

The Rabbinical Council of America

A Ruling by the Va'ad Halacha
Rabbi Asher Bush, Chairman

The Prohibition of Smoking in Halacha

4 Tammuz 5766, June 30th 2006

This תשובה (responsum) is issued unanimously by the Va'ad Halacha of the RCA, whose members are Rabbi Yosef Adler, Rabbi Kenneth Auman, Rabbi Asher Bush (Chairman), Rabbi Daniel Feldman, Rabbi Tzvi Flaum, Rabbi Dovid Gottlieb, Rabbi Chaim Jachter, Rabbi Yaacov Lerner, and Rabbi Zvi Sobolofsky.

It is issued with the הסכמה (concurrence and approbation) of the following members of the Va'ad HaPoskim: Rabbi Dovid Cohen, Rabbi Michael Rosensweig, Rabbi Hershel Schachter, Rabbi Gedalia Schwartz, and Rabbi Mordechai Willig.

Recent public statements and articles in major Orthodox publications have most appropriately focused attention on the problem of cigarette smoking within our community, particularly amongst our youth. They addressed the social, religious and health implications of this pernicious habit. Notably absent, however, was any discussion of the idea that smoking may in fact be an activity strictly prohibited by Torah law. The purpose in writing these words is to focus on the strength of this prohibition and to eliminate the numerous justifications offered for allowing the practice of smoking to continue in our community.

It should be noted that despite the numerous advances in our medical knowledge of the hazards of smoking, there remain some Orthodox communities that have even a higher rate of smoking than the general population. This is most disturbing in light of the fact that we are a people whose concept of the value of life is based on the words וחי בהם ("and you should live by them") and who subscribe to the principle that פיקוח נפש דוחה את הכל (the saving of life defers everything else). Our concern for health goes so far that even certain activities whose risks are far from obvious are prohibited by the הלכה (halacha).

This incongruity has been noted by Rav Hershel Schachter שליט"א, who observed that some pious Jews are so careful to avoid eating meat and fish together because of the perceived health risks, that they will separate the two by having a cigarette break! (-- this

is despite the fact that the מגן אברהם (Magen Avraham) commented¹ over three hundred years ago that we no longer witness people suffering any ill effects from eating meat together with fish.) Strangely, refraining from smoking, a significant and well documented health risk, is often regarded as nothing more than a matter of personal choice, and is treated by many people with less seriousness than significantly lesser dangers, like the mingling of meat and fish.

Some may take umbrage at an article whose central thesis is that smoking is strictly prohibited by הלכה (halacha), considering such a conclusion to be an affront to the several great רבנים (Rabbis) who did not rule this way. Our response is threefold: first, many of the leading פוסקים (authorities) of our day do, in fact, rule that smoking is prohibited. Second, based on the concepts that will be developed in this piece, it will be very difficult to permit smoking based on these lenient opinions. Finally, it is doubtful whether some of the same רבנים (Rabbis) who previously ruled leniently would continue to do so today in the face of the ever-accumulating medical data that links smoking to serious illnesses for both smokers and those around them.

It is also quite possible, as will be discussed below, that previous lenient rulings were based not only on the strict merits of the issue of smoking, but on other very real factors that affect the process of פסק הלכה (halachic decision-making), but which may not apply today as in years past. For this very same reason some פוסקים (authorities) in past years refrained from addressing the subject at all.²

It may also be that some פוסקים (authorities) used mild words to discourage smoking because they hoped and assumed that the gentle powers of Rabbinic persuasion along with the various public policies that had been enacted (such as printing health warnings on cigarette packages), would deter people from smoking. Yet, despite the fact that there are relatively few active smokers in the world today who were smoking in 1964 when the Surgeon General's report was first issued, the practice is still very much with us.

Some readers may wonder why we are revisiting this "old topic" now. Why is this issue suddenly worthy of renewed attention? Aside from the obvious fact that the problem remains, there are also very positive trends in our general society, of which we would do well to take advantage. In recent years the numbers and percentages of both youthful and adult smokers have continued to decline. Whether due to better health education, increased costs of smoking, fewer public places available for smoking, or a combination of factors, as such, we are presented with a great opportunity, a true שעת הכושר (rare opportunity) to impact both young and old in a most significant way.

