Journal of Halacha and Contemporary Society

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This issue of the
Journal of Halacha and Contemporary Society

is dedicated in memory of

Rabbi Arthur Schick ע"ה

רב אריה בן הרב דוד יוסף ז"ל

נפ' טו שבט תשע"ה

Arthur Schick came to the
Rabbi Jacob Joseph School as a
pre-schooler and remained as a student
through elementary school, high school and
beth medrash and then received semicha.

He served as president of the
Alumni Association and throughout his
life he remained close to the yeshiva.

His life was characterized by endless devotion
to our community and countless acts of
personal charity.

May his memory remain a blessing.

The Family

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Editor

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The Journal of Halacha and Contemporary Society is published twice a year by the Rabbi Jacob Joseph School whose main office is at 3495 Richmond Road, Staten Island, New York, 10306. We welcome comments on the articles included in this issue and suggestions for future issues. They should be sent to the Editor, Rabbi Dovid Cohen at editor@journalofhalacha.org.

Manuscripts submitted for consideration should be in Word format and sent via email to Rabbi Cohen. Each article will be reviewed by competent halachic authority. In view of the particular nature of the Journal, we are especially interested in articles that concern contemporary halachic issues.

More generally, it is the purpose of this Journal to study through the prism of Torah law and values major questions facing us as Jews in the twenty-first century. This encompasses the review of relevant biblical and talmudic passages and the survey of halachic literature, including recent responsa. Most importantly, the Journal of Halacha and Contemporary Society does not present itself as the halachic authority on any question. Rather, the aim is to inform the religious Jewish public of positions taken by respected rabbinic leaders over the generations.

Inquiries regarding subscriptions, back issues of the Journal and related matters can be faxed to 718-686-1506 or sent by email to mschick@mindspring.com, or call 212-334-2285.

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Tribute to
Rabbi Avraham Cohen

When the Journal of Halacha and Contemporary Society was launched nearly thirty-five years ago, Avraham Cohen and I and our families had been close friends for more than a dozen years. We spent summers together at several bungalow colonies, we went to each other's simchas and we spoke often about Jewish communal life. I do not know which of us came up with the idea that evolved into this Journal. Credit for the title is mine, a truly minor achievement when one considers the contents of this esteemed publication. There have been more than three hundred articles on vital halachic and contemporary issues, many of them written by Rabbi Cohen and all of them edited by him.

What makes his service as Editor one of the glorious chapters in American Jewish history is not merely the number of years that he has served in this capacity, but more critically the character of that service. It is a voluntary undertaking and has been from day one. Each issue has been prepared with care and each issue has appeared in a timely way. Each author has been treated with respect. Each comment, whether as a letter to the editor or as a private communication, has received a response.

The value of the Journal of Halacha and Contemporary Society is enhanced by its continued vitality. Each issue speaks to the needs of today and not merely to transient issues that arose years ago and are no longer relevant. My office constantly receives inquiries about articles published many years ago and we regularly get requests for back issues and for the entire set.

If this was the totality of the Rabbi Alfred Cohen story, there would be much to applaud. In fact, there is much more to the story, including a half-century or so of teaching generations of

advanced yeshiva students, first at Brooklyn Talmudic Academy and now for decades at the High School of Yeshiva University in Manhattan. Then there is his service as a pulpit rabbi, for many years at the Young Israel in Canarsie and now also for many years at Congregation Ohaiv Yisroel of Spring Valley. His rabbinical role encompasses a great deal more than speaking from the pulpit and teaching classes to his congregants. It includes a vast amount of pastoral work, of listening to members of his shul and community who come to him for guidance, and for providing assistance in times of need.

These multiple time-consuming responsibilities are testimony to Rabbi Cohen's possession of what is perhaps the single most vital gift in contemporary life. He is a genius in the utilization of time. He gets so much done because while he is never in a hurry, he always understands that there are other responsibilities that need attention. In fifty years of friendship, I have yet to hear from him an immodest word.

In the Rabbinate, as well as in this publication, Rabbi Cohen has been blessed by the partnership forged with his remarkably talented wife, Miriam. In addition to partnering with her husband and raising a wonderful family, Mrs. Cohen has made her own notable contributions to both scholarship and Jewish communal life. She has taught Jewish History and other *limudei Kodesh* subjects in Yeshiva High Schools and Seminaries for decades, in addition to teaching history at Kingsborough Community College. She also teaches adult-education classes in the Sephardic community, where she has served as a teacher and mentor for generations of women.

The Rabbi Jacob Joseph School and our community have been blessed by the exalted contribution of Rabbi Avraham Cohen and Mrs. Cohen. There is an additional blessing and it is that editorship of the Journal is now being assumed by their remarkably talented son, Rabbi Dovid Cohen of Chicago. There is joy and gratitude in the hearts of his parents that he has accepted this responsibility. We share in this joy because

we know that the Journal will continue to be in truly good hands and that it will continue to make a vital contribution to contemporary Jewish life.

As we thank Rabbi Cohen for what he has achieved, we express the *tefilla* that he and Mrs. Cohen and the entire family will be blessed with years of health, simcha and nachas.

MARVIN SCHICK
President, Rabbi Jacob Joseph School

Adoption – Some Halachic Guidelines and Attitudes

Rabbi Gedalia Dov Schwartz

The definition of adoption is given as "the act of a person taking upon himself the position of parent to another who is not in fact or is not treated by law as his child, and the person so acting is recognized by the law as having the rights and duties of a parent by nature".[1]

The act of taking a child into one's life and home, raising him/her as one's own, is almost universally viewed in most societies as a wonderfully altruistic undertaking, forming bonds which are often as strong and loving as those between biological parents and their children. This reality is acknowledged by the Talmud, which states

שכל המגדל יתם ויתומה בתוך ביתו, מעלה עליו הכתוב כאילו ילדו[2]

Whoever raises a male or female orphan in his house is equated by scripture as if he gave birth to him.

In today's society, we are aware of the legal aspects of adoption as defined by the prevailing law of the country, which prescribes the responsibilities of both the adopters and the adopted individual. Jewish law as well has guidelines for

1. *Encyclopedia Britannica*, Volume 1, page 177.

2. Gemara, *Megillah*13a and *Sanhedrin*19b. The Gemara explains that this refers to Batya, daughter of Pharoah, who raised Moses after finding him in the Nile (Chronicles I:4).

Rabbi Schwartz is Rosh Beit Din *of the Chicago Rabbinical Council and* Av Beit Din *of the Beit Din of America.*

the parents as well as the child. There are a number of Talmudic and Rabbinic sources that refer to matters of adoption and their ramifications in Jewish law, for despite the great mitzvah inherent in adoption, there are certain halachic issues which arise. The purpose of this essay is to briefly present some of these references as they relate to situations and problems created by the adoption itself.

It is most interesting to note that the above-quoted statement from our sages as to the relationship between the adopting parent and the adoptive child was the subject of controversy as to its full practical meaning. Does an adopted child have the same responsibilities vis-à-vis his adopted parents as he would toward his biological ones?

Rav Yaakov Dovid Willowski, known as *Ridbaz*,[3] ruled that the adopted child is obligated to observe full *shiva* (seven days of mourning) and recite the *kaddish* after his foster father, but this position was severely criticized by Rav Shimon Albaum of Chicago. Rav Albaum's opposition to this decision was based on the concern that it can lead to errors of releasing a widow of the father without *chalitzah*.[4] The Torah mandates that if a man dies without offspring, his widow must either marry his brother (*yibum*, an option which is not done nowadays) or else receive a "release" from him (*chalitzah*) before she can re-marry.[5] If the adopted child observes full *shiva* for his "father", possibly no one would realize that his widowed "mother" is not free to re-marry. Potentially, therefore, the adoptive child's sitting *shiva* could lead to a disastrous halachic mistake.

The ramifications of the act of raising a stranger's orphan are discussed by the great Rabbinic decisor (*posek*) of the past generation, Harav Yosef Eliyahu Henkin, who distinguishes between the adoption of a Jewish foster child and that of a

3. Lived in America and Israel in the past century.

4. *Sefer Divrei Emet*, page 137.

5. *Devarim* 25:5.

non-Jewish one, who would have to undergo the process of conversion by an authoritative Beth Din. Harav Henkin is strongly opposed to the adoption of non-Jewish children even after their conversion, because of their genetic background of non-Jewish generations which were steeped in non-Jewish practices. He instinctively felt that many of these children, even if they remained observant after the time of Bar Mitzvah, would somehow cause an erosion in the sanctity of the historic Jewish community (*kedushat Klal Yisrael)*. This idea springs from the Talmudic statement of R. Chelbo קשים גרים לישראל כספחת, "*converts are as difficult for Israel as a plague*".[6] In other words, despite the Talmudic praise for someone who raises an orphan as his own child, he was reluctant to extend this approval to raising a non-Jewish child, even after conversion. He was also concerned that the original biological parents might later want their children returned to them, after they were raised as observant Jews.

As far as the children who are adopted from foundling agencies, etc., rather than directly from the biological parent, Rav Henkin points out certain difficulties: if the agency claims that the child is Jewish by virtue of having a Jewish birth mother, we cannot always rely on that unless there is solid testimony or documentation that would be acceptable halachically. Just because a woman claims to be Jewish when surrendering her child to an agency, that is not sufficient for halachic acceptability as to her status. Furthermore, in such cases there exists the possibility of illegitimacy or *mamzerut*, implying a forbidden relationship between a Jewish woman and someone else who, although Jewish, would not be permitted: for example, the child might be the result of an incestuous relationship or of a liaison between a Jewish married woman and someone other than her husband. Rav Henkin emphasizes adoption should be undertaken only if one knows that the birth parents were observant Jews. Also,

6. Gemara, *Yevamot* 47b.

he holds that the child so adopted must refer to the adoptive parents as uncle and aunt and not as mother and father. Consequently, in all documents referring to the child's father it should be mentioned that the father is המגדלו, *the one who raised him*. The child is called *the son (or daughter) of one who raised him (her)*.[7] In referring to the raising of foster Jewish children as described above, the attitude is described as praiseworthy.

Harav Moshe Feinstein, in one of his responsa, addresses many of the halachic concerns of Harav Henkin in regard to adoption, and details all cautionary measures that arise as a consequence of adopting Jewish foundlings when little is known about the Jewish parents. He discusses the question of whether the children produced by such relationships may have the taint of *mamzerut* from either parent in the same manner as described by Harav Henkin. Although he concedes that adoption of non-Jewish children would definitely avoid the problem of *mamzerut*, nevertheless Rav Moshe writes that he advises against bringing into the Jewish community minor non-Jewish children as converts…כי אין בזה שום צורך ותכלית רק כשבא גם מעצמו להתגייר לשם שמים צריך לקבלו, *for there is no need or purpose, only if he came by himself to be converted with true sincerity (l'shem shomayim), then we need to accept him*.[8] Rav Moshe's focus seems to be the questionable desirability of converting someone to be Jewish when there is no impetus on the part of the non-Jew to have this happen.

Rav Gedalia Felder of Toronto, in his initial work on Conversion and Adoption in Jewish Law, *Nachlat Zvi,* Volume 1, addresses many of the attitudes, problems and halachic questions of adoption herein discussed, before outlining procedures of conversion in general. In fact, the above observations of Harav Henkin are those expressed by Rav

7. *Kitvei Rav Henkin,* Volume 2, Number 72.
8. *Iggerot Moshe, Yoreh Deah* I:162.

