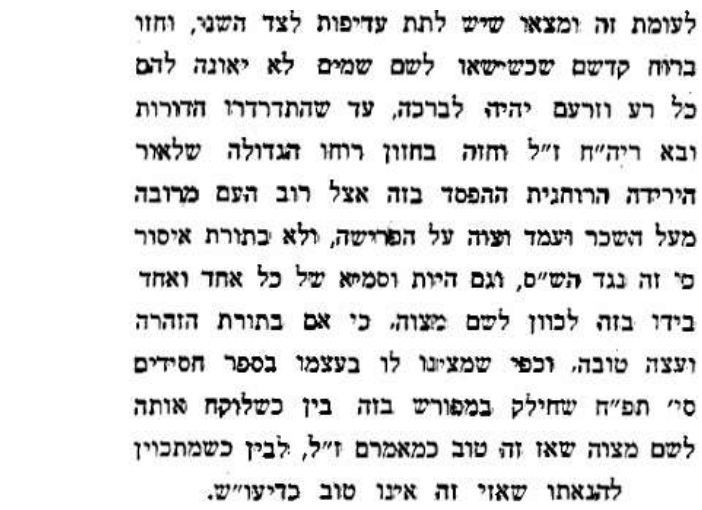


עין משפט ומנ"ך תמר כמ"ם שיחה לפס מלוכ ויבמח כה'
כי לא ידע רע] ודברי כמ"ם וכפו"ע תה"ע (סימן כ') סוף
כשטחה לפס מלוכ ועכ"ל לעמר לא תקרח וכ' יענה וגו'.
ומיוסב בזה דברי רבינו ז"ל:

In my humble opinion, there are grounds to resolve the tremendous perplexity on what he (Rav Yehudah ha'Chassid) instructed, that one not to marry his brother's daughter or sister's daughter, contrary to the words of Chazal, by first noting what has been clarified through experience by the leading doctors -- that most children born deaf-mute are born when the father and mother are close relatives, such as from marriages with a brother's daughter or a sister's daughter and the like. The closer the husband and wife are related to each other, the more children are born to them deaf-mute, or with known diseases of blindness, nerve disorders, and the like. But when there is no close family relationship between them, deaf-mute children are born only in very rare cases. (As explained in the book *The Laws of Preserving Health (Hygiene)* by Dr. Reclam, who wrote this based on statistical calculation. And see the *Real-Encyclopädie der gesammten Heilkunde* (the Real-Encyclopedia of Medical Science), published by Eulenburg, in the article *Blutsverwandtschafts-Ehe* ("Marriage between blood relatives") [which cites] several well-known researchers, and [shows] that even among animals, harm comes to the offspring when close relatives mate. And although some cast doubt on this and say that perhaps there are other causes, nevertheless most conclude that it is clear matter.) And what our Sages said about one who marries his sister's daughter the verse says, "Then you will call, and Hashem will answer; you will cry out, and He will say, 'Here I am'" – that is because there is more of a mitzvah in marrying one's sister's daughter, as Rashi explains, and "one who keeps a mitzvah will know no harm." When he marries her for the sake of Heaven, Hashem answers him, and he may be confident that his children will be a blessing. Although this is a natural harm, the harm is not so common, and we need not be concerned about it in the place of a mitzvah and the promise of the verse. But when the Chassid *zt"l* saw that the generation was not worthy, and the masses were marrying for the sake of beauty and the like, and not for the sake of the mitzvah, he instructed that a person should not marry his sister's daughter because of the harm to their offspring.... The words of the Gemara and the Shulchan Aruch refer to one who marries her for the sake of the mitzvah.