Engaging in Dangerous Activities

On the surface, our discussion should be short and simple, as numerous passages in the תלמוד (Talmud) take it for granted that one may not engage in dangerous or

¹ אור"ח סי' קע"ג ס"ק א'

² The application of מוטב שיהיו שוגגין ואל יהיו מזידין to the issue of smoking will be addressed in detail below.

unhealthy activities³. For this reason we are told not to walk under a shaky stone wall⁴, not to eat meat that was cooked with fish⁵, not to keep a wild dog as a house pet or maintain other unsafe conditions around the home⁶, to give just a few examples. These rulings are codified as full-fledged הלכות (laws) in the שלחן ערוך (Code of Jewish Law) in two places: in יורה דעה (Yoreh De'ah) they appear in the context of forbidden foods⁷ and in חושן משפט (Choshen Mishpat) in the context of the מצוה (mitzvah) to build a מעקה (parapet) around one's roof and to remove other dangerous situations.⁸ It is clear from these sources that the need to avoid danger applies to both oneself and to others as well.

The reason this common sense advice needed to be formulated as a מצוה (mitzvah) is powerfully summarized by the באר הגולה (Be'er HaGolah) who wrote⁹ that “The reason that the תורה (Torah) commanded regarding the protection of lives is because G-d in His kindness created this world so that His creations should recognize His greatness, and serve Him through doing His מצוות (mitzvot) and following His תורה (Torah), ... One who endangers his life is showing contempt for G-d's will and a lack of interest in doing His מצוות (mitzvot) ... and there is no greater irreverence than this.”

Accordingly, it would appear to be a simple matter that smoking should be prohibited. There is little doubt that had smoking with all of its currently known health risks been presented for Rabbinic approval in the abstract, it would have been immediately forbidden. Unfortunately, such was not the case; smoking was a widespread practice among both Jews and Gentiles long before medical science had any serious knowledge of these great risks. Strange as it may seem in the context of our discussion, when the classical פוסקים (authorities) were presented with situations that already existed, they did not view them with the same lens as they would when evaluating new practices. Quite often they would expend considerable intellectual effort to justify the practices of the Jewish people, especially if they felt that a receptive audience was not to be taken for granted.

In a תשובה (responsum) dated הנוכה תשכ"ד (Chanuka 1964), written within months of the release of the famous Surgeon General's report, Rav Moshe Feinstein זצ"ל (of blessed memory) wrote¹⁰ that while it is certainly preferable not to smoke, he would not say that smoking is strictly forbidden by הלכה (halachah). He cited two reasons why he felt that it is not forbidden. Firstly, he explained that in cases like this the תלמוד (Talmud) invoked the concept of שומר פתאים ה' (that G-d watches over the simple). This rule in its simple formulation means that commonplace activities, even though they may involve risks to health or safety, are permissible as we can rely on Divine protection. The very fact that so many people are engaged in a certain activity and emerge unscathed is ipso

³ שבת קכט:

⁴ ר"ה ט"ז; ורמ"א יו"ד סי' קט"ז סע' ה'

⁵ פסחים עו; יו"ד סי' קט"ז סע' ב'

⁶ ב"ק מו.

⁷ יו"ד סי' קט"ז

⁸ חו"מ סי' תכ"ז

⁹ חו"מ סי' תכ"ז ס"ק צ'

¹⁰ אג"מ יו"ד ה"ב סי' מ"ט

facto proof that G-d must be protecting these people, even though prudence might tell us to avoid that activity.

Secondly, Rav Moshe זצ"ל added, is the fact that many great תלמידי חכמים (Torah scholars, both past and present) smoked, thus making it impossible for us to say that such an activity is forbidden.

This brief תשובה (responsum) continues to serve as the primary justification for those who permit smoking. It is our contention that not only do numerous compelling sources indicate that smoking is forbidden, but that given the increased knowledge and awareness of the health risks of smoking, it is safe to assume that even רב משה זצ"ל (Rav Moshe Feinstein, of blessed memory) would have agreed that it is forbidden.