Henkin on examining and reviewing Rav Felder's work. Rav Felder engaged in exhaustive halachic research regarding the matter of adopting non-Jewish children who are either in orphanages or given up for adoption. He concluded that whoever had legal control of the child, and not necessarily the biological parent, is considered halachically as the parent with jurisdiction to transfer the child to other caretakers. He found full halachic support for this ruling in the responsa of Harav Kook and Harav Uziel, the former Chief Rabbis of Israel.[9]

Of course, in dealing with the adoption of a non-Jewish child and having the conversion performed upon the child as a minor in the presence of a Beth Din, the adopted child must be informed that he was adopted and that, on reaching his age of majority, i.e. bar/bat mitzvah, (s)he has the option of rejecting the mitzvot. This affirmation or rejection does not require any formal convening of a Beth Din, but rather his actions in carrying out mitzvot would be an affirmation of the desire to continue to be Jewish, and non-performance as a rejection of his conversion. This approach is indicated in the above-mentioned responsum of Rav Moshe Feinstein. For many of the actual procedures and behavior regarding adoption of children, I would refer the reader to Rav Felder's work, describing actual details and situations.

Moreover, in handling the relationship between the adoptive parents and the child, there is controversy regarding the situations of *yichud*, the Jewish law which precludes being alone with someone of the opposite gender. Under normal circumstances, a man may be alone with his daughter, and a woman may be alone with her son. In the case of adoption where the child is not only another gender but also biologically a stranger, how do we confront the challenge of *yichud*? The *Chazon Ish* ruled that adoption does not remove the restrictions of *yichud*, regardless of the age when the act of adoption took place. This also includes embracing and kissing

9. See page 19 of *Nachalat Zvi*.

of any sort, which is not prohibited in a normal biological family.[10] Consequently, according to this opinion, it would be very difficult to follow these guidelines in the course of raising children.

In contrast to the above ruling, Harav Eliezer Yehuda Waldenberg,[11] in confronting this problem of *yichud* and similar situations, follows a lenient approach. His rulings are based on the language of the great *Posek*, R. Mordechai Yoffe, known as the *Baal Halevushim*, who explains the leniency of a mother and her son, a father and his daughter in permitting *yichud* because of a lack of erotic arousal between them since they are identified as parents and not as some outside stranger. The reasoning should follow that the same emotions would exist between adoptive parents and their adopted offspring. While keeping in mind great sensitivity to childless couples seeking to adopt children, he establishes the following guidelines in order not to contravene the rules of *yichud*: In adopting a baby girl, she should not be older than the age of three, and for a boy not older than the age of nine, because adopting above those ages eventually would create a problem of *yichud*. In arriving at this decision, he delves into the explanations of other *Poskim* in regard to *yichud* with a *niddah*, a woman in her menstrual cycle, which is permitted. On the basis of certain halachic comparisons, he strengthens his above decision based on the clarification of the *Levush* regarding *yichud*.

In concluding this essay on the topic of adoption, I stress the point that it represents only a few matters on the topic, rather than being a comprehensive and definitive outline of rules and regulations. At the same time, in approaching these subjects the feeling and elements of compassion and sensitivity should be in the forefront of our attitudes. With the advance of

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10. See *Sefer Moadim U'zmanim,* Volume 4, Chapter 316, Note 1, citing *Chazon Ish*, and also see *Teshuvot Vehanhagot*, Volume 1, number 774.

11. *Tzitz Eliezer*, Volume 6, Chapter 40, Number 21.

medical science in the area of human fertility there is an even greater possibility for couples to have natural healthy offspring in fulfillment of the Torah commandment of "be fruitful and multiply", thereby reducing the frequency of adoption, with its many halachic issues.

Hospice Care

Edward R. Burns, M.D.

There has been a natural aversion and distrust towards the concept of hospice care for end of life palliation in the Orthodox Jewish community. Although there are little firm sociologic data to support such a statement, it is generally accepted that for patients who have various terminal diseases such as cancer, degenerative neurologic diseases and multi organ failures one still should "do everything" as it may save the patient. This approach differs sharply from both the gentile population and the non-observant Jewish population, which frequently embrace hospice for end-of-life care. This difference is easily explained by a rich tradition of Talmudic approaches that address the sanctity of life as well as a general lack of knowledge as to what services hospice can and should provide. An examination of the rulings of contemporary *poskim* will demonstrate that there can be a place for hospice care in appropriate circumstances in accord with Jewish law and tradition.

Why is there an issue in providing solely palliative care according to Halacha?

Jewish teachings are suffused by the concept that Jewish life is of infinite value and, as such, every moment of it has inestimable worth. That reasoning suggests that our obligation to treat patients are the same whether treatment can prolong life for many years or only several seconds. In fact there is a Talmudic source for this conclusion. The *Shulchan Aruch*

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(Orach Chaim 329:4) teaches that if a building collapses on the Sabbath and a person is trapped under the debris, then one is obligated to do everything, including violating all Sabbath laws, to save him even if he may survive for only a few moments. This is derived from the biblical verse "You should keep my statutes and my laws, which if a man obeys, *'va'chai bahem'* [he shall live by them], "(*Vayikra* 18:5). The phrase "he shall live through them" is interpreted to mean that he shall not die because of them, thus justifying Sabbath violations to save a life. This is one of the major sources of the "do everything" approach.

Diametrically opposed to this position is a Talmudic passage from which it can be inferred that for patients in extremis one need not do everything. The Gemara in *Ketubot* 104a reports the story of Rav Yehuda Hanasi, ("Rebbe"), the redactor of the Mishnah, who suffered from what is described as a severe terminal gastrointestinal disease. His condition was so poor that it was only the constant prayers of his disciples that was keeping him alive. Rebbe had a maidservant who was considered to be very pious. When she saw how much Rebbe physically suffered from his disease, she prayed that the angels of heaven who deal with death would overpower the angels of earth mustered by the prayers of Rebbe's disciples to protect him from death. Her prayers initially did not work because Rebbe's multitude of students prayed fervently that he should live. The maidservant then took a heavy clay urn and threw it on the floor, shattering it completely and generating a great sound. The loud noise so startled the students that they momentarily stopped praying, thus allowing the soul of Rebbe to depart to its eternal rest.

The Ran,[1] Rabbeinu Nissim, a 13th century authority, states that it is both permissible and praiseworthy to pray for the death of a patient who is gravely ill and in extreme pain. Furthermore, the Gemara in *Taanit* 23a recounts the story of

1. *Nedarim* 40a.

Choni Hama'agil, the preeminent Torah scholar of his era, who fell asleep for 70 years. Upon awakening from his long slumber, he had become a forgotten man and was not given his due honor even when entering his old *beit medrash*. He was in such psychological pain that he prayed for his own death--and it was granted. These episodes clearly demonstrate that in the face of physical or mental suffering, there are appropriate times to pray for someone to die quickly, a lesson that contradicts the concept of requiring the extension of life at all costs.

Distinct stages in the definition of "end of life"

The generic expression "end of life" is too broad and vague to be helpful in making halachic decisions. At the extreme state is a *goses*, an individual whose life and soul are just about to depart the body. For a *goses* no medical therapy is appropriate; interventions are prohibited lest one prematurely snuff out his life. Rav Moshe Tendler quotes his father-in-law, Rav Moshe Feinstein, as defining a *goses* as a person who is in extremis and cannot survive more than three days.[2,3,4] In contemporary times, it is quite difficult to identify exactly who should be characterized as a *goses*, given the fact that so many critically ill people are maintained on respirators, intravenous drugs and fluids, and sometimes on cardiac assist devices. The definition does imply irreversible death which cannot be prolonged by artificial means. In any case, we need not deal with this category in depth, as the controversies in end-of-life care primarily deal with the pre-*goses* state.

More relevant is the state often analogized to a *treifah*. A *treifah* animal is one which is not expected to survive more than one year. A human *treifah* is a person who is alive but

2. Tendler, M.D. *Responsa of Rav Moshe Feinstein* Vol. I *Care of the critically ill*, KTAV, Hoboken, NJ 1996.

3. *Iggerot Moshe, Choshen Mishpat* Vol.2 75:5.

4. *Perisha, Yoreh Deah* 339:5.

dying.[5] A *treifah* is the concept that according to many Torah scholars defines terminal illness today.[6] Many halachic questions related to the permissibility of high-risk surgery depend on whether a person is in the *treifah* state. Some *poskim* believe that in humans, one should be classified as a *treifah* only if expected to live for less than six months, while others maintain that a *treifah* for humans is also 12 months.[7,8] This dichotomy of opinion is dependent on the definition of a human *treifah*. The Rambam opines that the definition varies over time periods, depending on the medical expertise of the generation.[9] Others disagree with this position.[10] In either case, the relevant issue relates to a person with a defined terminal illness who is not expected to survive in the long term despite therapy. For the purposes of this study, we will define a terminal condition as one that is irreversible, incurable and will directly and rapidly cause the patient's demise.However, in actual practice, a competent halachic authority needs to make that ruling on a case-by-case manner.

One final concept is that of medical futility. This is defined as an exceedingly small likelihood that a specific intervention such as chemotherapy or surgery will benefit the patient. To be more specific, it means that the treatment is highly unlikely to either extend the person's life or make her or him feel better. Since the goal of medicine is to help the sick and not to provide treatments that do not benefit patients, it is important for physicians confronting patients with terminal illnesses at the end of life to consider whether specific treatments are futile.

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5. Rambam, *Mishneh Torah, Issurei Bi'ah* 1:12.

6. Steinberg A: *Encyclopedia of Jewsih Medical Ethics*. 2003 Vol. 3, pg.1046, Feldheim, Jerusalem.

7. *Iggerot Moshe, Choshen Mishpat* Vol. 2 75:2.

8. *Chochmat Shlomo Yoreh Deah* 155:1.

9. Rambam, *Hilchot Rotzeach* 2:8.

10. *Chazon Ish, Even Haezer, Hilchot Ishut* 26:3.

What medical services are required for the terminal patient?

Although secular medical ethicists have discussed a broad range of medical therapies felt to be unnecessary or inappropriate for the dying patient, Halacha takes a more proscriptive view. In 1995 four giants of Torah in Israel published a list of mandatory treatments for the terminally ill. These included intravenous or gastric feeding tube nutrition, intravenous fluid replacement, insulin therapy if needed, controlled doses of morphine for pain relief, antibiotics as needed and blood transfusions if needed. The Rabbis were R. Yoseph Shalom Eliashiv, R. Shlomo Zalman Auerbach, R. Shmuel HaLevi Wozner, and R. Nissim Karelitz.[11] Similarly, Rabbi Moshe Feinstein states that even for terminally ill patients there is a clear-cut benefit of nutrition and, in the absence of contraindications, the patient should be given intravenous feeding.[12]

Secular ethicists and many physicians are against the use of feeding tubes in dying patients or those with advanced dementia, marshaling evidence that their use is not clearly associated with increased survival and may promote serious adverse consequences such as aspiration and subsequent pneumonia. From a halachic perspective these arguments are not relevant given the rulings above, and patient families have the right to demand their use unless absolutely contraindicated. While IV hydration and nutrition might be preferred in the short term, the ability to maintain long-term intravenous access is frequently limited due to difficulties in keeping veins patent. Thus, a feeding tube may become necessary.

The Talmud itself may hint at the concept of a feeding tube. When Rabban Yohanan ben Zakkai was negotiating with the

11. *Yated Ne'eman 29 Kislev* 5755.

12. *Iggerot Moshe, Choshen Mishpat* II:74, 1984.

Roman Emperor Vespasian, he said to him, "Give me Yavneh and its sages, the family of Rabban Gamliel, and doctors to cure Rabbi Zadok."[13] Rav Zadok had fasted extensively for 40 years to stave off the destruction of Jerusalem, and became deathly ill with contraction and shriveling of his intestines. The Talmud suggests that the care for Rav Zadok was a process of graduated feeding from liquids to semisolids, akin to what we now do with feeding tubes.[14]

Rabbinic opinions regarding aggressive therapy for terminally ill patients

Consistent with the introductory themes of "doing everything" versus "not", there is a broad diversity of contemporary rabbinic opinions as to the general theme of aggressive therapy. We will deal with some of these major opinions before focusing on specific therapies.

