



D'VAR דבר ה' זו הלכה HASHEM

THE SEPHARDIC HALACHA JOURNAL
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VOLUME 1, ISSUE 5 / TAMMUZ 5776

Catch Of The Day

BUYING KOSHER FISH IN A NON-KOSHER STORE AND OTHER FISH KASHRUT ISSUES

By Rabbi Yitzchak Benjio, Kollel Etz Haim and Kashrut
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Fish have been a staple in Jewish cuisine throughout the world for many generations, and are currently experiencing a tremendous wave of popularity in the kosher kitchen and the modern food scene. The infinite ways to serve and enjoy fish

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From the Editor

We are pleased to present the Tammuz edition of the **D'var Hashem** – the **Sephardic Halacha Journal**. In this issue we address some of the basic *Halachot* of the days of *Ben HaMetzarim*, in which we mourn the loss of the *Bet HaMikdash*. As the prevailing custom is not to eat meat during the nine days leading to *Tish'a B'Av*, our feature article, by Rabbi Yitzchak Benjio, deals with the *Kashrut* of fish and some of the related *Halachic* concerns. Our business article, by Dayan Baruch Levine (author of "Playgroups in Halacha" and other books) deals with backing out of summer-camp and its financial consequences. We also offer a short review of the life of the great *Ga'on* and *Rosh Yeshiva*, Hacham Abdallah Somekh זצ"ל of Baghdad.

Although our print journal has not been published since *Pessah*, we continue to publish our popular weekly E-Journal, in which we feature high-level, relevant articles on a wide range of topics. We've recently discussed issues of *Shemitta* that may apply in America, the place of *Kabbala* in the world of *Halacha*, the prohibition of overcharging and underpaying and much more. We encourage you to join our email list and to visit our website: www.theshc.org.

To sponsor our publication and be a partner in the *Limmud Torah* of thousands of people across America, please contact our office. We pray that this journal enhances our readers' understanding and commitment to Torah study and *Halacha*, and that we continue to have the *Si'atta DiShmaya* to serve the Sephardic community nation-wide with excellence. May we merit to see the rebuilding of the *Bet HaMikdash*, speedily in our days, *Amen!*

B'Virkat HaTorah,
Rabbi Ariel Ovadia
The Sephardic Halacha Center

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This month's issue is dedicated by

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have brought the kosher consumer to look for more ways to find a steady supply of premium, fresh kosher fish.

While buying fish from a kosher market presents relatively few halachic problems, buying from a general market is an entirely different story. In this article we will discuss the various issues that should concern a kosher consumer who buys fish from a general establishment with no reliable kosher supervision.

Recognizing the Species

The Torah writes^[1]: “This you may eat of all that is in the water, all that has fins and scales you may eat.” *Hachamim* assert that, while there are many fish with fins and no scales, there are no fish with halachically viable scales that have no fins^[2]. Thus, if one identifies scales on a fish, one can be certain that it is kosher. Many times, fish are offered for sale after their scales have been removed, which poses a *kashrut* issue, as the consumer cannot know whether the fish is kosher or not. One cannot rely on the non-Jewish store owner’s claim (or even that of an expert) that it is a kosher fish, as various species of fish are interchangeable^[3].

According to *Maran*, as long as one can recognize even one scale on the fish, one can identify a fish as kosher. While the *Rama* maintains that the scale must be in a place where it cannot have come from anywhere else, such as under its cheeks, on its tail or next or under its fins. Still, finding two or more scales is a sufficient identifying factor, even if they are found elsewhere on the body.

Finding a Match

Finding scales on a matching piece of fish is also enough^[4]. For example, if the store owner were to slice the fish into two, and a scale would be found on one of the pieces, the matching piece can be identified as kosher – even if they are detached. It would seem difficult to rely on this *Halacha* to certify large batches of tuna fish as kosher, if a scale can be identified on one of the chunks, as the tuna chunks can be easily interchangeable and claiming a match is not as easy as it would be on matching pieces of the usual fish fillet.

The Unmistakable

Unlike tilapia, whitefish and other species, some fish – such as salmon – are unmistakable. This is not merely because of the fish’s pink color (which can be sometimes enhanced with food-coloring, and can be also found in some non-kosher species), but also because of the fish’s unique characteristics. This is why most *kashrut* agencies do not require one to find scales on unsourced salmon, as one can be absolutely certain that salmon

Breaching the protocol may only take a few seconds, in which no one will fear that the mashgiach will suddenly appear – especially in large factories with surveillance systems & elaborate facilities...



is salmon^[5]. This is the opinion of the majority of *Poskim*, including Rav Moshe Feinstein and Rav Yisrael Belsky זצ”ל.

Rav Belsky takes this logic even further, allowing one to rely on a herring’s signature silver tinge, to identify it as a kosher species without seeing scales^[6]. However, many *Poskim* argue and maintain that the silver tinge is not such a strong identifying factor.