2. Tzitz Eliezer 15:44, section ג

העתקתי לכבוד כמעט כל דברי הספר הזה, כדי
שיראה ויווכח שעם ההתגלויות הרפואיות
בזה, הספרות הרבנית היתה ערה ולא דלגה על בעיה
זאת שהעיר כבוד במכתבו, וחתרה אל מקורות ההלכה,
וגם ובעיקר בגלל הביאור והפירוש הנפלא של הספר
אשר על פיו הוא מיישב ומגזג דברי חז"ל ודברי
ר' ה"ח ז"ל אהדדי באופן שדבריו מהוים מעין השלמה
לדברי חז"ל, ובאופן שיתבא לנו מזה שגם לפני חז"ל
היו גלוים וידועים מהפגימים התורשתיים העלולים
לצאת מנישואין כאלה, אבל הביטו גם על הצד השני
של המטבע, הייגו, על שלימות מסגרת הנשואין היוצא
מזה בהיותו מחבב יותר את אשתו (כדברי רש"י)
ובהיותה בת מזלו (כדברי ר"ת), ועל רביית השלום
בעולם ע"כ (כדברי רבינו בחיי), ושקלו את זה


לעומת זה ומצאו שיש לתת עדיפות לצד השני, וחזו
ברוח קדשם שכשישאו לשם שמים לא יאונה להם
כל רע וזרעם יהיה לברכה, עד שהתדרדרו הדורות
ובא ריה"ח ז"ל וחזה בחזון רוחו הגדולה שלאור
הירידה הרוחנית ההפסד בזה אצל רוב העם מרובה
מעל השכר ועמד ועזה על הפרישה, ולא בתורת איסור
מי זה נגד הש"ס, וגם היות וסמיא של כל אחד ואחד
בידו בזה לכוון לשם מצוה, כי אם בתורת הזהרה
ועצה טובה, וכפי שמצינו לו בעצמו בספר חסידים
סי' תפ"ח שחילק במפורש בזה בין כשלוקח אותה
לשם מצוה שאז זה טוב כמאמרם ז"ל, לבין כשמתכוין
להנאתו שאז זה אינו טוב כדיעו"ש.

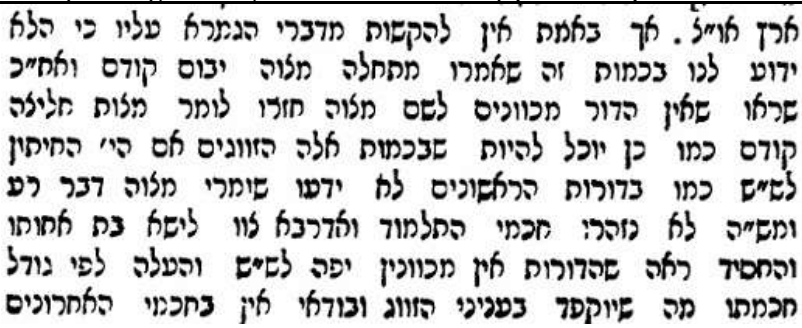
I have copied for you almost all of the words of this book (the Even ha'Roshah) so that you will see clearly that along with the medical discoveries in this area, the rabbinic literature was alert and did not skip over the problem you raised in your letter, but dug deeply into the sources of the Halachah. And also, and mainly, because of this book's wonderful explanation and interpretation, by which he reconciles and integrates the words of Chazal and the words of Rav Yehudah ha'Chassid, so that his (Rav Yehudah ha'Chassid's) words are a kind of completion of the words of Chazal. And so that it emerges for us that the hereditary defects that may result from such marriages were already revealed and known to Chazal. But they also looked at the other side of the coin: the strength and harmony of the marriage that results from it, since he cherishes his wife more (as Rashi says), since she is his natural match (as Rabbeinu Tam says), and the increase of peace in the world (as Rabbeinu Bachye says). They weighed one against the other and found that the second side should be given priority, and they foresaw with their Divine inspiration that when people marry for the sake of Heaven, no harm will befall them and their children will be a blessing. Until the generations declined, and Rav Yehudah ha'Chassid came and foresaw, with his great spiritual vision, that in light of the spiritual decline, the loss for most people would outweigh the gain. So he arose and instructed people to refrain – not as a prohibition, since that would contradict the Gemara... but as a warning and good advice. Indeed, we find in his own Sefer Chassidim (#488) that he explicitly distinguishes between one who takes her for the sake of the mitzvah, which is good, as Chazal said, and one who intends his own pleasure, which is not good.