שומר פתאים ה' (God Watches Over the Simple)

While the תשובה (responsum) in אגרות משה (Iggeros Moshe) seems to take the concept of שומר פתאים ה' (God watches over the simple) at face value, this is not the universal understanding. In a תשובה (responsum) regarding the fact that the prohibition of שלא לישא אשה שמתו לה שני אנשים (a marriage prohibited due to possible danger) was being disregarded in his day, the תרומת הדשן (Terumat HaDeshen) introduced a very different perspective to this issue.¹¹ Focusing on the word פתאים (simple), meaning either “fools” or “the innocent,” he questions whether such protections are given to תלמידי חכמים (Torah scholars) since they are not in this category as they certainly “know better.”¹² Similarly, given the almost universal knowledge of the risks related to smoking, it would be difficult to apply this permission to anyone in our generation.

In a discussion regarding the use of birth control by a seriously ill woman, Rav Chaim Ozer Grodzensky זצ"ל (of blessed memory) writes¹³ that the rule of שומר פתאים ה' (God watches over the simple) is only applicable in cases where the risk of danger is remote and quite uncommon, but not in cases where the danger is common and readily apparent.

Following this same line of reasoning, Rav Aaron Soloveichik זצ"ל (of blessed memory) ruled¹⁴ that there would be no room to permit smoking in our day given the many known lethal and non-lethal risks.

In a most fascinating discussion about legitimate risk taking, Rav Yaakov Etlinger writes¹⁵ that even though we have a rule that אין הולכין בפיקוח נפש אחר הרויב (in matters of

¹¹ שו"ת תרומת הדשן ח"א סי' רי"א, וע"ע ברמ"א לאה"ע סי' ט' סע' א' וט"ז שם ס"ק ג'

¹² This understanding seems to be borne out by the discussion (נדה לא.) concerning the danger of המשמש מטתו ביום תשעים. The תלמוד permits it based on the rule of שומר פתאים ה' since it is not reasonable to expect that most people will actually know when it is day ninety. This same idea is discussed in בית יוסף אה"ע סי' ט' ד"ה ומ"ש.

¹³ שו"ת אחיעזר ח"א סי' כ"ג "הא דס"ל לרבנן...וסמכינן על שומר פתאים ה' משום דזהו חשש רחוק ומיעוטא דמיעוטא." ¹⁴

¹⁴ In a שיעור delivered at RIETS in 1986

¹⁵ שו"ת בנין ציון ח"א סי' קל"ז

life and death appropriate precautions are taken even for risks of less than 50%), this is only true when there is an immediate danger. But regarding long term danger we employ the rule of רוב (majority) and do evaluate the statistical risks. This is why, he explains, the הלכה (halacha) permits taking journeys on the sea or in the desert despite the risks, since the dangers are not encountered immediately, and even later it is questionable whether there will be danger at any point. In cases such as these, he writes, we must evaluate the likelihood of encountering danger since activities that entail long term risk of less than a 50% likelihood may be undertaken.

Based on this תשובה (responsum) there were those who wished to permit smoking. Perhaps in the early years following the Surgeon General's report such a permissive ruling may have seemed correct, but contemporary medical knowledge indicates that fully 50% of long term smokers will die prematurely. Additionally, the overwhelming majority of all smokers suffer significant maladies, including cancer, heart disease, emphysema and strokes.¹⁶

Accordingly, Rav J. David Bleich שליט"א has written¹⁷ that "However, in light of presently available evidence, it appears that the cumulative risks of lung cancer, cardiovascular disease and respiratory illnesses will, in the aggregate, foreshorten the lives of the majority of smokers. If the majority of smokers do indeed face premature death as a result of cigarette smoking there is, according to *Binyan Tzion's* thesis, no halakhic basis for sanctioning the practice even though the multitude continues 'to tread thereon'. That is so even if longevity is reduced only marginally." [Which is not the case with smoking as noted below.]