Kosher Utensils

Once one has determined that the fish that he is buying is indeed kosher, one must now determine that the utensils used to handle the fish, such as the gloves, board and knives did not have any non-kosher residue on them. One can ensure this is the case by providing the store owner one’s own kosher utensils. If the store owner insists to use his utensils one would have to wash them properly and subject the knife to “*Ne’itza*” – which is done today by scrubbing it with steel-wool and dish soap^[7].

It is important to note, that one may not leave his utensils at the store so it would be used whenever he comes. This is because we suspect that store owner may have used it for non-kosher items. According to *Maran*^[8], one would have to place the utensils within two *hottamot* (reliable seals) to ascertain that the utensils are used exclusively for kosher fish.

In the case of a large-scale factory that processes only kosher fish with skin (such as a facility that packages salmon), the *Aharonim* are lenient and do not require the utensils to be certified kosher, as the possibility that they were used for a non-kosher items is remote, and even in such a case the small amount of non-kosher residue would be nullified in the vast amount of kosher fish that are being processed^[9]. [This is not always the case with tuna bought at commercial fish markets, which is often processed alongside non-kosher fish and the knives are only dipped in hot

water between the fish. That would not be a sufficient method of removing the substantial amount of non-kosher residue that is found on the knives.]

If the fish was cut with a non-kosher knife, one would need to wash it, and, according to the *Havot Ya'ir* and others [10], one must also pass the sharp side of a knife over it to scrape off any remaining residue (*Gereda*).

Many times, kosher fish may be stored alongside non-kosher fish or displayed on a bed of ice which previously displayed non-kosher fish. This can be an issue even with whole fish. In such a case, one must wash off any possible residue [11].

A Kashrut Seal and Supervision

As was previously mentioned, in order to ascertain that the kosher utensils are kept kosher, one must place them within two reliable seals. This is the case with all meat or fish products, as well as other things, as the *Shulhan Aruch* details [12]. This can be very relevant when ordering sushi or catering an event, in which case the fish platters (or any fish delivery) must have two reliable seals to ensure they are not switched.

Unfortunately, in many instances this *Halacha* can be overlooked. For example, if the platters leave the kitchen on the way to the event, and one of the workers realizes they forgot to include a vegetable or the like in the platter. Trying to stick something into a sealed platter would invalidate the seals and the fish would be considered to be inadequately supervised.

Another issue pertains to the commercial packaging of canned tuna, sardines, anchovies and the like. In *Halacha*, we generally rely on the concept of a *Yotze V'Nichnas* – a *mashgiach* who comes and goes unexpectedly – to guarantee that the ones handling the food will be afraid to be caught switching the product to a

non-kosher product. However, Rav Moshe Feinstein is quoted [13] as saying that this method is ineffective with assuring that a big factory does not mix in non-kosher fish. This is because breaching the protocol only takes a few seconds, in which no one will fear that the *mashgiach* will suddenly appear, especially in large factories with surveillance systems and elaborate facilities.

Fish Products

Finally, we must discuss the *kashrut* of some popular fish products. Fish gelatin without a kosher certification may come from non-kosher fish. Although cod is a kosher fish, cod liver oil requires a *kashrut* supervision as it may contain up to 3% of non-kosher ingredients. Similarly, omega 3 pills can also come from non-kosher fish and should be certified kosher.

The accepted *P'sak* is to rely on the color of fish eggs (roe) to determine their *kashrut* [14]. If the eggs are an orange-red, they are assumed to come from kosher fish, whereas if they are black they are generally from non-kosher fish. Some factories color their fish eggs black so that they resemble non-kosher caviar. If they are certified kosher it is permissible to eat them and there is no problem of *Mar'it Ayin* – seemingly eating non-kosher [15].

Sources:

[1] דברים יד, ט [2] גדה פ"ו מ"ט, חולין ס"ו ע"ב [3] כמבוא בשו"ע שם סעיף ז' [4] שם סעיף ד' [5] כ"מ מהגמ' בחולין ס"ו ע"א אין לו קשקשין ועתידי לגדל לאח"ז, דע"ב סמכין על שמכירים את מין הדג, וע"ב ב"י ורמ"א, ובט"ז כתב דכ"כ היה פשוט דין זה למרן שלא הוצרך להביאו. וע"פ פת"ש סק"ב. [6] שולחן הלוי ס' יט אות יג [7] ע"א אמת ליעקב יו"ד ס' פט, ומה שנקט שאף צריך להשתמש בסבון כלים לכאורה היינו רק משום שזה מועיל להסיר השומן, ולא משום שפוגם את הטעם דהרי השמנונית בעין [8] יו"ד ס' ק"ח ס"א [9] דרכ"ת ס' צ"ו סקל"ו [10] ס' קע"ט, הובא בפת"ש יו"ד ס' צ"ה סק"ה [11] ואף אם שהו שם יותר מכ"ד שעות לא מקרי כבוש כה"ג הואיל ואין הציר מלוח, כמבוא בדרכ"ת ס' פ"ג [12] יו"ד ס' ק"ח [13] מסורת משה [14] ב"י יו"ד ס' פ"ג [15] ילקוט יוסף, או"ח ח"ב ס' פ"ג אות י"ד, והטעם ע"פ מש"כ התפא"י דאין חוששין למרא"ע אלא כשיש קצת הוכחה לאיסור יותר מן ההיתר, ע"ש עוד במה שהאריך.