3. <u>Apei Zutrei, Even ha'Ezer 2:6, Rav Yaakov Pardo (1740-1819)</u>
<u>(quoted by the Tzitz Eliezer)</u>

> אלא דר"י החסיד בצוואותיו הזהיר דבין בת אחותו ובין בת אחיו לא ישא, ולכאורה הוא דבר פלא, שהרי רבותינו בש"ס ערבים בדבר שעליו נאמר "אז תקרא וה' יענה", והוא ז"ל אסר מוכרח שיש סכנה בדבר. ואפשר לומר דמגופיה דקרא שמעינן ליה, דמדקאמר "אז תקרא וה' יענה, תשוע ויאמר הנני", אם כן זה יורה דיעבור עליו כוס צער ויצטרך לזעוק לפניו יתברך והוא יענה, על כן הזהיר הרב הנ"ל שיתרחק מהסכנה ולא יביא עצמו לידי מדה זו שיצטרך לזעוק, דשמא יגרום החטא ולא יעשו לו נס. א"נ נימא דמה שהזהיר ר"י החסיד דוקא כשאינו לוקחה לקיים מ"ש "ומבשרך אל תתעלם" אלא לשום פניה אחרת, ואז אפשר שיסתכן, ומ"ש בש"ס, אם לוקחה לש"ש לקרב את קרוביו, אז ודאי הנה שכרו אתו... וחילוק זה למדתי מדברי ס"ח סי' תפ"ח.
>
> However, Rav Yehudah ha'Chassid, in his ethical will, warned not to marry either one's sister's daughter or one's brother's daughter. Apparently, this is astonishing, since our Sages in the Gemara are "guarantors" for this matter,

about which it says, “Then you will call, and Hashem will answer,” and he (Rav Yehudah ha’Chassid) prohibited it, which proves that there is danger in it. It is possible to say that we learn this from the verse itself. Since it says, “Then you will call, and Hashem will answer; you will cry out, and He will say, ‘Here I am,’” this shows that he will go through a measure of suffering and will need to cry out before Hashem, and He will answer. Therefore, Rav Yehudah ha’Chassid warned that one should keep away from danger and not bring himself to the point where he must cry out, since perhaps sin will cause that no miracle will be done for him. Alternatively, we may say that Rav Yehudah ha’Chassid warned only when one does not marry her to fulfill “and do not hide from your own flesh,” but for some other motive, and then he may be endangered. And what the Gemara says refers to one who marries her for the sake of Heaven, to draw his relatives close, then certainly his reward is with him.... And this distinction I learned from the words of the Sefer Chassidim #488.

4. Divrei Chaim (Sanz), vol. 1, Even ha'Ezer 8 (quoted by the Tzitz Eliezer)



... But in truth, one cannot challenge him (Rav Yehudah ha’Chassid) from the words of the Gemara. For we know a similar case, in which they originally said that the mitzvah of Yibum comes first, and later, when they saw that the generation did not intend it for the sake of the mitzvah, they retracted and said that the mitzvah of Chalitzah comes first. So, too, it is possible that in these marriages, when the marriage was for the sake of Heaven as in the earlier generations, those who kept the mitzvah knew no harm, and so the Sages of the Talmud were not concerned, and, on the contrary, they instructed people to marry their sister's daughter. But the Chassid, who saw that the generations did not have proper intention for the sake of Heaven, concluded in his great wisdom about what one must be careful about in matters of marriage.…