Rav Efraim Greenblatt שליט"א follows this same approach, pointing out that general society no longer considers smoking to be an acceptable risk, forbidding it in public locations (even in those where alcohol is permitted!). He writes¹⁸ that smoking is indeed forbidden, and the concept of שומר פתאים ה' (God watches over the simple) cannot permit smoking any more than it can permit lying down in the middle of a busy highway, and expecting Divine protection.

¹⁶ Over the past forty years there have been literally thousands of scientific studies and reports on smoking. Just a few basic sources are listed here for perspective: The CDC (Center for Disease Control) wrote in its 2004 report (available online at CDC.gov) that "Tobacco use is the leading preventable cause of death in the U.S. Cigarette smoking causes an estimated 440,000 deaths, or about 1 of every 5 deaths each year. This estimate includes 35,000 deaths from secondhand smoke exposure." It also reported that "adults who smoke die an average of 13 to 14 years early." Cigarette smokers are 2-4 times more likely to develop coronary disease than non-smokers. Cigarette smoking approximately doubles a person's risk for stroke. Lung cancer deaths account for approximately 120,000 of the 440,000 annual deaths. While statistics vary, it is estimated that 15% of smokers die of lung cancer (University of Maryland Medical Center, umm.edu). Accordingly, this would indicate a mortality rate of 50% or more from all tobacco related causes. Similarly, the British Medical Journal (BMJ June 22, 2004) reported based on a 50 year study that, on average, smokers die 10 years younger than non-smokers, with between half and two thirds of those who begin smoking in their youth dying from this habit (this report can be found on BMJ.com or in shorter form at Health Insite.gov.au).

¹⁷ Tradition, Fall 2003, page 97 note no. 4

¹⁸ שו"ת רבבות אפרים ה"ח סי' תקפ"ו

In describing the nature of the risks involved with smoking, Rav Shlomo Zalman Auerbach זצ"ל (of blessed memory) wrote¹⁹ that a smoker is in the category of חובל, causing himself continuous harm, and, he continues that "I make known that I have never joined with those who believe that smoking is permitted in our days."

For many years the bulk of Rabbinic literature concerning smoking focused on the smaller issue of smoking on יום טוב (Yomtov) and whether it qualified as a דבר השוה לכל נפש (a commonly found behavior). Having addressed this issue in number of his own תשובות (responsa), Rav Eliezer Waldenberg שליט"א writes²⁰ of his own great distress when he realized just how dangerous smoking is. In a most forceful manner, he explains that the rule of שומר פתאים ה' (God watches over the simple) applies only when life experiences do in fact indicate that people are protected from the risks of this activity. Smoking clearly is not in this category, as the ever-mounting evidence testifies to its great capacity to sicken and kill. Accordingly, Rav Waldenberg ruled that there is no question that smoking is in violation of הלכה (halacha).

In the course of the aforementioned תשובה (responsum), Rav Waldenberg introduces what he considers to be the coup de grace, a quotation of the חפץ חיים (Chofetz Chayim) found in one of his lesser known works.²¹ Writing approximately one hundred years ago, the חפץ חיים (Chofetz Chayim) expressed his dismay that many "weak" people smoked, even though doctors clearly told them of the great risk to their health. He notes that on many occasions he spoke with these smokers, often receiving the same response--that they would love to quit but they are addicted. To this the חפץ חיים (Chofetz Chayim) would respond "Whoever permitted you to get yourself addicted in the first place?" While it is certainly true that the חפץ חיים (Chofetz Chayim) was only commenting on "weak people," Rav Waldenberg emphatically states that, given our medical knowledge, all people are in this category, and the ruling of the חפץ חיים (Chofetz Chayim) for "weak" people clearly applies to all people.

Similarly, Rav Avigdor Nebenzahl שליט"א writes²² that שומר פתאים ה' (God watches over the simple) cannot be invoked when we clearly witness that G-d is not protecting smokers. Accordingly, he too rules that smoking is forbidden.