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Ask the Rabbi / דברי חכמים

FEATURED QUESTION ASKED TO THE SHC, ANSWERED BY RAV MOSHE PINCHASI:

Accepting Shabbat Early

Q: *My husband accepts Shabbat early every week, but I still have to get some things done in the house before Shabbat starts. Am I bound by his Kabbalat Shabbat?*

A: Although the *P'ri Megadim*^[1] is in doubt whether when a father prays *Arvit* of *Shabbat* early, his family is automatically included in that acceptance of *Shabbat*. The late *Aharonim* debate about the final *Halacha*. Whereas the *Shevet HaLevi*^[2] is stringent, Rav Moshe Feinstein [3] distinguishes between whether the father prays in a *Minyan* that accepts *Shabbat* early out of extra respect for *Shabbat*^[4] – or whether the *Minyan* was just established as a matter of convenience. In the case of the latter, his family would not be bound by such a *Kabbalat Shabbat* (except for *Melachot* that they are doing for the father). However, Hacham Ovadia Yosef^[5] and others write that the family is not bound by a father's *Kabbalat Shabbat*. The *Sefer Kene Lecha Haver* relates that the *Kaf HaHayim* once asked this question to the *Ben Ish Hai*, who also responded that the family is not bound by the father's *Kabbalat Shabbat*^[6].

As a side note, although the *Shulhan Aruch*^[7] rules that if most of the town accepts *Shabbat* early, the minority is bound by that *Kabbalat Shabbat* as well (and according to most *Poskim* this even applies to rabbinic prohibitions), nevertheless, the *Keneset HaGedola* and others write that this does not apply in a place in which there are *Minyanim* who pray at different times.

Sources:

[1] או"ח ס' רסג מש"ז סק"א [2] ח"ז ס' לה [3] שו"ת אג"מ או"ח ח"ג ס"י לה [4] דאז מחוייבת ע"י קבלתו אפילו אם היא מתפללת בביה"כ במנין מאוחר יותר [5] חזו"ע שבת ח"א עמ' רפה, ועוד אחרונים [6] וכן מבואר בשו"ת תורה לשמה (ס' ק"ז) שמוותרים בני הבית לקבל פרעון חוב עבור אביהם שקיבל שבת, וכ"מ בשו"ת רב פעלים (או"ח ח"ב ס"ס מט) [7] ס' רסג ס"ב.

Q&A for Ben HaMetzarim

By Rav Moshe Pinchasi,
Lakewood

Q: May one rinse their mouth on a fast day?

A: On the four fasts (excluding *Tish'a B'Av* and *Yom Kippur*), some say that if one ensures that he does not swallow any liquid, it is allowed if necessary^[1]. Hacham Ovadia Yosef ל"צ writes^[2] that even in such a case one should not use more than a *Revi'it* (3 ounces)^[3]. He also writes that one may brush their teeth if they do so on a daily basis.

Q: What do you do if you mistakenly made a *Beracha* to eat on a fast day?

A: The *Kaf HaHayim*, *Ohr L'Tziyon* and others maintain that one may not swallow even a minute amount, and should recite *Baruch Shem Kevod* etc. as one would normally do when reciting a *Beracha* in vain^[4]. However, the *Hida*, Hacham Ovadia Yosef and others permit one to taste a minute amount from the food so that the *Beracha* should not be in vain^[5].

Q: Is one allowed to recite a *Sheheyanu* during the three weeks?

A: It is better not to recite *Sheheyanu* during the three weeks over new clothing or fruits^[6]. Some say this applies even on *Shabbat*^[7] (at the very least over new clothing). If one already recited a *Beracha* over a new fruit, they may recite *Sheheyanu*^[8]. The *Poskim* are more lenient with regards to a minor reciting *Sheheyanu*^[9].

Q: Is it permissible to swim during the three weeks?

A: Hacham Ben-Tziyon ל"צ writes that it is permissible since it is not mentioned in the *Shulhan Aruch*^[10]. This year (5776) that *Tish'a B'Av* is postponed to Sunday, according to *Maran*^[11] there would also be no prohibition to bathe^[12].

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The Cost of Home-sickness

Business Halacha / דבר המשפט

By Dayan Baruch M. Levine
Dayan at Bet HaVa'ad, Lakewood and
noted author

There is no more fundamental summer institution than summer camp – where a child creates valuable memories, experiences and friends that last a lifetime. Finding a suitable camp for your child can be quite an undertaking, and often times, whether for unforeseeable reasons or a sudden change of heart, a parent may feel compelled to opt out of a camp.