In the "do everything" camp, most prominently, is Rabbi Eliezer Waldenberg, a pre-eminent *posek* who often ruled on medical issues, who opined that the physician must try to extend life and treat all patients even in the face of physical suffering and even if the patient refuses treatment.[15]

Opposing this somewhat lone view are the positions of other *Gedolei Yisrael*, notably, Rabbis Y.S. Eliashiv, S.Z Auerbach, and M. Feinstein. As an example, Rav Eliashiv is quoted that if a terminally-ill patient is suffering terrible anguish and requests that his life not be extended by treatments that increase his suffering, it is permitted to withhold life-prolonging treatment, and there is no prohibition to not extending life in these circumstances.[16]

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13. *Gittin* 56b.

14. Rav Moshe Faskowitz, personal communication.

15. *Tzitz Eliezer*, Vol. 5, Ramat Rachel #288.

16. Abraham A.A., *Nishmat Avraham* Part 4, *Yoreh Deah* 339.2 Artscroll, NY, 2003.

Rav Auerbach states that "in terminal states of illness, there is no requirement to take measures to extend this period and cause further pain and suffering."[17]

Controversial Issues in End of Life Care

Do not resuscitate (DNR) – Before undertaking a discussion of this topic, it is appropriate to define it. DNR means do not perform cardiopulmonary resuscitation. CPR is undertaken when a patient's heart stops, or he or she stops breathing. In the setting of a healthcare facility, the procedure entails a doctor or nurse compressing the patient's chest by at least 2 inches at a rate of 100 compressions a minute in order to externally compress the heart and maintain blood flow to the brain and other tissues. Simultaneously, the patient needs to be given a source of oxygen, either through breaths into the mouth or via a compressible bag connected to oxygen. These measures alone are rarely successful, so they must be supplemented by intravenous drugs and an externally administered electric shock to the heart, termed defibrillation, or in the case of a respiratory arrest, connection of the patient to a mechanical ventilation machine, a respirator. CPR is continued until the patient either resumes having a heartbeat and pulse or, if the procedure is unsuccessful, the patient is declared dead.

CPR has about a 5% chance of survival in elderly patients and an even lower success rate in the terminally ill. CPR can cause rib fractures and those few who survive are often left with severe and irreversible neurologic damage.[18] A recent meta-analysis that amalgamated data from 47 separate studies that reported survival to discharge in hospitalized adult cancer patients involving 1707 patients who underwent CPR

17. Op. cit. and *Minchat Shlomo* No. 91,sec 24.

18. Kinzbrunner BM: "Jewish Medical Ethics and End-of-Life Care"; *J Palliative Med* 2004;Vol 7, No.4, pp. 558-573.

found that in patients with metastatic disease, there was a 5.6% success rate of CPR. These included rates of 3.4% for patients with lymphoma and less than 1% for those with leukemia.[19]

Taken together, these studies show a very low rate of success of CPR in terminally-ill patients, coupled with a high risk of irreversible brain damage in those who do survive. These medical facts should inform halachic decisions to either allow a "Do not resuscitate" order on a specific patient or mandate that CPR be performed.

In halachic discussions of DNR, it is accepted by many that CPR may be withheld from or refused by Jewish patients who are terminally ill when the patient states his or her wishes.[20] Similarly, in the appropriate circumstance, to be determined by a qualified Orthodox rabbi, it is permissible to withhold CPR and attachment of a patient to a respirator in the case of terminal illness.[21,22]

Do Not Intubate (DNI) – This order differs from DNR in that it applies to individuals who have a normal heartbeat but cannot breathe on their own sufficiently well to maintain a normal oxygen level in the blood. Examples of patients and diagnoses to which this applies include terminal patients who develop overwhelming pneumonia or massive pulmonary embolism, patients with terminal emphysema and patients with amyotrophic lateral sclerosis (ALS). The latter condition is a neurologic disorder in which patients progressively lose

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19. Reisfield GM, Wallace SK, Munsell MF, Wenn FJ, Alvarez ER, Wilson GR: "Survival in cancer patients undergoing in-hospital cardiopulmonary resuscitation: A meta-analysis". *J Resuscitation*, 2006 71:152-160.

20. Schostak Z: "Ethical guidelines for the treatment of the dying elderly". *J Halacha Contemp Soc* 1991, Fall:XII, 62-86. Quotes opinion of Rav Shlomo Zalman Auerbach, cited by A.S. Abraham in *Halachah Urefuah* 2:189.

21. Steinberg A: *Encyclopedia of Jewsih Medical Ethics*. 2003 Vol. 3, pg.1058, Feldheim, Jerusalem.

22. *Iggerot Moshe*, *Choshen Mishpat*, Vol. 7, 74:1.

all of their muscle activity, including that of the respiratory muscles required for breathing, while maintaining full cognitive ability. Once they can no longer breathe on their own, patients must be placed on a respirator or else they will die. As the disease is incurable, once on the respirator, they can last for years and years, totally paralyzed and unable to communicate despite have full mental capacity.

Several *poskim* rule that it is permissible to withhold connecting a patient with ALS to a respirator if that is his or her wish, because of the profound suffering he or she will experience for many years. This approach is held by Rabbis S.Z. Auerbach, Y.S. Eliashiv and I. Lau.[23]

If a terminal patient has a treatable pneumonia in which it is appropriate to treat that pneumonia, or a case of likely reversible congestive heart failure (fluid in the lungs), and the patient needs a respirator to tide him or her over till the pulmonary process is cleared (see use of antibiotics), then a DNI is not appropriate.

Blood transfusions – Most *poskim* require blood transfusions as needed for terminally ill patients. Rav Moshe Feinstein explained that the transfused red blood cells aid in oxygenation and can make the patient more comfortable. If the patient is in deep permanent coma or clinically brain dead, then transfusions may not be necessary.

Removal from a Respirator – In general, only withholding life-prolonging interventions is permitted by Halacha, but it is forbidden to withdraw therapy already started. Stopping therapy is considered the performance of an action while withholding therapy is considered a passive non-action. Most Rabbis rule that it is never permissible to disconnect a patient from a respirator if that is what is needed to maintain life.[24]

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23. *Nishmat Avraham* Part 4, *Yoreh Deah* 339:2.
24. *Tzitz Eliezer* Part #17 #72:13.

Rav Moshe Feinstein, in a novel position, states that if a respirator needs to be serviced or if the patient needs to be removed from the respirator for a minute or so to suction out respiratory secretions, then there is no requirement to reconnect the respirator if medical observation ascertains that the patient is not breathing spontaneously.[25] This position led to the development of integrated timers on respirators that were developed in Israel, to allow temporary automatic shutoff to ascertain whether a patient is capable of spontaneous breathing. Modern day respirators no longer need to be disconnected to allow for suctioning.

With regard to initially connecting a terminally-ill patient to a respirator, that issue will be dealt with in the section on general principles. Special note must be given for the patient with amyotrophic lateral sclerosis (ALS). This terrible disease causes complete muscle paralysis, eventually affecting the respiratory muscles, while maintaining the patient's brain function completely intact. Eventually, they cannot breathe on their own and are forced to decide whether to go on to a respirator and live the rest of their life completely paralyzed, unable to communicate and respirator-dependent while being fully cognizant of the world around them. Most patients elect not to go onto a respirator and face decades of total paralysis and incredible suffering, choosing instead hospice care during the terminal stages of their disease. Whether this is allowable under Halacha is controversial. Dr. Abraham S. Abraham cites a discussion he had with Rav Auerbach in which Rav Auerbach allowed a patient with ALS to refuse ventilator treatment.[26] Needless to say, such a decision requires close consultation with a sensitive and highly experienced *posek* .

Dialysis – Dialysis is indicated in the face of kidney failure that is so severe that the patient will die without it. As the risk of initiating dialysis is relatively small, then if the patient is

25. *Iggerot Moshe Yoreh Deah* Part 3 #132.

26. *Nishmat Avraham, Yoreh Deah* 339:2.

not otherwise suffering from pain, it is appropriate to provide this treatment. This is especially relevant to provide emotional support so that the patient does not feel neglected.[27]Naturally, if the patient is a *goses*, then it is prohibited to provide such an intervention.

According to Rav Moshe Feinstein, in his discussion of pneumonia treatment,

> If the terminally ill patient is in great pain, and he would prefer to die rather than continue living under these conditions, it may well be proper not to treat him in any manner that would prolong the dying process. This means it might be best to withhold treatment for the second illness, since if the pneumonia is cured, it would impose on the patient the burden of his first disease, for which relief is not available.[28]

It is possible that the same reasoning would apply to initiating dialysis.

Rav Moshe continues that this is a decision which the patient must make. When the patient is incompetent, his family must be consulted, since the mitzvah "to heal" initially falls on the family. However, the family's authority is not absolute. It is subservient to halachic and medical opinion.[29]

Antibiotics – Antibiotics are one of the several items that the four Israeli *poskim* mentioned above require in terminally ill patients.[30] However, in the case of a patient who is suffering from great pain, Rav Moshe Feinstein's dictate in the case of pneumonia may apply, and antibiotics could be withheld, but that would depend on a rabbinic ruling.

Chemotherapy – This is a nuanced topic both from a

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27. *Iggerot Moshe Choshen Mishpat* II:74 (1984).
28. Loc. cit.
29. Loc. Cit.
30. *Yated Ne'eman* op.cit.

medical as well as halachic perspective. Cancer chemotherapy, as well as radiotherapy and biologic therapy, is given in one of three settings. It may be given as adjuvant therapy in association with surgery to prevent recurrences of the cancer. This is always halachically appropriate when medically indicated. It may be given for curative purposes, again always halachically appropriate. Finally, it may be given to terminally-ill patients for palliation. In the latter case, the therapy might be prescribed to effect tumor shrinkage which can make a patient feel better and possibly prolong life, but rarely so. Alternatively, oncologists may prescribe "so-called palliative chemotherapy" even when it is not expected to work, but merely to give the appearance of "doing something". This is often demanded by families. Some Rabbis require disease specific medications to be given to a terminally-ill patient, even if the treatment cannot cure him.[31] According to Rav Moshe Feinstein, one should not give these medications because they are of no help, but only prolong the life of suffering.[32]

In deciding between these two opposing opinions, one need take into account how much additional suffering the futile chemotherapy will cause. If the therapy will cause increased suffering in the face of medical futility, it probably should not be given. Yet, if the chemotherapy is not expected to prolong the patient's life beyond twelve months it would be the patient's choice as to whether to accept palliative chemotherapy, assuming he or she is capable of making that choice.

A recent study from the Dana Farber Cancer Institute of Harvard University and Cornell University Medical College involved 386 terminally-ill cancer patients. They entered a study in which about half elected to have chemotherapy that was limited to palliation with no expectation of cure or

31. Rabbi B.P. Toledano *Barkai* Vol. 4, 5747 p.428.

32. *Iggerot Moshe*, *Choshen Mishpat* II #74:1 73:5.

improvement, and half elected to have palliative care with no chemotherapy. The average time to death was about four months and there was no difference in overall survival between patients receiving palliative chemotherapy and those who were not. The use of palliative chemotherapy was actually associated with an increased risk of dying in an intensive care unit, a decreased risk of dying at home, and a lower likelihood that patients died in their preferred place.[33] This gives further support that palliative chemotherapy is usually not helpful and therefore not indicated, especially if it is highly toxic and will increase the patient's suffering.

It should be noted that newer biologic agents, including gene-based therapies, are becoming available as part of clinical trials and eventually will become FDA approved for treatment. As these newer agents may both extend and improve life, even if not curative, they may eventually be widely recommended for palliative therapy and would then be halachically appropriate.

Surgery – A nuanced view of the subject of surgery for terminally ill patients is also required. Some procedures may be performed to make a patient more comfortable or even to alleviate acute pain. These are almost always sanctioned by Halacha as they improve the patient's quality of life, sometimes immediately. The controversial issue revolves around risky surgery that may extend life but may be so dangerous as to pose an imminent danger for survival. Here, Rav Moshe Feinstein provides a rational approach which is relevant to both risky surgery as well a high-risk medical therapy. He states that for a patient who would not survive a year if untreated, but the treatment involves a significant risk, then it is permissible to assume a large risk in order to achieve a cure if death would be certain without the treatment.