Rav Ovadia Yosef שליט"א also quotes²³ the above-mentioned ruling of the חפץ חיים, finding it to be a most compelling mandate to stop all smoking. He points out that just as we rely on the wisdom of doctors to permit doing otherwise forbidden מלאכה (work) for פיקוח נפש (saving a life) on שבת (Shabbos) and eating on יום הכפורים (Yom Kippur), so too we are required to listen to them and distance ourselves from those activities they deem dangerous. Rav Ovadia שליט"א adds that this prohibition to smoke applies even to those who presently smoke, and not just to those who have not yet begun to do so.

¹⁹ שו"ת מנחת שלמה ח"ב סי' נ"ה סע' ו'

²⁰ שו"ת ציץ אליעזר חט"ו סי' ל"ט

²¹ קונטרס ליקוטי אמרים, פרק י"ג

²² אסיא שנת תשמ"ו ח"ה דף 261

²³ שו"ת יחווה דעת ח"ה סי' ל"ט, הערה ב', ספר הליכות עולם ח"א דף רס"ה סע' ד'

אונס (Duress)

One frequently hears the claim from observant Jews who are smokers that even if the הלכה (halacha) were to forbid smoking, the proscription would not apply to them since they are addicted and, by definition, unable to control themselves. Accordingly, they would enter the category of אונס (acting under duress), and be exempted on the grounds of אונס רחמנא פטריה (God exempts one who acts under duress).²⁴ However, as seen from the strong words of the חפץ חיים (Chofetz Chayim), this is not an acceptable excuse for a number of reasons.

An examination of the cases in which the הלכה (halacha) employs the rule of אונס רחמנא פטריה (God exempts one who acts under duress) reveals that it is an exemption from obligations in מצוות (mitzvot) or from punishments for עבירות²⁵ (transgressions) or restitution for damages, but by no means does it permit one to engage in an otherwise prohibited activity. The question regarding smoking is whether it is permitted or not, and has nothing to do with punishments or the like.

It is striking to note that in the rebuke given by the חפץ חיים (Chofetz Chayim), he stated that he was not interested in the fact that these smokers were now addicted, as they had no right to start smoking in the first place. This general phenomenon is referred to by the תלמוד²⁶ (Talmud) as תחילתו בפשיעה וסופו באונס (an act started with negligence that ends in duress). In such cases the הלכה (halacha) is that even though a full-fledged אונס (an act done under duress) may be exempt from making restitution, in cases of prior פשיעה (negligence), no such exemption can exist.

While not a strictly legal argument, it is worth noting that the very first line of the lengthy ודוי (confessional) of על הטא (Al Chet) recited on יום הכיפורים (Yom Kippur) begins with the words על הטא שחטאנו לפניך באונס וברצון (for the sins we have committed under duress and willingly). Given the rule that deeds done in situations of אונס (duress) are פטור (not punishable), it is surprising that there should be a need to confess. It is explained in the סידור הגר"א (Siddur of the Vilna Gaon) that this אונס (duress) refers to a case in which the person had initially willingly entered a situation, and only now finds himself out of control. For such a deed it is also necessary to do תשובה (repentance).

אין גוזרין גזירה אלא אם כן רוב הצבור יכולים לעמוד בה (No Decree Can Be Made Unless The Majority Of The Community Can Follow It)

Some have advanced the argument that ideally the Rabbis should legislate to forbid smoking, but given the fact that they will not be obeyed, such a ruling cannot be issued, falling under the limitation of אין גוזרין גזירה על הצבור אלא אם כן רוב הצבור יכולים לעמוד בה

²⁴ ב"ק כח., ע"ז נד., ועוד

²⁵ רמב"ם הל' איסורי ביאה פ"א הל"ט, הל' סנהדרין פ"כ הל"ב

²⁶ ב"ק כא., רמב"ם הל' נזקי ממון פ"ב הל' ט"ו

(No decree can be made unless the majority of the community can follow it).²⁷ However, it is clear from all of the sources quoted until now that there is no need for any new Rabbinic ban, as the existing laws of the תורה (Torah) clearly already forbid smoking.