This will obviously leave the camp unhappy, as they must now scramble to find a way to supplement the lost income. In this article we will discuss what Halachic recourse do parents or camps have in the various possible scenarios.

A Replaceable Slot

When parents wish to opt out of a camp they enrolled their child in, the first thing we must determine is whether the slot can be replaced. The responsibility to find a replacement falls on the camp, and if the camp is able to replace the slot with another child with reasonable effort, the parents would not have any responsibility to pay the camp if they back out, even if a *Kinyan* (transactional act) was made^[1]. If the (full) camp tuition was prepaid it would have to be refunded.

Even if the parents signed an application form which stated they would be responsible for the full tuition in the event they cancel their slot, this would generally not include such an instance where the camp has the ability to replace the slot, unless the application clearly stated so. [Even so,

although the camp would have the option of charging the tuition and not replacing the slot, they would not be allowed to keep the tuition and replace the slot^[2].] If the camp requested a “deposit”, there is strong basis to allow the camp to keep this payment, since it is generally understood that a “deposit” is non-refundable.

Grievances (*Tar'omet*) and Lacking Faithfulness (*Mehusar Amana*)

Even though in this case the parents have the option of backing out, nevertheless, *Hazal* would entitle the camp to have a *Tar'omet* – justified grievances – against the parents for causing them the hardship of replacing their slot. However, if the camp is able to find a replacement without difficulty, and the child did not start attending the camp yet, they would not have a right to have *Tar'omet*^[3]. Still, the parents would be frowned upon by *Hazal* and termed “*Mehusar Amana*” – lacking faithfulness – for renegeing on their word^[4] [unless they are backing out due to an unforeseen circumstance, as we shall discuss later].

An Irreplaceable Slot

If after reasonable effort the camp cannot find a replacement, the parents may bear some financial responsibility depending on the following factors:

A Verbal Commitment

If the parents only made a verbal commitment to enroll their child, and did not sign any formal application or give any deposit, they are not technically bound to the agreement. Nevertheless, they may still be liable for causing the camp a financial loss. Accordingly, if the camp could have filled that slot with another child, the parents would generally still be responsible to pay the tuition for the entire duration they had agreed to enroll their child for

Finding a suitable camp for your child can be quite an undertaking, and often times, whether for unforeseeable reasons or a sudden change of heart, a parent may feel compelled to opt out of a camp...

(except for unavoidable termination, which will be discussed below). However, if at the time of the cancellation there is little or no reason to assume that the camp will be unable to replace the slot, then even if the camp is indeed unsuccessful in doing so, the parents will not be responsible for the tuition [5].

When paying for lost tuition, the parents do not pay the full amount; rather they first deduct the amount that a camp would agree to forfeit in order to have one less child in their camp. Depending on the age of the child and the size of the camp, this deduction may only be a minimal amount or possibly nothing at all [6].

If the camp would not have been able to fill this slot either way, for example, if they still have slots available, then the parents have not prevented them from enrolling other children by their enrollment and subsequent cancellation. They would therefore have the ability to back out without any financial obligation to the camp. The *Halachot* of *Mehusar Amana* as previously outlined would still apply.

Even in a case where the camp would not have been able to fill the slot, and thus the parents are not responsible for the tuition, nevertheless, if the camp had made specific (non-refundable) expenditures in anticipation of the child's attendance, and the parents were aware that the camp would be doing so, the parents may be responsible for this loss. Examples of this could be the purchase of supplies, trip reservations or hiring extra staff [7].

A Binding Kinyan

If a *Kinyan* was done to finalize the camp enrollment, the parents are *Halachically* bound to the contract. Examples of a *Kinyan* can include signing an application [8] or paying full tuition. It is unclear whether paying a deposit would constitute a *Kinyan* to obligate them to pay the rest of the tuition out-of-pocket [9]. In any event, a deposit or even a full tuition payment specifically earmarked for the first half of the summer (July) would generally not obligate the parent to pay out of pocket for the second half of the summer (August). If the child started attending the camp it would also constitute a *Kinyan*. However, attending the camp for the first half of the summer (July) would generally not obligate the parents to pay out of pocket for the second half of the summer (August). [Here too, they would not pay the full amount as detailed above.]

Oness – Unavoidable Termination

If it becomes unfeasible for the child to attend the camp this would be a case of *Oness* and the parents may back out without any consequences, even if the camp was prevented from filling that slot because the parents originally signed up. *Mehusar Amana* and *Tar'omet* would also not apply. However, according to some *Aharonim*, the camp would not be required to refund the parents any prepaid tuition or deposit they had already paid.

Often, a *Dayan* or a *Bet Din* would need to determine if it is indeed an *Oness* [10]. Some examples of an *Oness* may include the parents moving out of town for the summer, the child becoming sick ר"ל, or if the child simply refuses to go to the camp.