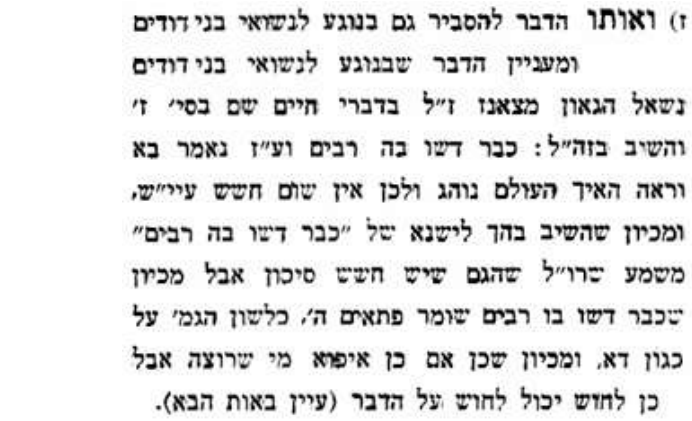
5. Tzitz Eliezer 15:44, section ה

ויש להוסיף בהסבר הדברים, דבשם לגבי יבום הואיל והענין חמור מאד דהו"ל כאילו פוגע בערוה לכן חששו אפילו למיעוטא הואיל והוה כבר זה בדורתם מיעוט המצוי, אבל בבת אחותו הואיל ואין כאן שאלה של פגיעת בערוה, וגם לא שאלת פקו"נ ממש וגם לא אפילו שאלת סיכון פגמי הנראה בעליל שלפנינו, והחשש הוא רק על העתיד אולי להתרחש בבאות, ולא בודאות וגם לא על פי רוב, אלא רק באחוז יותר גדול מאילו לא היתה בת אחותו או בת אחיו, לכן לא חששו אז בזה למיעוט המצוי שאינם מכוונים לש"ש, והחשיבו את הדבר כאילו ישנם תרי רובא שלא יתרחש הדבר, רוב המכוון לש"ש, והקרוב לרובא שלא יתהוה פגם תורשתי, עד שבא הר"י החסיד ז"ל וראה והבחין שהדורות נתמעטו ויש כבר כמעט רוב שאינם מתכוונים לש"ש, וגם נוכח אולי גם בהשתנות הטבעיים וריבוי הפגמים התורשתיים כתוצאה מנשואין כאלו מחולשת הדורות, לכן עמד וצוה והזהיר על נשואין כאלה כשאינם מכוונים לשם מצוה (אשר זהו עפ"י רוב) הואיל ויש לחשוש בהרבה לאי הצלחת הזיווג, ובתוך זה גם על פגמים תורשתיים.

We may add to the explanation: Regarding Yibum, since the matter is very severe, for it is as if one violates a forbidden relationship – they were concerned even about a minority, since in their generations this was already a common minority. But regarding a sister's daughter, there is no question of a forbidden relationship, nor a question of actual *pikuach nefesh*, nor even a question of a risk of defect clearly before us. The concern is only about the future, something that may perhaps happen, not with certainty, and not even as a majority, but only at a higher percentage than if she were not his sister's or brother's daughter. Therefore, they were not concerned about the common minority who do not intend [to marry] for the sake of Heaven, and they considered it as if there were two majorities that it will not happen: [1] most people intend it for the sake of Heaven, and [2] it is nearly certain that no hereditary defect will arise. Until Rav Yehudah ha'Chassid came and saw that the generations had declined, and there was already almost a majority who do not intend [to marry] for the sake of Heaven; and he perhaps also observed changes in nature and an increase of hereditary defects resulting from such marriages, due to the weakness of the generations. Therefore, he arose and instructed and warned about such marriages when they are not for the sake of the mitzvah (which is the majority of cases).…