Additionally, this logic has several other major flaws. The fact that all Orthodox Jews refrain from smoking on שבת (Shabbos) shows that for a faithful Jew, reverence for הלכה (halacha) and obedience to it are far stronger than any addiction to tobacco. Were the word to go out in a clear and forceful manner that the הלכה (halacha) unambiguously forbids smoking, experience has shown that committed Orthodox Jews will follow the demands of the תורה (Torah) even in the face of great adversity.

More importantly, the concept of not making a גזירה (decree) that will not be followed is limited to cases where the majority will not listen to the Rabbis. The fact that most of the population does not smoke would indicate that this is certainly a law that the “majority” can live by. (In America approximately 25% of the adult population smokes. Studies show that in the early-mid 1960’s over 50% of adult males were smokers). It would also seem that even in countries where there may be a majority that does smoke, the fact that there are significant areas where a clear majority does not partake shows that a majority is indeed *capable* of listening, thereby meeting the criteria needed to legislate.

Even were we to assume that such a גזירה (decree) would only take into account those who do smoke or would be willing to do so (a most difficult assumption to make), there is no reason to assume that the countless numbers of young people who do not yet smoke would not be able to heed such a strong warning. This is especially significant when we view the number of potential listeners whose lives can be saved. Additionally, statistics in America show that smoking rates have fallen by 50% and more in the past forty years, clearly proving that the majority of smokers also can quit.

These last few paragraphs have been written to counter this potential excuse, but as already mentioned, we believe that smoking is indeed fully prohibited based on many sources, ancient and modern, and does not require any additional Rabbinic enactments.

חמירה סכנתא מאיסורא

(A Danger To Life Is Treated More Stringently Than A Prohibition)

As mentioned in the introduction, one of the primary goals of this article is to show that given the medical knowledge of today, there is no basis in הלכה (halacha) to permit smoking. The fact that in the 1960’s and 1970’s most of the leading פוסקים (authorities) did not issue prohibitive rulings is most likely a reflection of the fact that medical knowledge was continuing to develop and its public acceptance was a gradual process²⁸. Even Rav Waldenberg שליט"א who wrote so strongly against smoking did not do so until תשמ"ב (1981).²⁹

²⁷ ע"ז לו, רמב"ם הל' ממרים פ"ב הל"ה

²⁸ This slow process of the acceptance of information is clearly seen in a letter sent by Rav Yosef Shalom Eliashiv שליט"א in 1980 where he writes אף שהרופאים בזמנינו קבעו שלריה עשן סיגריות יש תוצאות בלתי רצויות על

Rav J. David Bleich שליט"א has noted strikingly³⁰ that, while given the information available in his day, Rav Moshe Feinstein זצ"ל (of blessed memory) certainly ruled correctly, "It must be noted, however, that there is little question that *Igros Moshe's* responsum, written in 1964, accurately reflects the societal reality of that time... However, it is more than likely that, at present, that condition no longer obtains."

Yet, even if the reader were still unconvinced by all of these sources and that Rav Moshe Feinstein זצ"ל (of blessed memory) and others who previously permitted would now agree that smoking is forbidden, there remain two operating principles in הלכה (halacha) that, on a practical level, would mandate a prohibitive ruling. Very specifically relating to our case of smoking, the רמ"א (Rema) writes³¹ וכן יזהר מכל דברים (so too, one should take care to avoid anything that leads to danger, for such risk is more serious than a prohibition, and one should be more careful regarding a doubtful risk to life than a doubtful prohibition.) Accordingly, even if one were to consider the matter of smoking an unresolved question amongst the פוסקים (authorities), this principle would still mandate a prohibitive ruling.

Secondly, given the fact that there are many leading פוסקים (authorities) who clearly do rule that smoking is prohibited, there is the general rule in פסק הלכה (halachic decision-making) that ספק דאורייתא לחומרא (we incline to stringency when there is a Torah prohibition involved), further mandating that הלכה למעשה (in practical terms) we rule smoking to be strictly prohibited.