If the parents had knowledge of (or had reason to anticipate) the *Oness* at the time they signed up, yet did not inform the camp of this, they would still be liable, unless the camp had equal knowledge of the likelihood of the *Oness* [for example, if the child has a social issue which both the parents and the camp knew about].

Sources:

- [1] חו"מ (ש"ג) ס"ב, וע"ע ברמ"א (ש"ה ס"א). [2] דלקבל שכירות מהילד שעוב וגם מהילד החדש לכאול חשיב גוומא, אם לא שכתוב באופן דאין בו משום אסמכתא (ב"ד חשובו). [3] ע"ב ש"ך (שם סק"א) שכתב דמהרא"ש מנבאר דהתערעומוט הוא משום הטיחא כו'. והק' הש"ך מהא דאי דסי' ש"א (ס"ו) גבי השוכר ספינה ופרקה בחצי הדרך כו', ות' דשאני התם כיון שפרקה בחצי הדרך וכבר הורגל עמו משא"כ הכא שחזור מיד. ומזה לכאול יוצא דהיא שההורים חוזרים באמצע השנה אף אם יכול המחנה למצוא ילד אחר בלא טירחא אפ"ה יה' תרעומוט כיון דכבר הורגלה באותו ילד. וע' בערה"ש (ש"ג סק"א). [4] סמ"ע (שם סק"א) ע"פ המבואר בשו"ע ס"י ר"ד (ס"ז). וע' בפתח"ח (פ"ה ס"ב), וחלק עליו בשו"ת שבת הלוי (ח"ז ס"י רל"ו אות ו'), ע"ש. ועכ"פ אם ההורים בעצמם מוצאים ילד אחר שיירשם למחנה אפשר דלכו"ע אין בו משום מחוס"א. וכן לא ידך גיטא אם ההורים חוזרים בתוך שנת הלמודים ויש טירחא למחנה להתחיל עם ילד חדש, לכאול לכו"ע יה' בו משום מחוס"א, והכל לפי הענין. [5] דהוי גרמי בשוגג ופטר, וע"ע בדרו"ח (ב"מ ע"ו ע"ב). [6] שו"ע (ס"ב) דנותן להם שכרם כפועל בטל. וע' בפוסקים מה הוא שיעור הנכוי, ואכמ"ל. [7] כהא דסי' של"ג (ס"ח) האומר לאומן עשה לי דבר פלוני ואקחנו נמך כו' דחייב משום גרמי. וכפ' בדברי מלכאל (ח"ה ס"י רכ"ט) בנדון כע"ז. ולכאול כל זה רק כשההורים ידעו שהמחנה יקנה הדברים על פי דיבורם (ע"י ש"ך ס"י קכ"ט סק"א), וע"ע בשבת הלוי ח"ז ס"י רל"ו). ובכל אופן לכאול עכ"פ גרמא וחייב לצי"ש. ובנוגע להפסד עבודת המדריך, ע' בס' דבר למשפט להגר"ש ראזנבערג שליט"א (ס"ה) שהאר"ך לברר דא"י בכלל דבר האבוד. ואפשר דעכ"פ חשיב גרמא. [8] מדין סיתומתא [9] עיין בפ"ת (ר"ז סק"ג) שכתב בשם שו"ת מים חיים דנתינת דמי לא נחשב כקנין כסף דדעתם רק שיהי' ערבון ולא לעשות קנין גמור, אולם בשו"ת (deposit) אדרוף בית שלמה (י"ד ח"ב סוס"י קפ"ז), כתב דודאי נחשב קנין (וע"ע במנחת פתים ס"י ק"צ מש"כ בענין זה). וכ"ז לגבי מכר, ולגבי שכירות פועלים בכלל וגן ילדים בפרט יש סברות לכאול ולכאול, וקשה להוציא ממון מההורים בכח"ג. [10] עיין בתרו"ח (הובא ברמ"א) דאפילו באונס "קצת" מיפטר, ואכמ"ל.

Q: Do pregnant or nursing women have to fast on 17th of Tammuz or Tish'a B'Av?

A: Pregnant women are exempt from fasting on the 17th of Tammuz^[13]. The Poskim debate whether a pregnant woman within the first 40 days of her pregnancy can also be lenient^[14]. A woman within thirty days of giving birth is exempt even if she is not nursing^[15]. After that, within 24 months of the birth, Hacham Ben-Tziyon writes that she must fast if she is no longer nursing, and Hacham Ovadia allows her to break her fast once she starts feeling a bit uncomfortable. This year (5776) that Tish'a B'Av is postponed to Sunday, Hacham Ovadia treats it like the more lenient fasts^[16], while Hacham Ben-Tziyon is stringent^[17] and treats it as the usual Tish'a B'Av in which they are not exempt^[18].