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33. Wright AA, Zhang B, Keating NL, Weeks JC, Progerson HG: "Associations between palliative chemotherapy and adult cancer patients' end of life care and place' of death:prospective cohort study" *BMJ* 2014;348:1219.

"However, if the treatment will only prolong life for only a few months and not for a full year while the patient may die immediately because of the treatment's toxicity, I believe it is forbidden to undertake such a course of treatment."[34]

Narcotics for pain relief – Medication may be chosen to obtain the maximum comfort for terminally-ill patients with intractable pain, even if it renders the patient less responsive.[35] While there may be a fear that high dose narcotics may cause a patient to stop breathing, this can usually be mitigated by adding small incremental doses which are designed to achieve pain relief rather than respiratory depression.

Definition of Hospice and Palliative Care

Hospice is a home or hospital established to relieve the physical and emotional suffering of the dying. Although special hospitals for the terminally ill existed prior to the 20th century, it was not until after World War II that recognition of the special needs of the dying led to the modern hospice movement. Cicely Saunders, one of the initiators of the movement and the founder of St. Christopher's Hospice, London (1967), and other health professionals recognized that many established procedures of modern medical care could be inappropriate when applied to those who are dying. The aggressive life-prolonging measures routinely taken in intensive-care units often only increased the discomfort and isolation of terminally-ill patients and deprived them of the opportunity to die in a peaceful and dignified fashion. In response to the absence in the medical system of provisions for the supportive care of this class of patients, the modern hospice was developed.

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34. *Iggerot Moshe*, *Choshen Mishpat* II:75 (1984).

35. Loike J, Gillick M, Mayer S, Prager K, Simon JR, Steinberg A, Tendler MD, Willig M, and Fischbach RL: "The critical role of religion: Caring for the dying patient from the orthodox Jewish perspective". *J Pall Medicine:* 13(10) 1-5, 2010.

The hospice functions as a sympathetic and reassuring environment dedicated to making the last days of the dying as pleasant as possible. The prevention of physical pain is the first priority, and analgesics, tranquilizers, and physical therapy are used to alleviate physical suffering. Hospices emphasize the prevention, rather than the mere control, of pain through vigilant monitoring and by the tailoring of drugs and their dosages to patients' individual needs. Patients in hospices receive moral support from loved ones as well as the staff itself, and a variety of measures are used to further their emotional and spiritual well-being.

Patients are usually admitted to a hospice on referral by a physician after a prognosis for survival of only months or weeks. Care may be provided completely within a health facility, on an outpatient basis, or at home.[36]

Palliative care, on the other hand, seeks to improve the quality of life of patients with terminal disease through the prevention and relief of suffering. It is facilitated by the early identification of life-threatening disease and by the treatment of pain and disease-associated problems, including those that are physical, psychological, social, or spiritual in nature. Palliative care is also sometimes described as hospice, but is a more general approach. While *hospice care* does imply palliative care, it is specific to care provided near the end of life. In contrast, palliative care covers the duration of a patient's illness and, hence, may be delivered over the course of years.[37]

Home versus Inpatient Hospice

For patients who can be managed at home by family and

36. "Hospice." *Encyclopaedia Britannica Online Academic Edition*. Encyclopædia Britannica Inc., 2014.

37. "Palliative care." *Encyclopaedia Britannica Online Academic Edition*. Encyclopædia Britannica Inc., 2014.

with help, hospice services can be provided to allow a patient to live his or her final days at home and to die at home. This is often a patient preference. The hospice organization will work together with the patient's physician and provide skilled nursing visits, management of pain medication and social work consultation. The assigned case manager can also facilitate transfer to inpatient hospice if needed. For most of the day, though, there are no hospice personnel present within the home. The major advantage of home hospice care is the comprehensive management of pain and social service needs. It is important to appreciate that while Medicare will pay for all aspects of home hospice care, it will not cover chemotherapy or other drugs to treat the underlying illness once the patient chooses to receive hospice care. As such, all decisions and discussions as to the appropriateness of not continuing palliative chemotherapy and the like must be made before choosing hospice. One can, however, reverse one's decision and change back from Medicare for hospice to standard Medicare, which will pay for illness therapy.

In-patient hospice provides 24/7 skilled nursing care and an on-site physician supervision for patients who are both terminal and too sick to be managed at home without 24-hour-a-day care. The in-patient hospice also provides comprehensive pain management but supplements this with round-the-clock nursing care, I.V. hydration, oxygen, transfusions, antibiotics and bed sore prevention.

The Challenges of Hospice

Many people are repelled by the thought of hospice for a variety of reasons. There are concerns that some hospice care organizations may not respect the halachic wishes of the patient or family, and literally offer no treatment other than pain relief. Other concerns relate to the patient not being told of his or her diagnosis, so the family is thus reluctant to refer the patient to hospice. The first concern does have a basis in reality, as there are certain hospice organizations that are

philosophically committed to a distinct type of restricted care. The challenge, then, is to find an organization that will totally respect the family's wishes. These institutions do exist.

As to the concern of not telling the patient, in my experience, that situation is usually a fiction created by the family with good intentions, as they try to save the patent from depression. In reality, when someone is racked with pain, is losing weight rapidly, and is too weak to perform everyday tasks, they know absolutely that something is terribly wrong. It may be much more kind to inform the patient and then make his or her remaining time more meaningful with expressions of sympathy and love, having friends visit to comfort. It enables one to confront the real problems of the terminally ill such as pain relief and non-specific terror that they experience from not knowing why they are so sick. In addition, knowing their diagnosis allows them to become meaningfully involved in future planning, such as creating or updating wills and making their wishes known to spouse and children. It is important to realize, however, that telling or not telling a patient the truth about their condition is a halachic question that needs to be discussed with a competent rabbinic advisor.

Why Hospice Care is so Important

There are many real-life needs of the terminally ill patent that may be best served in a hospice setting, once the patient reaches the end-of-life stage before anticipated death. These include the obvious needs for oxygen, expert pain relief and feeding. Equally important, though, are those services which usually cannot be adequately provided at home, such as body cleansing and bathroom aid, frequent turning to prevent bed sores, and the numerous manipulations that are difficult or impossible because of the need to maintain *kibud av v'em* (respect for parents) with its many halachic implications. The hospice environment provides all of these in a peaceful, not cramped, comfortable setting. It is virtually impossible for

most families to provide a truly high level of end-of-life care at home because of limitations of space, facilities and finances. Both Medicare and Medicaid as well as commercial insurance and long-term care pay generously for hospice care. It is the family's responsibility to insure that a chosen hospice will cooperate fully with the family in their wishes to provide halachically appropriate hospice care.

Caveats in Defining Halachically Appropriate End of Life Care

It goes without saying that the first step in deciding whether and how to seek hospice care needs to start with a consultation with an Orthodox Rabbi, who is expert in the halachot of end-of-life care. It is appropriate to begin to discuss matters with one's congregational Rabbi who may or may not be such an expert, but who will certainly be involved in pastoral care and may actually work together with the halachic expert to provide day-to-day guidance.

Next, if at all possible, it is critical to discuss substantive questions with the patient himself or herself. It is actually the patient's wishes with regard to therapy that are most important, both halachically and from a secular ethical perspective. Their explicit written or verbal wishes should be obtained and, if possible, legally binding advanced directives and health care proxy should be completed. Sometimes, these forms are somewhat restrictive and may not address the nuanced wishes of the patient. In such cases, it might be helpful for the patient to dictate a letter and sign it in the presence of witnesses, to establish a richer, but legally binding set of directives. From a halachic perspective there may be unique circumstances when the patient's wishes may not be halachically acceptable, thus emphasizing the need for consultation with rabbinic authorities well-versed in these issues.

If hospice care is planned, then the family should discuss their specific wishes, developed in consultation with the

patient and their rabbinic *posek*, with the hospice organization. The discussions must include DNR/DNI, feeding, hydration, antibiotics and transfusions. In most cases, the hospice will respect the family's wishes and it is the family's responsibility to insist on these halachically-mandated requirements. These discussions must be undertaken before the final choice of a hospice organization to insure its agreement. If the patient has been hospitalized and cannot make it to hospice care, then the family should have the exact same conversation with the treating medical staff of the hospital to insure an orderly end according to Halacha and the family's wishes.

It is instructive to end with a long quote on the topic from one of the generation's greatest halachic decisors, Rav Moshe Feinstein. In a *teshuva* asking whether there are patients who should not be treated so as to prolong their lives for a little while, he states:

> With regard to a terminally ill patient who can live for several weeks or months, such patients often should not be treated. In cases of intractable pain, we have clear instructions from the account of the death of Rebbe, where the Talmud records that the actions of the maid servant were right and proper. Furthermore, the Ran in *Nedarim* 40a states that "it is sometimes proper to pray to Hashem for the death of a critically ill person if he is suffering greatly and there is no rational hope that he will recover."

Rav Moshe then rules that,

> For such a patient who has no hopes of surviving free of pain, but it is possible, by medical methods to prolong his life, then it is improper to do so. Rather, the patient should be made as comfortable as possible, and left without any further intervention. I must emphasize that it is absolutely forbidden to do anything or to provide any drug that will shorten the patient's life, for even a moment. If it is possible to provide drugs that will make

> the patent comfortable so that he will not be in pain, then efforts should be made to prevent the patient from dying."[38]

Those efforts, as previously stated, include oxygen, feeding and hydration.

This perspective, I believe, provides an appropriate balance between maintaining the sanctity of life, being sensitive to human suffering and providing the most respectful end-of-life care all under the umbrella of Halacha.

Acknowledgements:

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38. *Iggerot Moshe Choshen Mishpat* II:73.

Scale Insects in Orange Juice

Rabbi Dovid Cohen

Introduction

A. Overview

This document will discuss the concern that there may be forbidden insects in retail containers of orange juice. (See the footnotes for acknowledgements[1] and the bibliography of research papers used in researching this topic.)[2] The first half

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1. Acknowledgements: Rabbi Yoel Feingold of Lakewood has taken the lead in researching the practical and halachic issues related to the subject of this paper, and this document would never have taken on its current form without his significant sharing of his knowledge and experience. In addition, the cRc (Chicago Rabbinical Council) had the foresight to invest the time, resources, and finances so that this author could research and present the findings contained herein for the benefit of the broader public.

In addition, the document is based on meaningful discussions and consultations between the author and (listed alphabetically) Rabbi Shlomo Dickman (Lakewood), Rabbi Sholom B. Dubov (Florida-K Kosher), Rabbi Asher Anshel Eckstein (Belz Kashrus), Rabbi Shmuel Felder (*Posek* in Beth Medrash Govoha in Lakewood), Mr. Michael Mas (JBT), Rabbi Dovid Steigman (OK Kosher), Rabbi Meir Sternberg (Lakewood), and Rabbi Sholom Tendler (Star-K). Lastly, the author has read a number of scholarly research papers on the topic and personally visited a large juice processor to investigate the issue. The author thanks these contributors, while taking full responsibility for the content of this paper.

2. The following is an alphabetical list of articles used. For each article there are 5 pieces of information, separated by a semicolon, as follows: Publisher; Document ID; Title; Link; How document is referred to in this paper.

- New Zealand Entomologist; 1995, Volume 18; Size and fecundity of soft wax scale (*Ceroplustes destructor*) and Chinese wax scale (C. simt)

Administrative Rabbinic Coordinator,
Chicago Rabbinical Council (cRc).

of the document will describe the concern, including information on the insect and its presence in juice, and the second half will discuss the halachic issues arising from this reality.

B. Sizes

This document will discuss items which are quite small, which raises two issues: Firstly, the smallest common unit of length in the American method of measurement is an inch. If we were to use that unit of measure, we would be faced with the unwieldy and confusing possibility of using numbers such as 0.0024 or 0.0098 inches. The most accurate terminology for such tiny items is the "micron" (μm), which is equivalent to one thousandths of a millimeter or 0.00003937 inches, but that term is too unfamiliar to most readers. This document will compromise between these possibilities and use the millimeter (mm) as its unit of measure.