F. Cousins, and the practical conclusion

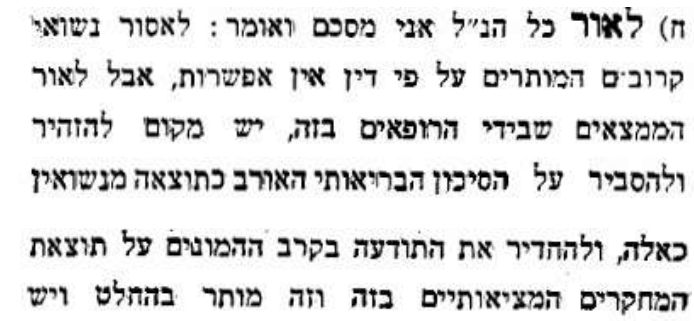
1. Tzitz Eliezer 15:44, section ז



ז) **ואותו** הדבר להסביר גם בנוגע לנשואי בני דודים
ומעניין הדבר שבנוגע לנשואי בני דודים
נשאל הגאון מצאנז ז"ל בדברי חיים שם בסי' ז'
והשיב בזה"ל: כבר דשו בה רבים וע"ז נאמר בא
וראה האיך העולם נוהג ולכן אין שום חשש עיי"ש,
ומכיון שהשיב בהך לישנא של "כבר דשו בה רבים"
משמע ברו"ל שהגם שיש חשש סיכון אבל מכיון
שכבר דשו בו רבים שומר פתאים ה', כלשון הגמ' על
כגון דא, ומכיון שכן אם כן איפוא מי שרוצה אבל
כן לחוש יכול לחוש על הדבר (עיין באות הבא).

The same explanation is relevant to marriage between cousins. Interestingly, regarding marriage between cousins, the Gaon of Sanz was asked in Divrei Chaim, there in #7, and he answered: "*Many have already trodden over this [risk], and about this it is said, 'Come and see how the world conducts itself.' Therefore, there is no concern at all.*" Since he answered with this wording, "many have already trodden over this [risk]," this implies that his intention was to say: granted that there *is* a concern of risk, but since many have already trodden over this risk, "Hashem protects the simple," as the Gemara says in such cases. Since that is so, accordingly one who wishes to be concerned [and avoid marrying a cousin] may be concerned about the matter [and avoid such a marriage].

2. Tzitz Eliezer 15:44, section ח (conclusion)

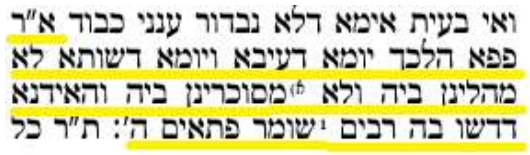


ח) **לאור** כל הנ"ל אני מסכם ואומר: לאסור נשואי
קרובים המותרים על פי דין אין אפשרות, אבל לאור
הממצאים שבידי הרופאים בזה, יש מקום להזהיר
ולהסביר על הסיכון הבריאותי האורב כתוצאה מנשואין
כאלה, ולהדיר את התודעה בקרב ההמונים על תוצאת
המחקרים המציאותיים בזה וזה מותר בהחלט ויש

In light of all the above, I summarize and say: There is no possibility of prohibiting marriages between relatives that are permitted by Halachah. But in light of the doctors' findings, there is room to warn and to explain the health risk that insidiously lurks as a result of such marriages, and to raise public awareness of the results of the research in this area. This is certainly permitted.

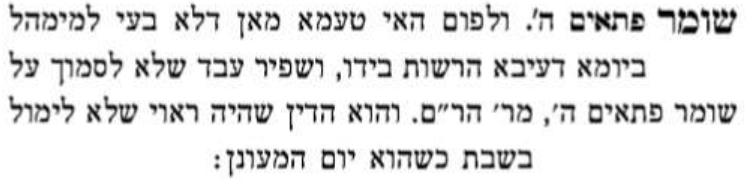
3. Chiddushei ha'Ritva, Yevamos 72a (quoted by the Tzitz Eliezer)

Gemara, Yevamos 72a


ואי בעית אימא דלא נבדור ענני כבוד א"ר
פפא הלכך יומא דעיבא ויומא דשותא לא
מהלינן ביה ולא מסוכרינן ביה והאידנא
דדשו בה רבים ישומר פתאים ה': ת"ר כל

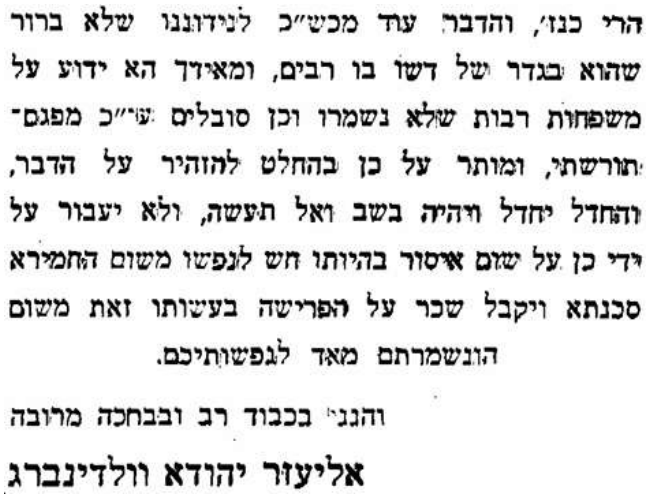
Rav Papa said: Therefore, on a cloudy day or a day with a south wind, we do not perform a Bris Milah. But nowadays, since many have trodden over this [hazard], "Hashem protects the simple."