Sources:

[1] משנב"ס (סי' תקס"ו ס"ק יא) ואול"צ (ח"ג פכ"ט ס"ג) ועוד בשם החיי אדם (כלל קלב ס"ב) [2] חזו"ע (הל' ד' תעניות עמ' כח) [3] ובישוב דברי השו"ע (סי' תקס"ו) שמתחילה התיר לטעום רביעית ושוב כ' לאסור הודחת הפה, המג"א (סק"ו) כ' דלא אסר אלא הדהח ביוזתר מרביעית, ובמאמ"ר (סק"ב) כ' דלא החמיר אלא ט"ב, ועוד י"ל דברחיצת הפה חשש יותר לשמא יבלע, וע"ע באחרונים. [4] כה"ח (סי' תקס"ו אות טז) אול"צ (ח"ג פל"א ס"ה) ועוד בשם האחרונים, ד"א שאסור אכילה בתענית הוא אף בחצי שיעור, ושכ' ואל תעשה עדיף [5] ברכ"י (סי' תקס"ו סק"א) שו"ת יבי"א (ח"י ס' מא) ובחזו"ע (הל' ד' תעניות עמ' כב) ועוד בשם האחרונים, שהרי רבים ס"ל בדעת הרמב"ם והשו"ע (סי' רטו, ע"י ברכ"י ס' מו, ועוד) דאסור ברכה שאינה צריכה הוא מדאורייתא [6] שו"ע סי' תקנ"א ס"ז [7] ברכ"י (שם) בשם המקובלים ובשו"ת חיים שאל (ח"א ס' כד), ובאול"צ (שם ס"ג). ו"א (מג"א) (שם ס"ק כא) שו"ת יח"ד (ח"א ס' לו) ובחזו"ע (עמ' קכ"ט, קל"ד) ועוד שמותר לברך, אך אמנם על בגד חדש נכון להחמיר. ובראש חודש אב אין להתיר אלא לנהוגים היתר באכילת בשר ברי"ח (חזו"ע עמ' קלב). [8] ברכ"י (שם סק"י) ובחזו"ע (הל' ד' תעניות עמ' קל"ח) ועוד [9] בברכ"י סק"ט כ' שקטן כל שלא מבין את הצער בימים אלו יברך, ובחזו"ע (עמ' קל"ד) התיר בכל קטן. וחתן ביום חופתו [לשי' השו"ע (שם ס"ב) שלא נאסרו נישואין אלא מר"ח אב בלבד] יכול לברך שהיין על השלית (אול"צ ח"ג פכ"ה ס"ד). [10] אול"צ פכ"ה ס"ה [11] סי' תקנ"א ס"ד [12] אול"צ (שם) ובשו"ת יבי"א (ח"י ס' נה ח"א אות י'). אמנם לנהוגים ע"פ הב"ח (ש"א פ"ר ב"ר) דברים ס"ז) לאסור רחיצת אפי' בצונן, יש לאסור אף שחייה, ולבד אם הוא לכוף שחייה וכבר התחיל קודם בין המצרים שרשאי להמשיך עד ט' באב (שו"ת רב פעלים אול"ח ח"ד ס' כ"ט ד"ה גם עוד). [13] שו"ע סי' תקמ"ד ס"ה [14] האול"צ (ח"ג פכ"ה ס"ז) מיקל כבר מתחילת ההריון, ו"א [משנב"ס (סי' תקנ"ג סק"ג), חזו"ע (ד' תעניות עמ' נט)] שתוך מ' יום הראשונים אין להקל אא"כ יש לה צער. ובשאר חודשי ההריון אין להחמיר אפי' אם חשה בטוב (חזו"ע עמ' ס). [15] אול"צ שם ס"ז [16] חזו"ע עמ' נ"ז [17] אול"צ פכ"ט ס"ג [18] כמבואר בשו"ע סי' תקמ"ד ס"ה



Halachic Wills And Estates

Conflict between halacha and civil law

By Dayan David Grossman, Shlit"א

The differences between halacha and civil law, have the potential of placing the family of a deceased in a conflict that cannot be resolved. Halacha does not allow a distribution according to civil law. A distribution made contrary to halacha is regarded as an appropriation from the yorshim, and is considered theft. It is nearly universally accepted that the doctrine of *dina demalchuta dina* (the law of the land is the law of the Torah) is inapplicable to yerusha.

On the other hand, distributing the estate pursuant to halacha without the beneficiaries consent is illegal and may expose the Administrator to significant personal liability. Any beneficiary can demand that the Administrator supply a sworn accounting of all estate transactions. An Administrator who distributes an estate contrary to law risks personal liability to the legal beneficiaries for the unlawful distribution.

It is therefore important to create an estate plan that is recognized both by halacha and New York State law, and that yields the same result in bet din and in state court. Doing so prevents a violation of halacha and ensures that the Administrator is not faced with this conflict.