(*Hemiptera: Coccidae*) on citrus; http://bit.ly/lyZQrm; NZE 1995:18.

•University of California, Agriculture and Natural Resources; n/a; Degree-Days; http://kshr.us/1IqORM8; UC DD.

•University of California, Agriculture and Natural Resources; n/a; Degree-days: Reference Tables (California Red Scale; http://kshr.us/1AOgTAh; UC DD RT CRS.

•University of California, Agriculture and Natural Resources; Publication 7408; Scales; http://ucanr.edu/sites/sjcoeh/files/77098.pdf; UC ANR 7408.

•University of California, Agriculture and Natural Resources; Publication 21529; Life Stages of California Red Scale and its Parasitoids; http://kshr.us/1AOf2LU; UC ANR 21529.

•University of Florida, UF/IFAS Extension, Entomology and Nematology Department; ENY 814; Scale Pests of Florida Citrus; http://edis.ifas.ufl.edu/ch059; UF ENY 814.

•University of Florida, UF/IFAS Extension, Horticultural Sciences Department; HS 817; A Guide to Scale Insect Identification; http://edis.ifas.ufl.edu/ch195; UF HS 817.

•University of Florida, UF/IFAS Extension, Horticultural Sciences Department; CIR 1241; Florida Crop/Pest Management Profiles: Citrus (Oranges/Grapefruit); http://edis.ifas.ufl.edu/pi036; UF CIR 1241.

A second issue is that the items discussed in this document are so small that they are truly difficult to visualize. The following sizes of common items are given so as provide a frame of reference:[3]

Item	Length in mm	Width in mm
Sesame seed	3.20	1.80
Poppy seed	1.20	0.78
Grain of sugar	0.66	0.44
Grain of salt – most brands. Individual grain sizes vary considerably	0.62	0.57
Grain of salt – Diamond Crystal. Individual grain sizes vary somewhat	0.31	0.31
Visible to unaided human eye (minimum)	0.04	0.04
Sheet of paper (thickness)	n/a	0.10
Human hair (width)	n/a	0.07
Reynold's Aluminum Foil Heavy Duty thickness	n/a	0.024
Reynold's Aluminum Foil Standard thickness	n/a	0.016

3. Measurements of the items listed in the chart are from the following sources:

- Personal measurements by the author using a digital caliper (alternate measurements with a USB microscope appeared to be inaccurate) – poppy seeds, sesame seeds, grain of salt, grain of sugar.
- *Particulate Matter*, EPA, available at http://kshr.us/1EJ25XS f – human hair.
- *Mesh vs. Micron Comparison Chart*, Netafim USA, available at http://kshr.us/1xkJk9R – visible to human eye.
- *VWR*, available at http://kshr.us/1CQB6F6 – Reynolds aluminum foils.
- *Thickness of a Piece of Paper*, available at http://kshr.us/1CQuvus — sheet of paper.

Part 1 – The Concern

C. Lifecycle

The unusual lifecycle of the scale insect plays a critical role in many aspects of the halachic sh'ailah (question), and we therefore begin with a description of the relevant details.[4]

Citrus fruits commonly harbor scale insects on the outside of their peels. Scale insects are born at less than 0.25 mm (smaller than a grain of Diamond Crystal salt, but much darker) crawl away from their mother, and find another fruit (or tree part) which they will inhabit.[5] The hours between when the insect is

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4. The details of the scale insect's lifecycle are based on the current scientific understanding, but it is noteworthy that the existence of many of the stages and forms which the insect passes through (as will be noted in the coming text) have been personally witnessed recently by Rabbis by inspecting oranges in which insects were trapped underneath the wax-like coating applied to the fruit before they are sold to the public. In this manner they have seen mature females covering tiny eggs, crawlers emerging from the eggs, crawlers with legs, and other stages of growth up to and including mature adult insects. (At some of these stages, identification was only possible via magnification; the significance of that will be discussed in the second half of the article.)

5. An insect which was born on the ground or on a tree is forbidden to eat by Jewish law, even if it was never שורץ (walked); if it was born on something which is not attached to the ground, then it remains permitted until it is שורץ (see *Shulchan Aruch* 84:4). The Gemara, *Chullin* 67b has a debate (*machloket)* whether an insect which was born on a fruit which is attached to the ground is forbidden without being שורץ, and *Shulchan Aruch* 84:6 rules leniently on this question. Ramo (ad loc.) describes a case which seems quite similar to citrus scale – an insect found in a "tight spot" (within a bean) where there is clearly no room for it to have been שורץ – and, based on the assumption that the insect was never שורץ, he rules (as per *Torat Chattat* 46:2, cited in *Taz* 84:10 and *Shach* 84:19-20, but see *Darchei Moshe* 84:5 and *Gr"a* 84:20) that a priori (*l'chatchilah)* one should be strict (*machmir)*, but if the food is already cooked (or juiced) one can be lenient. At first glance, scale insects appear to match this description – an insect found in a spot which is so "tight" that they cannot possible be שורץ there – in which case there would be basis for permitting the insects while on the fruit. However, (a) in light of the understanding that the insect, in fact, passes through a crawler stage when it is שורץ, and (b) the assumption that most people

born and it finds its way to a new location is the only time during its lifetime that it will "walk", and therefore during that period it is referred to as being in the "crawler" stage.[6] Upon arriving at its destination, the crawler takes a number of steps (not necessarily in this order) to permanentize its new home:

- It sticks a straw-like rostrum into the fruit, through which it will extract/suck nutrition from the fruit.
- It rotates its body while excreting a waxy substance, so as to create a relatively thick protective cover over its entire body.

This scale-like feature of the insect is the reason why this class of insects is referred to as "scale insects". The scale-cover is typically round or oval, and has a diameter of 1-3 mm (between the size of a poppy seed and a sesame seed).

- It sheds its legs, since it has no future use for them.

The legs, and skin which molt from the scale later in life, become incorporated into the scale-cover. The scale-cover has an inherent clear or white color, and it is the legs and skin added to it which create the common dark/black color generally associated with scale covers.

Female scale insects permanently remain in the location which they have chosen (as described above). In that spot they absorb nutrition from the fruit, give birth to young, molt their skin (twice), and grow to as large as 0.5-1.0 mm before dying. As the insect grows and molts its skin, it passes through

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encounter the insect after it has already left the fruit where we will apply the halacha (*Shulchan Aruch* 84:4, but see *Shach* 84:12 citing *Torat Chattat* 46:5) that פירש מת is *assur*, this point is moot.

6. It will be noted below that the mature male regrows legs and wings. The male leaves the fruit shortly afterwards, and therefore from the perspective of scale insects found on the fruit (or in the juice), it is appropriate to say that they only have legs in the crawler stage.

growth stages known as "1st instar", "2nd instar" and "3rd instar". During the earliest stages of development, the insect and scale-cover are separate from one another, but (in many varieties) in the later stages the insect becomes more thoroughly attached to the scale-cover.

In contrast, male scale insects go through 2 instar stages and then grow new legs and wings, after which time they leave the fruit, mate, and die.[7] Since the male insect only remains on the fruit for approximately half as long as the female (and because the female dies on the fruit),[8] it is much more common to find female scale insects (and their shell-covers) on the outside of fruit, rather than males. [For an interesting diagram of the information presented above, see page two of UC ANR 21529.]

For the sake of simplicity, the following terms will be used hereinafter: "**insect**" will refer to the scale insect without its cover; "**cover**" is the scale-cover with no insect attached to it; and "**scale**" will be reserved for the combination of both insect and cover.

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7. For an interesting video about citrus scale insects, and particularly about the mature male (towards the end), see http://kshr.us/13YU0gD.

8. UC ANR 21529 provides many details about the California Red Scale. It notes that a female of that species will remain on the fruit for approximately twice as long as the male will. [In addition, the female eventually dies on the fruit while the male leaves beforehand.]

The exact length of the insect's stay is measured in "degree days", where days with warmer weather count for more since they help the insect develop quicker. As noted in the chart in UC DD RT CRS, days where the temperature remains below 50° provide zero degree days, days when it is well over 90° F provide as much as 51 degree days, and the more typical days provide some amount in between (60-70° F is 12 degree days, 70-80° F is 22, 80-90° F is 32, and 90-100° F is 42). In this context, UC ANR 21529 notes that females remain on the fruit for upwards of 650 degree days, while males are only there for 380 degree days. Therefore, if, for example, the temperature was between 80-90° F for an extended period of time, the female would remain on the fruit for more than 20 days while the male would leave after less than 12.

D. Presence in Orange Juice

Farmers can control the presence of scale on fruit either with pesticides or by introducing natural predators (e.g. wasps). These methods are used aggressively for fruit which will be sold on the retail market, because the presence of scale makes the fruit appear less desirable. However, the outer appearance of the fruit is insignificant at commercial juice processors, and therefore much less attention is paid to preventing scale on fruit grown for that purpose. It is therefore not surprising that the oranges used at those processors have a fair number of scale on most fruit.

Juicing an orange involves steps which might transfer the scale into the juice (more on that below). Juice processors do not want a significant presence of scale in their juice as that would be unappealing to consumers, and even a lesser number of scale would force them to label the product as being of a lower grade (or even unsuitable for retail sale). At the same time, the processing of the juice includes the following steps which would reduce the presence of scale in the finished juice: the oranges are washed and scrubbed (usually on two separate occasions) before juicing, all juice passes through a 0.50 mm "finisher" which filters out the pulp and a significant amount of the scale,[9] and the processing itself – which includes pressing, pumping, heating, and other steps – presumably causes many of the scale to disintegrate or break apart. Of the aforementioned steps, the washing and scrubbing definitely reduce the number of scale, but they also leave a considerable number on the fruit.

As a result of the above, most consumers never see scale in their juice, and the processors are convinced that this is

9. The finishers used in industrial plants typically have holes which are 0.020 inches (0.508 mm), and in some plants the holes are 0.015 inches (0.381 mm). These finishers are designed to trap pulp and certain other particulate, and this prevents most scale (particularly the larger ones) from remaining in the juice.

because there are (essentially) no scale to be found. However, in recent months, some concerned Jews have been filtering and inspecting juice and were surprised to find a steady number of tiny insects, and a lesser number of covers, in the juice. The issue was first raised as relates to Tropicana orange juice, but further investigation showed that there was also some presence of insects and covers – albeit less frequently than in Tropicana juice – in other brands of juice which were tested. (More on this below.)

Those who made this discovery responsibly brought it to the attention of their local Rabbis and the certifying agencies. The *Rabbonim* involved considered this to be a serious issue, and cautiously advised the people involved to continue their research while simultaneously probing the halachic issues and searching for suppliers who could provide juice which is free of these concerns. This continued for a number of months as the topic continued to be researched from different angles. At this point, the issue has come to the attention of the public[10] and a wider group of *Rabbonim*.

E. Discovery in Orange Juice

The standard method of filtering liquids or fine powders (e.g. flour) to check for infestation is to pass them through a filter which is 50-70 "mesh", which means that the space between the holes of the filter are 0.30-0.21 mm.[11] (In measuring filters, a higher "mesh" means that the space between the holes is smaller and the filter is therefore more

10. One of the main catalysts for the issue coming to the attention of the broader public was an article by Rabbi Yair Hoffman, which can be found at http://kshr.us/RYHTropicana.