Chiddushei ha'Ritva there


שומר פתאים ה'. ולפום האי טעמא מאן דלא בעי למימהל
ביומא דעיבא הרשות בידו, ושפיר עבד שלא לסמוך על
שומר פתאים ה', מר' הר"ם. והוא הדין שהיה ראוי שלא לימול
בשבת כשהוא יום המעונן:

"Hashem protects the simple." According to this reason [to permit Bris Milah, because of "Hashem protects the simple"], someone who does *not* want to perform a Bris Milah on a cloudy day has the right [to refrain], and he conducts himself properly by not relying on "Hashem protects the simple."

Tzitz Eliezer 15:44, section n (conclusion)


הרי כנז', והדבר עוד מכש"כ לנידוננו שלא ברור
שהוא בגדר של דשו בו רבים, ומאידך הא ידוע על
משפחות רבות שלא נשמרו וכן סובלים עו"כ מפגם-
תורשתי, ומותר על כן בהחלט להזהיר על הדבר,
והחדל יחדל ויהיה בשב ואל תעשה, ולא יעבור על
ידי כן על שום איסור בהיותו חש לנפשו משום החמירא
סכנתא ויקבל שכר על הפרישה בעשותו זאת משום
הונשמרתם מאד לנפשותיכם.

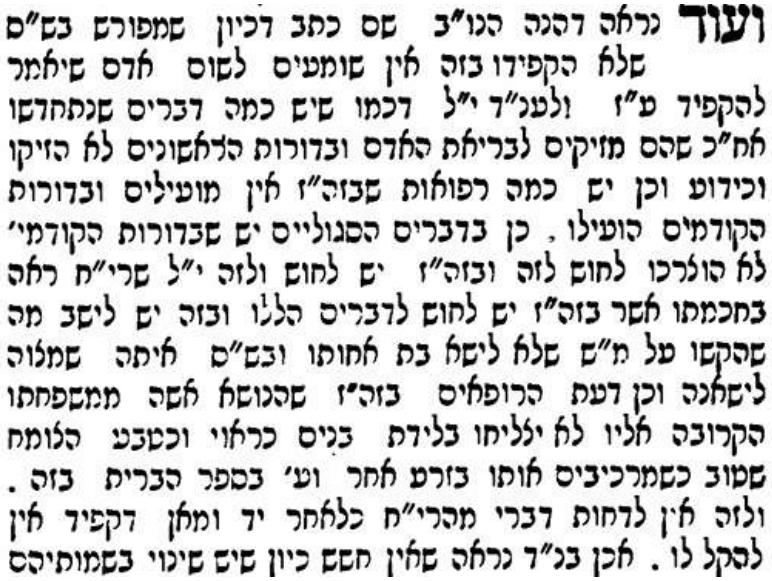
והנני בכבוד רב ובבחכה מרובה

אליעזר יהודא וולדינברג

... This [logic of the Ritva] applies all the more so to our case, where it is not clear that [marrying a relative] falls into the category of "many have trodden over this hazard." On the contrary, we know of many families who were not careful and as a result they suffer from hereditary defects. Therefore, it certainly is permitted to warn about the matter. One who refrains [from marrying a relative] will be acting passively and will not violate any prohibition as he is being concerned