Order of Succession

When one passes away without leaving any type of will, Torah dictates that one's assets are passed on in a very unique manner. This order is in conflict with the legal order of suc-

cession. As such, when a beneficiary act upon their legal rights they are actually taking what is not theirs in the eyes of the Torah. According the Torah, the entire estate of a decedent passes to the decedent's *yoresh* or *yorshim*, heirs who are the nearest relative or group of relatives according to the following order of succession:

1. Husband (but not wife)
2. Sons, then their male descendants, then their female descendants
3. Daughters, then their male descendants, then their female descendants
4. Father
5. Brothers, then their male descendants, then their female descendants
6. Sisters, then their male descendants, then their female descendants
7. Father's father
8. Father's brothers, then their male descendants, then their female descendants
9. Father's sisters, then their male descendants, then their female descendants

Other Important Facts

- The first-born son to the father receives *Pi Shnayim* –a double portion
- Often times, one who drafts a civil will without addressing it Halachically can transgress a Torah prohibition
- Although the Torah's mandate of yerusha is very specific, there are Halachically acceptable ways to structure one's will in a manner which distribute one's estate in the way one would prefer. It is important, though, to put the proper Halachac documentation in place.
- A Halachic will can validate any type of trust or estate planning

For a Halachic will consultation call the Hoshen Mishpat Consultation Line 1.888.ITL.VAAD (485.8223) or email ask@theSHC.org

“Istai”: Our Mentor, Hacham Abdallah Somekh זצ”ל

THE LIFE OF THE GREAT RAV AND ROSH YESHIVA OF BAGHDAD

A BIT OF HISTORY / דברי הימים

A Budding Scholar

The Sephardic Torah world of the past century owes a great deal to the decision of a young man in his twenties to suspend his business ambitions to tend to the creation of the next generation of *Talmide Hachamim*.

The young R’ Ovadia (Abdallah) Somekh, hailed from an aristocratic Iraqi family with business ties across the globe as well as a prestigious rabbinic lineage, tracing back to Ribbi Nissim Ga’on. He was a promising schoolboy, and before long he was learning *Gemara* in-depth with the older students. He became the dedicated student of Hacham Moshe Hayim זצ”ל (grandfather of the *Ben Ish Hai*, and Rav of Baghdad) and Hacham Yaakov Roffe זצ”ל (author of *Shemen HaTov*, *Ohel Yaakov* and more).

Choosing a Path

Sometime after his marriage, Hacham Abdallah joined a partner to run a business, and was taken aback by the disregard his partner had for conducting business in good faith and monetary *Halacha*.

Choosing between the business and rabbinic worlds was not an easy decision to make, but upon realizing the dearth of Torah scholarship among the upcoming generation, the young Ovadia knew that he had a responsibility on his shoulders. Already an accomplished scholar, he took upon himself to teach ten young men the ways of the *Talmud* and the *Poskim*.

Partners in Torah

Only now, Hacham Abdallah was joined by a more serious partner. Mr. Yehezkel Menashe was a world-renowned philanthropist, who truly understood the value of this undertaking and committed to support the young men financially so that they may devote themselves to Torah study. At the time of his passing, some years later, Mr. Menashe was supporting sixty students, who, under the tutelage of Hacham Abdallah, have become masters in *Talmud* and *Halacha*.

After his passing, his son, Mr. Menashe Zbeda, doubled his father’s support and – joined by many more *Ba’ale Battim* – established the Yeshiva in which Hacham Abdallah served as Rosh Yeshiva until his passing: Bet Zilcha. Students from Kurdistan, Persia and India flocked to the Yeshiva whose students have begun to shine across the Torah world, including the *Ben Ish Hai*, Hacham Elisha Dangoor זצ”ל (author of *Gedulat Elisha*, and *Av Bet Din* of Baghdad), Ribbi Eli-

yahu Mani, Rav of Hevron and many more. [These students along with other noteworthy individuals helped establish *Yeshivat Porat Yosef* which produced generations of *Talmide Hachamim*, including Hacham Ovadia Yosef זצ”ל and Hacham Ben-Tziyon Abba Shaul זצ”ל.]

The Rav and his Talmidim

Hacham Abdallah’s success with his students may have had a lot to do with the support and respect he accorded them. Overseeing the meteoric rise of his prime student, the *Ben Ish Hai*, Hacham Abdallah would arrive early at the young R’ Yosef Hayim’s *shiurim*, and rise to his feet when his student would enter the room. In one instance, when a secular newsletter slighted the honor of the *Ben Ish Hai*, Hacham Abdallah staged a full-scale protest and did not rest until the kavod of the *Ben Ish Hai* was restored.

Over the course of many years, Hacham Abdallah and his students compiled the great work “*Zivhe Tzedek*” – on the first part of *Yore De’ah* – in which the toil and camaraderie of the Yeshiva is evident. Hacham Abdallah, author of the majority of this work, took into account his students’ opinions and also visited the slaughterhouses and butcher shops many times to clarify the practical *Halachot* of *Shehita*, *T’refot* and *Issur V’Hetter*. *Zivhe Tzedek* serves as a seminal work on these topics as well as a treasure of the *Minhagim* and *Takkanot* of Baghdad – many of which were instituted by Hacham Abdallah himself.