11. A.k.a. 30-21 microns. Information on mesh sizes is taken from http://kshr.us/1xkJcan and http://kshr.us/1xkJk9R. The text uses the standard nomenclature for filtering materials, but it is worth noting that some companies refer to filters by the micron-size of the holes, and would therefore refer to the "50 mesh" filter noted in the text as a "30 mesh" since the holes in the filter are 30 microns.

fine.) This size is used in many industrial/lab settings and is also used by consumers in *Eretz Yisrael* who sift their flour (to remove insects) before using it. When individuals and company-labs filtered orange juice with this type of filter, they were (essentially) unable to find insects or covers, since all of them seemed to pass right through the filter.[12]

In order to actually find insects and covers in orange juice, the following method is used. First the juice is filtered with a 50-70 mesh cloth to remove the largest particles from the juice (some skip this step), and the liquid which passed through that filter passes through a second filter which is 230 mesh. A 230 mesh filter has holes which are only 0.063 mm across (about the thickness of a hair) and it takes a considerable amount of "coaxing" to get relatively thick orange juice through it. However, after 30-60 seconds of shaking the filter (and sometimes even spraying it with a powerful stream of water), 6-8 ounces of juice will pass through the 230 mesh filter, leaving behind a syrup-like mixture of pulp, juice and other matter.

The insects and covers have no legs, whiskers, eyes or other features which would identify them as living beings (or covers) to people who have not been trained to identify them. However, those who are experienced and trained, can find insects and covers in the material trapped by the 230 mesh filter. The insects and covers tend to be somewhat round and oval respectively, and have an overall symmetrical shape.

In general, when viewed without magnification, the insects appear to be whole, while the covers found in orange juice tend to be missing (a) a crescent-shaped piece from one end, and (b) the legs and molted skin that become attached to the waxy portion of the cover (leaving just the white or off-white

12. As a result of this, when Tropicana was asked to check specific samples of their juice, they were unable to ever find scale, and another lab which checked a sample found no evidence of insects. Individuals who followed the procedure outlined in the coming text were able to identify scale.

portion). These points, and their significance, will be discussed in more detail below.

Some of the Rabbis investigating this issue are under the impression that the insects they are finding belong to a specific class of scale insects which have an elongated shape to them (*Unapsis Citri*, Citrus Snow Scale), and they were supported in this by a reputable lab's report. However, the oranges arriving at juice plants appear to be equally infested with the standard, round, scale insects (*Chrysomphalus Aonidum*, Florida Red Scale).

F. Tropicana vs. Other Brands

Over the past few months that people have been checking orange juice for scale, they have consistently found more insects and covers in Tropicana brand orange juice than in off-brand/private-label not-from-concentrate juices (e.g., brands specifically marketed to kosher consumers). By no means was this a scientific study – accurate records were not maintained and minimal tests were done on each brand – but the overall impression has been that Tropicana juice is more significantly affected by this issue than other brands. The estimated "statistics" are that Tropicana averages one insect per 6 ounce sample (equivalent to about 10 insects per 64 ounce bottle) and one cover in each bottle, Trop50 (a Tropicana product)[13] had a similar amount of insects but more covers, while other brands have 2-6 insects per bottle and they almost never find a cover.

Different explanations have been suggested as to the difference between brands: some believe that it has to do with the thickness of Tropicana juice (which may indicate a less-

13. Trop50 is a Tropicana beverage made with 42% (not from concentrate) juice, water, vitamins, stevia, flavor, and other ingredients.

rigorous filtering/finishing),[14] the method of juice extraction,[15]

14. All testing was performed on juice which is sold as "pulp-free", but some brands contain more particulate and/or are overall more viscous than others, leading to the possibility that there are different standards of "pulp-free".

15. The way in which homemade orange juice is made is by slicing the orange in half, and then squeezing each half over a juice reamer. This process puts a considerable amount of pressure on the outside of the orange peel, and – all who have ever done this can testify that – it releases a meaningful amount of orange oil and citrus scale. Industrially, there are two major methods of extracting juice, known as "Brown" and "JBT", the names of the companies that sell these systems. This author has not yet been granted permission to see the Brown process in an actual juice plant, but based on reading company literature (see for example, http://kshr.us/1H0AIWV and http://kshr.us/1H0B3cf), and discussions with industry personnel and people who have been in "Brown" plants, it appears that the Brown reaming system has a similar effect as a home-reamer; as the juice is extracted, a meaningful amount of orange oil and scale get mixed into the juice.

In contrast, the JBT method is quite different. The author has seen and studied that system in a plant setting, in a manually-operated industrial machine used for testing, and through other methods of research; the exact details of exactly how that system operates are beyond the scope of this document. What is significant is that it almost completely eliminates contact between the juice and the peel (and orange oil and scale). As the juice is essentially pushed/sucked out of the center of the orange through a large straw-like pipe, all oil (and scale) released in the process spray onto the "outside" of that equipment where they physically cannot get mixed into the juice. [Although the outside of the peel is severely cut during the process, the cuts only penetrate the flavedo (orange outer layer of the peel) and not the albedo (white inner layer just under the flavedo), thereby preventing contact between the scale (which are on top of the flavedo) and the juice (which is in cells that are under the albedo).] Based on this consideration alone, it would be understandable that juice produced using the JBT method would be less likely to have scale in it.

Industry personnel believe that Tropicana is one of the only major companies which continues to juice orange using the Brown system, and that all other major processors – and possibly as many as 80-90% of the juicers worldwide – use the rival system sold by a company called JBT. If correct, that might be a plausible explanation why other brands of (not-from-concentrate) orange juice have been found to have fewer insects and covers than the Tropicana juice extracted via the Brown method.

However, the reasons to discount this line of reasoning are that (a) part of

or the presence of more orange oil (found in the peel or rind).[16] At this point, those suggestions are all in the realm of conjecture, and there is no clear explanation for the difference in findings.

Part 2 – Halachic Issues

The halachic question as to whether orange juice is permitted in spite of the presence of scale can be organized into the following points:

- *Are the insects forbidden? Might their size or other factors be a basis for suggesting that they are actually insects which the* Torah *permits?*
- *Are the covers forbidden?*
- *Are the scale* batel *(nullified) to the juice since they are so well mixed into the juice? Is* bitul *(nullification) possibly inappropriate because the insect is a* beryah *(a complete creature) or because it is possible to remove the insect from the juice?*

These issues will be discussed in this section of the document.

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a standard Brown process is to scrape off outer layers of the orange before juicing, so as to recover orange oil (see, for example, http://kshr.us/1DsRWwR and http://kshr.us/1DsRGy5), which should remove more of the scale before juicing, (b) although Tropicana Pure Premium only contains juice from Florida (see http://kshr.us/1BUcGLW), the Trop50 product often contains juice from Brazil where the JBT method is used almost exclusively, and (c) industry personnel report that companies commonly sell juice to one another to fill certain needs, so that Tropicana products may potentially contain juice produced via the JBT method and vice versa.

16. Although one might expect orange oil extracted from the peel to frequently contain scale, in fact, the oil is filtered and centrifuged before use, and thus there rarely is any scale in it. See the previous footnote regarding the method in which oil is extracted from oranges in the "Brown" method. The suggestion that Tropicana actually adds rind into the juice so as to create a unique taste seems to be baseless and counterintuitive.

G. Insect Size

The insects found in orange juice are approximately 0.18-0.35 mm[17] and generally have no appendages or other features (nor are they mobile) through which one can identify them as living beings. They are about the size of Diamond Crystal salt and without magnification they look exactly like tiny pieces of salt, such that the average person can see the insect with the naked eye (once it is separated from the juice) but cannot possibly identify it as an insect. Does the Torah forbid insects which are so small?

It is generally accepted that microscopic organisms are not forbidden as "bugs", and, of course, insects which are large enough to be identified as such are surely forbidden. There is, however, significant debate as to the status of insects which are between those two extremes: insects which are large enough to be visible to the naked eye but not large enough to be identified as insects without magnification. The following are some of the positions taken by *Poskim*:

• Currently Identifiable

Insects are only forbidden if they are <u>currently</u> in a form where they are identifiable with the naked eye. In other words, if the insect is moving or is large enough that one can identify appendages so that they can tell that this is a bug, then it is forbidden. Otherwise it is permitted, even if there were times in the past when it could have been identified.

This position is founded on the assumption that אין הקב"ה בא בטרוניא עם בריותיו[18] (God does not "trick" humans into violating the Torah law) and would not forbid people from eating items which they cannot possibly avoid. (In fact, this was the same logic used in the original halachic determination

17. At times, there have been discovered in the juice adult insects which were as large as 0.55 mm (the size of a larger grain of salt).

18. See Gemara, *Avodah Zara* 3a.

that microscopic insects are not forbidden.) The difficulty with this position is that it leads to a situation where an insect which was moving or had appendages on Monday is forbidden at that time, but if it then is dead, immobile, and/or lost its identifying appendages on Tuesday it will suddenly be permitted. Can an insect possibly be forbidden on Monday and permitted on Tuesday? This leads directly to the second position.

- **Once Was Identifiable**

An insect which was ever in a form where it was identifiable with the naked eye is forbidden, even if it subsequently became impossible to be recognized.

In light of the fact that some forbidden insects cannot be identified by people who might eat them, this position (and the one following hereinafter) seems to require that individuals must devise radical or creative means to avoid eating those insects which were ever identifiable, and where that is impossible, then they are deemed totally not responsible (*oness*) for violating the prohibition. Thus, for example, a person might remove any speck of foreign matter from their lettuce since they have no way of distinguishing between a permitted piece of leaf and a speck on the lettuce which is really a forbidden insect that is no longer identifiable.[19] Alternatively, they might use magnification to teach themselves to differentiate between different specks.

- **Visible**

Any insect which is large enough so that each[20] individual

19. One could argue that most specks are not insects and therefore one is not halachically required to remove every speck, and can instead assume that the specks on food are not insects. Thus, the wording of the text merely suggests what *might* be required for one to avoid *any* insects, based on this standard.

20. If the halacha were that any living being where a collection of them can

insect can be seen without magnification, is forbidden-- even if there was never a point when it was identifiable.

It is not clear that there are any insects which never move once they are large enough to be visible, such that this position would forbid them, but the previous one (Once Was Identifiable) would not. (Whether scale insects may be an example of this will be discussed below.) Nonetheless, conceptually, this position considers any visible insect as forbidden and does not consider identifiability as having any significance, while the previous position agrees somewhat to the first position (Currently Identifiable) that, in fact, this is the significant criterion.

Although many *Poskim* have expressed views on this matter, the nuanced differences between the first and second positions, and the second and third positions, makes it difficult to specify which *Poskim* take exactly which position (see the coming footnotes for details). That said, many contemporary *Poskim* – including the Chazon Ish, Rav Shlomo Zalman Auerbach, Rav Elyashiv and Rav Dovid Feinstein[21] –

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be seen with the naked eye (even though one individual being cannot be seen) is forbidden, then yeast and certain other foods would be forbidden, inasmuch they are a "living being" which can be seen with the naked eye. Accordingly, the assumption is made that even the strictest standard is of the opinion that each individual being must be visible without magnification.

21. *Shmirat Shabbat K'hilchato* (Chapter 3 footnote 105) reports that Rav Shlomo Zalman Auerbach originally followed a more lenient standard (seemingly, the Currently Identifiable standard), and later changed his mind because (a) he was told that Chazon Ish was strict (*machmir)*, and (b) "he" (it is not clear if this refers to Chazon Ish or Rav Auerbach) learned that there is a time when scale insects can be seen to move (more on this below). Was Chazon Ish only *machmir* because of this second reason (i.e. the Once Was Identifiable standard) or was he *machmir* regardless of that (i.e. the Visible standard)?

Similarly, a *talmid* of Rav Elyashiv told this author that Rav Elyashiv was *machmir* on this question (and that ruling is also printed in his name in *Bedikat Hamazon K'halacha* B:2:4), but it is not clear if that is because he followed the most-strict interpretation (Visible) or a variation of the middle

have accepted a stricter approach, although as noted, it is not always clear if they followed the middle (Once Was Identifiable) or most-strict (Visible) standard. In contrast, others – including Rav Chaim Ozer Grodzinski and Rav Wosner[22] – follow a more lenient approach, and again as noted, it is not clear if they accept the most lenient (Currently Identifiable) or the middle (Once Was Identifiable) position.