מוטב שיהיו שוגגים ואל יהיו מזידיים (Better They Should Sin In Ignorance Than Sin Knowingly)

On several occasions³² the Sages of the תלמוד (Talmud) refrained from criticizing open violations of the הלכה (halacha), explaining their silence based on the rule of מוטב שיהיו מזידיים (better let them sin in ignorance than sin knowingly). It is clear from these sources that this law applies to violations of both דין דאורייתא (Torah laws) and דין דרבנן (Rabbinic laws). This concept is not just reserved for those cases spelled out in the תלמוד (Talmud), as the ראשונים (early medieval authorities) also applied³³ it in various

בריאות האדם ואף יכול להיות גורם רציני למחלות מסוימות, מ"מ התעודה הזאת עדיין לא יצאה טבעה בעולם ולא פשטה בקרב הארץ."

²⁹ There were other leading רבנים who did issue prohibitive rulings in the 1970's, most notably Rav Chaim David Halevy זצ"ל Rav HaRoshi of Tel Aviv and Rav Hershel Schachter שליט"א Rosh Kollel Yeshivas Rabeinu Yitzchak Elchanan.

³⁰ Tradition, fall 2003, page 96, note no.1.

³¹ יו"ד סי' קט"ז סע' ה'

³² ביצה ל, שבת קמח:

³³ Two examples are the comments of תוספות explaining Rabbinic silence towards clapping and dancing on שבת (שבת סד: ד"ה רבי) by women (ביצה ל. ד"ה תנן) and the wearing of jewelry on שבת (שבת סד: ד"ה רבי). Strikingly, in each of these cases תוספות strives to justify the questionable practices without having to invoke this rule and only invokes it when the other suggested answers leave too many unsolved problems.

situations where contemporary practices seemed to be in violation of clearly established הלכות (laws).

At first glance this הלכה (halacha) would seem to pertain to the issue of smoking, as it is questionable as to how many smokers will actually listen to such a ruling. However, to a large extent this simplistic evaluation would miss the point, as this הלכה (halacha) is not relevant in the determination of the status of איסור והיתר (prohibited and permitted matters), but only in establishing the need or propriety of giving תוכחה (a rebuke).

Nevertheless, were this rule to apply, it could likely mandate the silencing of any public discussion on the subject of smoking, these words included.³⁴ However, it is clear from the פוסקים (authorities) that we should not be quick to assume that people will not listen, and should only employ this rule if it is a known or established fact that they will not listen.³⁵ Considering the large numbers of smokers who do attempt to quit, for personal or medical reasons, it is hard to say that such a ruling would be ignored. This is particularly true given the previously mentioned fact that all Orthodox smokers already refrain from smoking on שבת (Shabbos), a day when they do believe that the תורה (Torah) forbids smoking. Given this reality, it is very difficult to believe that were all of the respected פוסקים of our generation to unequivocally rule smoking to be prohibited that their words would be ignored. Additionally, as mentioned above, the fact that the rate of smoking in America today is approximately 50% of what it was in the 1960's shows the power of a concerted and forceful educational and social program.

Even if this last assumption were not correct, and in fact the strength of addiction is greater than יראה שמים (piety), it would still be necessary to make this prohibition known to the public for the benefit of the large number of young people (and future generations) who have not yet started to smoke. There is little doubt that for the תורה (Torah) observant community which cherishes the teachings of its Rabbis, Rabbinic silence is in large measure the reason that young people continue to begin this dangerous practice (sometimes even justifying smoking based on the "fact" that certain Rabbis may do so).

It is also worth noting that in his very early תשובה (responsum) dealing with the issue of smoking, which is often quoted as permitting smoking, Rav Moshe Feinstein זצ"ל (of blessed memory) clearly wrote³⁶ that it is not right to smoke (ודאי מכיון שיש חשש (להתחלות מזה מן הראוי להזהר מזה) (for sure, given the concerns, it is proper to avoid starting to do this). The fact that the דעת תורה (considered opinion) and prudent advice of this great sage is ignored should be a most disturbing fact.

³⁴ It is quite possible that some of the earlier פוסקים who did not issue prohibitive rulings regarding smoking did not feel that it was a permitted activity but did not wish to issue a public prohibition due to this factor.