Laying the Law

Aside from his magnum opus, *Zivhe Tzedek* on *Yore De’ah*, which reflects Hacham Abdallah’s dedication to the adherence to the laws of *Kashrut* in his community, his *Teshuvot* (also titled “*Zivhe Tzedek*”) underscore the impact of his rulings throughout the Sephardic world. Questions ranging from *Dikduk* to *Mikva’ot*, global commerce, transportation and much more are analyzed in depth and with great clarity.

In 1883, the Hachamim of Baghdad were very disturbed by the way in which the *Tefillin* in the city were manufactured. They summoned Hacham Yehuda Ashkenazy ע”ה, an expert from Damascus, who taught the *Tefillin*-makers of the town how to make proper *Tefillin*. To ensure that this problem was fixed, Hacham Abdallah appointed supervisors in all of Baghdad’s synagogues (about seventy in total!) to verify that everyone’s *Tefillin* were kosher.

The Passing of a Tzaddik

The unfortunate – and wondrous – incidents surrounding Hacham Abdallah Somekh’s passing are recounted in many sources. In 1889, there was a widespread plague in Baghdad which forced many of its residents to flee *continued on page 8*



Hacham Abdallah Somekh ztz”l



Tomb of Elisha Kohen Gadol



Hacham Abdallah’s manuscript of *Hazon LaMo’ed*, explaining the *Hochmat Ha’Ibur*

to the nearby villages. The hateful Pasha of Baghdad and his cohorts forbade the Jewish residents from returning to or even burying their dead in the city, displacing many of the living and the dead.

When Hacham Abdallah fell ill and eventually passed away on that year's 18th of Elul, the community was barred from burying him near his family in the city's *Bet Ha'Almin*. In an apparent show of good will, the government allowed to bury him in the courtyard of the ancient tomb of Yehoshua Kohen Gadol. However, once the funeral procession reached the entrance

of the tomb, they discovered that it had been deliberately locked. As an Arab mob formed, a few men lifted the coffin over the gate and buried Hacham Abdallah in a haste – while pretending that the burial had actually taken place outside the gate.

After that, the oppression of the Jews by the Pasha of Baghdad only worsened. Finally, after a few months, activists from London, Paris and Istanbul got involved and pressured the Turkish government to put an end to the Pasha's tyranny. They were successful in returning the displaced Jews to their homes and even received

a permit to bury Hacham Abdallah near his family. Arrangements were made, and with great trepidation, a delegation of *Hachamim*, joined by a heavy guard and medical team, was dispatched to exhume the body and bring it to its rightful resting place. When the grave was opened, everyone was shocked to find Hacham Abdallah's body fully intact with no sign of decomposition whatsoever. The awestruck crowd then conducted a second funeral with rounds of *hespedim* from the *Ben Ish Hai* and the sages of the generation. *Zechuto tagen 'alenu*.

Our Heart and Soul

A Final Word / סוף דבר

By Rabbi Ariel Ovadia

The events leading up to the destruction of the *Bet HaMikdash* took place during the days of Ben HaMetzarim – the three weeks between the 17th of *Tammuz* and *Tish'a B'Av*. To commemorate this terrible tragedy, we observe certain mourning practices. Ribbi Yaakov Skali זצ"ל, student of the *Rashba*, in his *Derashot Torat HaMinha* writes, that the mourning practices – such as not bathing or not wearing leather shoes – symbolize the separation of the soul from the body. When an *Avel* mourns the departure of a *Neshama* from a body, he does not engage in activities that increase the harmony between body and soul. In a similar fashion, *Am Yisrael* mourn the disconnect between Hashem dwelling in the *Bet HaMikdash* – our soul – from the nation. Other tragedies that occurred during this period are

also a form of departure of soul from body, such as the breaking of the *Luhot* and the burning of a *Sefer Torah* בעוה"ר.

Hachamim blame the *Hurban* on the fact that people would not recite *Birkot HaTorah* over the learning of Torah^[1]. The *Ran* in *Nedarim*^[2] quotes *Rabbenu Yona* who says that not reciting these *Berachot* was not the cause of the destruction – but rather a symptom of a larger problem: the lack of respect and genuine understanding of the importance of Torah-study for its own sake. It may be said, that this attitude deprived the Torah-study of its "soul". During this period, we mourn the lost soul of Torah-study and the service of the *Bet HaMikdash*, which ultimately led to its physical destruction. To rectify this, we must infuse our Torah and service of *Hashem* with a heart and a soul, and in this merit, we hope to see the return of the *Shechina* with the rebuilding of *Bet HaMikdash*, Amen!

Sources:

[1] *Bava Metzia* 85b [2] 81a

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