As relates to this issue, Rav Gedalia Dov Schwartz[23] has directed the cRc to adopt the most lenient approach, and this is also the position of certain other national American *hashgachot*, while certain "*Heimishe*" *hashgochot* and the *Mehadrin* Israeli *hashgochot* accept one of the stricter approaches.[24] (Local kashrut supervising agencies in the United States take different approaches to this matter, based on the rulings of their certifying Rabbis or the training of their

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standard. The ruling of Rav Dovid Feinstein was publicized in his *teshuvah* on the copepods in New York City water, where he appears to follow the middle standard.

22. A disciple of Rav Tuvia Goldstein told this author that his Rebbi repeated from Rav Yisrael Gustman that Rav Chaim Ozer Grodzinski was of the opinion that one could be lenient on the above issue. Another *talmid* of a *talmid* of Rav Gustman corroborated this, and a similar ruling can be found in *Shevet HaLevi* 7:122. Does that mean that they held like the most lenient (Currently Identifiable) standard or like the middle standard (Once Was Identifiable)? Those who repeat these rulings believe that they follow the most-lenient standard, but this is clearly subject to interpretation.

23. Rav Gedalia Dov Schwartz is *Rosh Beit Din* at the Chicago Rabbinical Council.

24. The *Rabbonim HaMachshirim* for many of the national American *hechsherim* have told this author that they agree with the most lenient approach, and this view is also espoused by Rav Shlomo Gissinger, a recognized expert in *hilchot tolaim* who is the ultimate source of much of the American policies on these matters. In contrast, Rav Vaye, the recognized expert from *Eretz Yisrael*, teaches that one should follow a stricter approach (as cited above from his *Sefer Bedikat Hamazon K'halacha*) and many have adopted that approach.

Administrators.)[25,26]

An important detail of this discussion relates specifically to the insects found in orange juice. There is no question that the most lenient standard noted above will rule that the insects are permitted because although they are visible, they are not identifiable as insects in their current state. Therefore, since they are not identifiable, this standard will consider them to be permitted. Similarly, the strictest standard, which assumes that all visible items are forbidden even if they are not identifiable, will rule that the insects are forbidden since they are visible.

What about according to the middle standard (Once Was Identifiable)? Were the scale insects ever identifiable as (living) insects? Rav Auerbach, noted above, appears to accept that they were identifiable when he states that:

> גם נודע לו כי לפני שהכנימות מתכסות בקליפת המגן, גם בעין רגילה יכולים להרגיש קצת ברחישתן
>
> He was also made aware that before the insects are covered with scale, one can somewhat notice their movement even with the naked eye

He appears to be saying that when the insects are in the crawler stage they are large enough to be seen as they leave

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25. For more on this topic, including a discussion of the possible proofs and counterarguments, listen to the *shiurim* by this author at http://kshr.us/54YUJ8JK, http://kshr.us/4fJK34KV, and http://kshr.us/55UHJ78.

26. The application discussed in this document (citrus scale) is one where the potential violation is on a biblical level (*d'oraitah)* of eating an insect which is clearly there. In contrast, most other applications of this issue, such as whether one must wash strawberries with soap so as to remove the thrips larvae which are only forbidden according to the two stricter standards, only relate to a Rabbinic requirement to check/clean foods which are seldom infested (*miut hamatzui)*. Thus, those who are strict when it applies to a biblical prohibition might be lenient in the less-serious situations where it is no more than a concern about a Rabbinic prohibition (*d'rabannan)*.

the protection of their mother and move to the location where they will spend the rest of their lives. If so, they were once identifiable as insects, and according to the middle standard that suffices to render them as forbidden forever. This is understood to mean that although the crawlers are amazingly tiny (less than 0.25 mm), a person can "somewhat notice" them as they move across the surface of the fruit, and that is enough to forbid the insects in all future stages.[27]

Conclusion

There are different standards used to determine which insects are too small to be forbidden, and the status of the citrus scale insects depends on these opinions.

The cRc and certain other national hashgochot follow the more lenient approach, and accordingly are of the opinion that these insects – and, of course, the covers of these insects and the orange juice which contains them – are permitted.

The rest of this document will discuss whether there is basis for permitting orange juice according to those who accept the stricter approach on this issue.

H. Status of the Covers

As has been noted earlier, the covers which are visible on the outside of oranges are comprised of an off-white waxy substance secreted by the insect, mixed with the dark legs and skin which have separated from the insect. However, in the

27. It was reported that Rav Shlomo Miller said (somewhat differently) that even if no one has ever watched the fruit from the point that the crawler came onto the fruit until the visible scale grew and formed, we cannot ignore the scientific knowledge of the current era that the scale on oranges are not dirt but rather covers for an insect which once crawled in a visible manner. ([In fact, one can watch videos online (see, for example, http://kshr.us/13YUjIq) which are essentially time-lapse photos taken over many hours, where the insect is seen to crawl onto the fruit and create the cover.)

orange juice, the only parts found are the wax portion of the cover, without any of the legs or skin.

Legs and skin which separate from an insect are as forbidden as the insect itself, and therefore if they were detectable in the orange juice, they would essentially pose as much of a concern as the insects. The same is not true of the covers, for the following reason: When the Torah forbids the consumption of certain creatures, that prohibition includes the flesh of the animal/insect, any flavor from the animal which is absorbed into another food (טעם כעיקר), and also the edible excretions of the animal. This prohibition, known as the *yotzeh* (יוצא) of the animal, is the reason why milk from a non-kosher animal is forbidden. However, the only secretions which are forbidden are those which leave the animal's body in an edible form, but those which leave in an inedible form are classified as פירשא (excrement) and are permitted.

The aforementioned principles of יוצא and פירשא are agreed to by most *Poskim*, but there is a debate as to the application of those principles to the secretions of insects. *Iggerot Moshe*[28] rules that these same principles apply to insect secretions, and therefore shellac, an inedible wax secreted by lac insects, is kosher and can be used in the production of candies and chocolates. The wax leaves the insect's body in an inedible form and is therefore classified as permitted "excrement", פירשא, even though it is subsequently converted into a food ingredient. In contrast, Rav Elyashiv[29] argues that the permissibility of inedible secretions is limited to secretions from an animal which is inherently edible, such that the inedibility of the secretion indicates that it does not share its "parent's" status. However, insects themselves are forbidden in spite of their being inedible, and this teaches that inedibility is not a factor for insects, with the result that the inedible secretions of an inedible insect – such as shellac – are

28. *Iggerot Moshe* YD 2:24. See also *Darchei Teshuvah* 84:187.

29. *Koveitz Teshuvot* 1:73:f.

forbidden as a יוצא, according to Rav Elyashive.

That difference of opinion relates to the covers of scale insects as well. *Iggerot Moshe* will be of the opinion that the inedible wax cover of a scale insect is permitted in much the same way as shellac, while Rav Elyashiv will argue that it is forbidden.[30]

The common practice as relates to this question follows much the same pattern as the previous one (size of insects). The national American kosher supervisory organizations follow the lenient approach of *Iggerot Moshe* and certify shellac and products which contain it, and most local *Va'adim* accept this approach as well. Therefore, these groups would not be concerned about the consumption of scale covers. At the same time, many "*Heimishe*" kosher certifiers in the United States, and most of the *Mehadrin* Israeli *hashgochot* follow the stricter position of Rav Elyashiv (or some variation of it), and will not accept products with shellac as kosher. Accordingly, they would also be potentially concerned with the presence of scale covers in orange juice.

Conclusion

There are two different opinions as to whether shellac is kosher, and those who are strict on that question would have a similar opinion about scale covers.

The cRc and certain other national hashgochot follow the more lenient approach, and accordingly are of the opinion that the scale covers – and, of course, orange juice which contains them – are permitted.

30. The example discussed in this document, scale covers, is somewhat different than that of shellac, for shellac is an inedible item which is later used as a food item and therefore in its finished/current state it is edible, while scale covers remain inedible. Nonetheless, it appears that this would not be sufficient reason for Rav Elyashiv to permit covers.

I. *Bitul* – Nullification or Dilution

The general rule is that when a non-kosher food is mixed into kosher food, the mixture is permitted if there is little-enough of the forbidden substance (*issur)* to be *batel* (diluted) in the kosher part of the mixture. The basic rules of *bitul* are that (a) there must always be more permissible substance (*heter)* than *issur*, (this is called *bitul b'rov*—i.e., the existence of the forbidden substance is effectively nullified when it is the minority of the mixture), and (b) if the non-kosher provides a positive taste into the kosher, then there must be 60 times as much *heter* as *issur* (*bitul b'shishim*). In our case, where there are just a few insects and covers per bottle of juice, there is surely enough orange juice to dilute the *issur* with 60 times the amount of permissible matter (*shishim)*,[31] and therefore at first glance it seems obvious that the juice is permitted. The insects and covers may be forbidden, but they are *batel b'shishim* (diluted to the point of "not counting") in the juice and therefore the juice is permitted.[32]

However, we will see in the coming sections that there are two possible reasons why *bitul* may be inappropriate in this situation: the insect might be a *beryah*, and the mixture may not qualify as a true *ta'arovet.*

J. *Beryah*

There is a well-known rule that if a forbidden item is a

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31. In truth, the insects qualify as *notein ta'am lifgam* (impart a negative factor) where *bitul b'rov* suffices (*Shulchan Aruch* 104:3), but the term *bitul b'shishim* was used for simplicity's sake.

32. Although, as a rule, *hashgachot* will not certify a food in which one deliberately mixed in any *issur* even if that *issur* is *batel b'shishim*, but in cases such as this where the *issur* is "inherent" to the product such that it surely qualifies as unintentional – אין כוונתו לבטל (see *Nodah B'yehudah* YD 1:26 (הגה"ה) & 2:56-57, cited in *Pitchei Teshuvah* 84:10, and in *Nachlat Tzvi* ad loc.) and there is always well over 60 times as much *heter* as *issur*, they would typically be willing to certify the product.

beryah – a complete item which is inherently forbidden – then it can never be *batel*.[33] A *beryah* is so prominent that *Chazal* decided that the concept of nullification is antithetical to it, and cannot be effective. The covers are not a living being, and therefore surely do not qualify as *beryot*,[34] but what about the insects? The insect appears to be complete, so should we say that it is a *beryah* and cannot be "nullified" even if there are thousands of times more juice than insects?

It appears that there are a few reasons why this is incorrect. The most basic reason is because, during most stages of the insect's life, it has a rostrum through which it sucks nutrition from the host fruit, and this rostrum is almost never connected to the insects found in the juice.[35] [Presumably, it breaks off when the insect is separated from the fruit.] Thus, although the insect looks complete, a better understanding of its anatomy indicates that it is actually missing a significant limb.[36] In reality, then, the insect is not a whole creature, not a

33. *Shulchan Aruch* 100:1.

34. In other words, the *chumrah* of *beryah* is limited to items which are or were once alive (*Shulchan Aruch* 100:1), and therefore the covers are not *beryot*. In addition, the covers do not meet the criteria of שאם יחלק אין שמו עליו, and as we have seen above, the covers are commonly missing a crescent-shaped piece of themselves such that they are not complete.

35. Personal observation of those checking orange juice, and confirmed by Rabbi Tendler via email with Dr. Beth Grafton-Cardwell IPM Specialist and Research Entomologist and Director of Lindcove Research and Extension Center, and one of the authors of UC ANR 21529. [As this article was going to press, further research was being done on this point.] It is possible that even when the rostrum is attached to the insect, it is only visible via magnification, such that its absence may not be considered significant halachically. On the other hand, much of the information presented in the document including the identification of the insect can only be verified through magnification, and it seems incongruous to forbid an insect based on magnification, but not be willing to permit it for the same reason.

36. Gemara, *Nazir* 51b-52a questions how much of an insect must be missing before it is no longer considered a *beryah* as relates to receiving a punishment (*malkot)* for eating it. Does the term "*beryah*" refer to an insect which is complete or one which is viable? If it means "complete" then even if the insect is missing a leg or some other non-critical body part (אבר שאין

beryah.