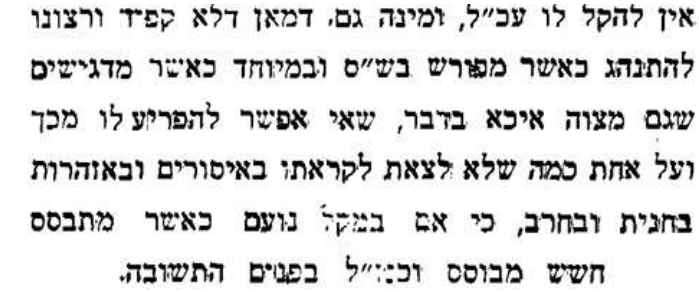
for his well-being, because of the “severity of a danger” (cf. Chulin 10a). And he will receive reward for refraining, since he does so in order to fulfill, “You shall guard yourselves well” (Devarim 4:15).o

Divrei Malkiel 5:202, p. 162, Rav Malkiel Zvi Halberstam (1847-1910)



... And according to my humble opinion, it can be said that just as there are several things that later came into being that harm a person’s health which, in earlier generations, did not harm him, as is known, and so too there are many remedies that nowadays are ineffective which, in earlier generations, were effective, and so too with *segulos* – there are things that earlier generations did not need to be concerned about, while in our times we must be concerned. And so it can be said that Rav Yehudah ha’Chassid saw in his wisdom that nowadays we must be concerned about these matters. And with this we can resolve the difficulty raised against his instruction not to marry one's sister's daughter, while the Gemara says it is a mitzvah to marry her, and so is the opinion of the doctors today – that one who marries a closely related woman from his own family [has an increased likelihood that they] will not have healthy children.... Therefore, Rav Yehudah ha’Chassid's words should not be dismissed, and one who is careful should not be told to be lenient....

Tzitz Eliezer 15:44, post-script



... And it also follows from this that one who is not particular about this, and wishes to conduct himself as stated explicitly in the Gemara, especially since they (the Sages) emphasize that there is

> also a mitzvah in the matter, may not be prevented from doing so. All the more so, one should not come out against him with prohibitions and warnings, “with a spear and a sword,” but only “with a gentle staff,” since a well-founded concern has been established, as mentioned above in the body of the responsum.

Additional resources for Class 7

Tzitz Eliezer 15:44 (Hebrew), Rav Eliezer Yehuda Waldenberg (1917-2006). Available at https://hebrewbooks.org/pdfpager.aspx?req=14514&pgnum=120

Sefer Chassidim #488, Rabbeinu Yehudah ha’Chassid. Available at https://hebrewbooks.org/pdfpager.aspx?req=14561&st=&pgnum=123
Even ha'Roshah #31 (Hebrew), Rav Eliyahu Klatzkin (1852-1932). Available at https://hebrewbooks.org/pdfpager.aspx?req=186&pgnum=90

Apei Zutrei, Even ha’Ezer 2:6, Rav Yaakov Pardo (1740-1819). Available at https://hebrewbooks.org/pdfpager.aspx?req=8448&st=&pgnum=24

Divrei Chaim, vol. I, Even ha’Ezer , Rav Chaim Halberstam of Sanz (1793-1876). Available at https://hebrewbooks.org/pdfpager.aspx?req=143&pgnum=95

Divrei Malkiel, vol. 5, #202 (p. 162). Rav Malkiek Tzvi Tanenbaum (1847-1910). Available at https://hebrewbooks.org/pdfpager.aspx?req=805&st=&pgnum=155

Genetic counseling and screening of consanguineous couples and their offspring: Recommendations of the National Society of Genetic Counselors, R.L. Bennett et al. *Journal of Genetic Counseling* 11(2):97-119 (2002). Available at https://tinyurl.com/5bh4vpne

Tay-Sachs Disease – Carrier screening, prenatal diagnosis, and the molecular era: An international perspective, 1970 to 1993, M. Kaback, et al. *JAMA* 270(19):2307-2315 (1993). Available at https://jamanetwork.com/journals/jama/fullarticle/409253

*Mutation spectrum of the gene encoding the beta subunit of rod phosphodiesterase among patients with autosomal recessive retinitis pigmentosa. Proceedings of the National Academy of Sciences USA 92(*8): 3249–3253, April 11, 1995. Available at https://pmc.ncbi.nlm.nih.gov/articles/PMC42143/