³⁵ מגן אברהם או"ח סי' תר"ח ס"ק א', ועוד

³⁶ אגרות משה יו"ד ח"ב סי' מ"ט

As previously mentioned, the rule of **חמירא סכנתא מאיסורא** (matters of danger are to be treated more stringently than prohibitions) instructs us not to deal with matters of danger in the same manner with which we deal with other areas of **הלכה** (halacha). Instead, as the **רמ"א** (Rema) wrote³⁷, in all matters of danger where there is a doubt, strictness is required. Accordingly, even were there to remain some doubt about the application of the rule of **מוטב שיהיו שוגגין** (better they should sin out of ignorance than knowingly,) the rule of **חמירא סכנתא מאיסורא** (more stringency is called for in matters of danger than in prohibitions) would demand that we not remain silent on the matter of smoking.

שלא להוציא לעז על דורות הראשונים **(Not To Cast Aspersions On The Practices Of Earlier Generations)**

In his very first **תשובה** on the subject of smoking, Rav Moshe Feinstein זצ"ל added to his basic point (that one can rely on **שומר פתאים ה'** (God watches over the simple)) the fact that in 1960's and in the generations that preceded, there were **תלמידי חכמים** (Torah scholars) who themselves smoked.³⁸ This rationale appears to resemble a concern³⁹ that the **תלמוד** (Talmud) has **שלא להוציא לעז על גיטין הראשונים** (one should not cast aspersions on the practices of prior Rabbinic courts). However, there are number of reasons why this rule should not affect our judgment in dealing with the issue of smoking. The **פתחי תשובה** (Pitchei Teshuvah) writes⁴⁰ that there are several limitations in applying the rule of **שלא להוציא לעז על גיטין הראשונים**: firstly, it may only be applied in cases where the new practice is based on a **חומרא בעלמא** (a precautionary stringency), which, given the information available prior to 1964, may have been a correct way to view smoking, but is certainly no longer the case. Secondly, this rule may be limited to cases of **אישות** (related to marriage) and not applicable to all areas of **הלכה** (halacha). It may well be that this is the reason Rav Moshe זצ"ל (of blessed memory) only used this idea as an added support and not as a full-fledged reason (as he wrote **שבפרט שכמה גדולי תורה מדורות שעברו ובדורנו** (especially given the fact that a number of great Torah sages of earlier generations, and of our generation, did or do smoke)).

It is also important to note that Rav Moshe's original ruling was based on the best medical knowledge of the time (which had only begun to understand the dangers of smoking), and thus, neither his wisdom nor the validity of his ruling at that time is being questioned. Additionally, there is no logic that would suggest that to render a different ruling based on two generations of new medical information would in any manner cast aspersions on his ruling or the conduct of earlier generations who could not possibly have known that there were such serious health risks associated with smoking. In fact, as discussed above and cited⁴¹ in the name of Rav J. David Bleich שליט"א, the conditions which led to this lenient ruling no longer apply.

³⁷ יו"ד סי' קט"ז סע' ה'

³⁸ אגרות משה יו"ד ח"ב סי' מ"ט

³⁹ גיטין ה':

⁴⁰ אבן העזר סי' קכ"ה ס"ק י"ב

⁴¹ See note no. 28

It is also worth noting that long before the 1960's, the חפץ חיים (Chofetz Chayim) strongly condemned smoking in all cases where it was injurious to health. It is therefore correct to say that those who rule that smoking is prohibited are following the teachings of the חפץ חיים (Chofetz Chayim), and are not embarking on a new path at all.

סיכום להלכה Practical Summary

Accordingly, this analysis must lead to the unambiguous conclusion that smoking is clearly and unquestionably forbidden by הלכה (halacha) and that this should be made known to all who care about the תורה (Torah) and their health.

A final note is in order: People who smoke are not, ה"ו (God forbid), doing so in an attempt to flout הלכה (halacha). In fact, most would dearly wish to quit, but shedding an addiction is no simple matter. While it is important to make clear that הלכה (halacha) prohibits smoking, it is also important not to condemn those who struggle with this issue. Rather we must offer our full help and support to aid them in their quest for physical and spiritual health.