Other reasons to consider that the insect can be *batel* in spite of its apparent status as a *beryah* are as follows:[37]

- The processing, filtering, and pasteurization of the juice raise a reasonable doubt as to whether the insect is complete, and *safek beryah* can be *batel*.

  Although it is true that *safek beryah* is permitted[38] one could question the applicability of that principle to our

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הנשמה תלויה בו) it is no longer a *beryah*, but if the term refers to something which is viable then it only loses that status if it is missing a part of the body that it cannot live without. The Gemara does **not** resolve this question. The *Rishonim* understand that this same question can also be raised regarding the status of *beryah* as relates to the halacha that a *beryah* cannot be *batel* (see *Beit Yosef* towards the end of YD 101). Accordingly, *Shach* 100:6 rules that since the aforementioned question is unresolved and it is a mere Rabbinic principle that a *beryah* cannot be *batel*, one may be lenient and assume that if as soon as an insect is missing **any** part of its body – even a non-critical part – it is no longer a *beryah* and can be *batel b'shishim*.

Thus, even if the rostrum were to be a non-critical organ of this insect, an insect without a rostrum is not a *beryah*. In fact, since all of the insect's nutrition is absorbed through the rostrum, it would appear that the rostrum actually is an organ vital to its viability (אבר שהנשמה תלויה בו), and there is no question that if it is missing, the insect is not a *beryah*. (See also the end of the next footnote.)

37. Is the insect not a *beryah* because it loses its legs as it attaches itself to the fruit? It would appear that since the insect's legs are only intended to be used for the first few hours after birth, they are considered a "temporary" or "disposable" part of the insect and their absence does not indicate that the insect is incomplete. In a sense, this insect's legs are akin to hair cut off an animal's head, the umbilical cord severed from a newborn calf, or the egg-tooth which falls off a bird a few days after birth.

The same cannot be said of the rostrum. Although there are stages during the insect's life when it does not have a rostrum, the rostrum plays such a critical role for so much of the insect's life that it seems clear that if the rostrum is missing then the insect is not a *beryah*. (See also the previous footnote.)

38. *Taz* YD 100:1; the reason for this is that it is only a *d'rabannan* that a *beryah* cannot be *batel*, and therefore if there is a *safek beryah* it qualifies as ספק דרבנן להקל. (In a situation regarding doubt about a Rabbinic dictum, we are lenient).

situation. Firstly, although there are ample opportunities for the insect to be dismembered, many of the insects found in orange juice do appear to be complete. Secondly, *Shulchan Aruch*[39] discusses a parallel halacha, of someone who cooked food without checking for infestation, and rules that post facto (*b'dieved)* the food is permitted. However, *Shach*[40] notes that the food is only permitted in cases where the food typically seldom has insects (*miut hamatzui)*, such that the responsibility to check the food before eating from it is merely a Rabbinic ordinance – *d'rabannan*. But if the food is often found to be infested (*muchzak*) and it was cooked without being checked, the food is forbidden. It would seem that if Tropicana orange juice has more than one insect per cup, then that qualifies as *muchzak* to be infested, and the food should be forbidden in spite of the possibility that the processing removed the status of *beryah*. (Some have argued that the presence of 2-6 insects per bottle in other brands also qualifies them as *muchzak* to be infested.)

On the other hand, there is basis for saying that the strict position of *Shach* is limited to situations where the person was expected to have checked the food before cooking, and since he chose to ignore that responsibility, he may not eat the food in spite of the reality that there is doubt about the presence of a *beryah*.[41] In the case of orange juice, that would mean that someone who squeezes their own orange juice at home would

39. *Shulchan Aruch* 84:9.

40. *Shach* 84:29.

41. See *Shulchan Aruch* and Ramo YD 39:2 (as per *Shach* 39:8) that Ramo is of the opinion that *Chazal* were *machmir* (except in cases of considerable loss) in the case of a lost lung as a means of enforcing the original requirement to check for common *teraifot*. *Pri Megadim* SD 84:29 implies that the *chumrah* of *Shach* 84:29 regarding a food which was cooked before being checked when the food is *muchzak* to be infested, is related to the aforementioned *chumrah* in the case where the lung was lost.

be expected to remove the scale beforehand, and if he didn't then the juice could be forbidden even *b'dieved*. But, if the person purchased commercially-produced orange juice where there is no possibility for the Jewish consumer to remove the scale before juicing, he may rely on the strict letter of the law that in the case of doubt, it is permitted.[42]

- One of the criteria for *beryah* is that it is referred to differently before and after it is whole (אם יחלק אין שמו עליו). The fact that all refer to this as a "scale insect" in spite of the uncertainty as to whether it is or is not whole (as above), indicates that there is no difference in title for the whole insect, such that it is not a *beryah*.[43]

- The reason a *beryah* is not *batel* is due to its prominence (as noted), and that rule is therefore inherently inapplicable to insects which are infinitesimally small and clearly have no "prominence".

This line of reasoning is noted in *Mishkenot Yaakov*,[44] and is most well-known due to its being recorded in *Aruch HaShulchan*[45] as one of three elements of his justification

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42. Whether a *hashgachah* certifying the juicing of orange should have the stricter status of an individual, who is required to remove the insects before juicing, is a question that is beyond the scope of this document.

43. Rav Yona Reiss, *Av Beit Din*, Chicago Rabbinical Council.

44. *Mishkenot Yaakov* YD 36. A somewhat related point is made by *Iggerot Moshe* YD 4:2 who considers that one might be lenient, as follows:

There are those who quote me as voicing an opinion regarding the small insects found in many vegetables, but in truth I have not stated any conclusion on the matter. Actually, my inclination is to accept the more lenient approach, as you noted in the question that you and my son, R' Reuven, shlit"a, wrote to me, that it may be that something which is not actually visible to the [naked] eye is not forbidden, and at a minimum is not considered a beryah. This idea is in addition to the justification presented in Aruch HaShulchan 100:13-18.

45. *Aruch HaShulchan* 100:13-18.

It is noteworthy that *Aruch HaShulchan* states (100:13 & 15) that infestation was so common that, were people to follow the letter of the law, they would face an indescribable hardship (*sha'at hadchak* שעת הדחק שאי אפשר לצייר) of being essentially unable to eat bread (אם לא שלא נאכל לחם וגרויפין) such that

(*limud zechut)* for those who are not as careful as needed in checking vegetables. Similarly, he suggests that insects are revolting to people (as per *Shulchan Aruch* 104:3) and therefore *Chazal* would have never given it the prominent status of a *beryah* as relates to its not being *batel*.[46] Both of these assume that a *beryah* is generally not *batel* due to the inherent prominence of a complete item, but *Aruch HaShulchan* himself notes earlier[47] that the *Rishonim* say that *beryah's* prominence is based on the fact that one received *malkot (*punishment by the courts) for eating a *beryah* even if it is smaller than a *kezayit*. This feature indicates a Torah-based prominence to a *beryah*, and *Chazal* extended that to the halacha that a *beryah* cannot be *batel*. Accordingly, *Aruch HaShulchan* himself notes that since one receives *malkot* for eating a *beryah* even if it is tiny and disgusting, it logically should also have the Rabbinic status of *beryah* such that it cannot be *batel*.

• There is a minority opinion in the *Poskim* that a *beryah* can be *batel* if there is more than 960 times as much *heter*

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he finds it appropriate to rely on minority opinions. Clearly, the inability to drink Tropicana orange juice would not begin to approach that level of *sha'at hadchak*. On the other hand, see *Kovetz Teshuvot* 1:74 (end) where Rav Elyashiv suggests that if a given food cannot easily be checked for bugs and will therefore become forbidden for an entire year/season, that qualifies as a great loss (*hefsed gadol* ולאסור כל המין אין לך הפסד גדול מזה).

46. (See, however, *Shulchan Aruch* 100:1 who cites an ant as an example of a *beryah* which cannot be *batel*.) One could question the applicability of this line of reasoning to our situation, for although people find ants, flies and other larger insects to be disgusting, it is not clear that the same can be said of scale insects (or even of aphids, thrips and many of the other small insects commonly found in vegetables) which even the most conscientious companies and consumers do not make any attempt to remove from their food. On the other hand, one can argue that when *Mashgichim* point out these insects to people, most people are, in fact, revolted by their presence, so that people's acceptance of these infestations may be more a matter of ignorance than tolerance.

47. 100:2 & 16-17.

as *issur*.[48] Although the general halacha does not accept this opinion,[49] this may be an added factor to be lenient.

Conclusion

Although the insects found in orange juice appear to be whole, they can be batel and are not considered beryot, whole creatures. This is primarily because they are missing their rostrums. Other reasons to consider bitul appropriate are that there is a doubt (safek) if parts of the insect were broken off during processing, very small insects may never qualify as beryot, and some are of the opinion that when diluted by more than 960 times even a beryah can be batel.

K. Removable

Under the assumption that the halacha of *beryah* does not prevent the insect from being *batel*, we now move to the second possible reason why *bitul* may be inappropriate.

A prerequisite for *bitul* is that the *issur* and *heter* are not distinguishable from one another. A corollary of that rule is that *bitul* is not effective if it is possible to separate the *issur* from the *heter*. Although all agree to this latter principle, there are two distinct opinions within the *Poskim* as to the reason for it. Many[50] are of the opinion that it is a basic (*d'oraitah*) element of *bitul* that if the *issur* can be removed then there is effectively

48. See *K'raiti U'plaiti* (*Plaiti* 100:2) who cites and defends those who accept this position. (This possibility is one of the three *limud zechut* points raised by *Aruch HaShulchan* noted above.) Since there is obviously more than 960 times as much juice as insects, the insects would be *batel* according to this opinion.

49. See, for example, *Shulchan Aruch* 100:1 as per *Gr"a* 100:5.

50. The following is a list of *Poskim* who share the strict opinion, prepared by Rabbi Dickman: *Tevuot Shor* (end of *sefer*), *Pri Toar* 84:15, *Chochmat Adam* 51:1, *Chatam Sofer* YD 277, *Beit Shlomo* 2:157 s.v. *vegam*, *Maharshag* YD 1:45 s.v. *u'mah she'hikshah*, *Yad Yehudah* 69:61 s.v. *od ra'iti*, *Yeshuot Yaakov* 84:5, *Avnei Nezer* YD 81, *Eretz Tzvi* 88, and *Chazon Ish* 14:6 & 24:8.

no *ta'arovet* (mixture). Others[51] disagree and suggest that although the items are considered to be mixed together – as evidenced by the fact that in their current state one cannot distinguish the forbidden *issur* from the permitted *heter* – since it is possible to remove the *issur*, there is a Rabbinic requirement to do so. Just as *Chazal* say that a *davar sheyesh lo matirim*[52] cannot be *batel* because a person should use the food in the completely permitted way instead of relying on *bitul*, so too if the *issur* can be removed, then one should do so and avoid consuming the *issur* via *bitul*.[53]

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51. See, for example, *Tzemach Tzedek* YD 70:5.

It may be that one can bring a proof to this question from the following Halacha: Rashba (*Torat HaBayit* 4:4 page 38b) states that if a non-kosher dish was mixed into kosher dishes, the dishes may all be used if the non-kosher dish is *batel b'rov*. Furthermore, although it is a *davar sheyesh lo matirim* since one could *kasher* all of the dishes (and remove the forbidden absorbed flavor), one is not required to go to such lengths to avoid a *davar sheyesh lo matirim*. Ra'ah (ad loc. page 38a) argues that the reason to *kasher* is not because of *yesh lo matirim* but rather because anytime the *issur* is noticeable (i.e. removable) there is no *ta'arovet* and there is no limit to how much one must do to remove the *issur*. Rashba (*Mishmeret HaBayit* on page 38a) replies that, in fact, that is not true, and just because it is possible to remove an *issur* does not automatically disqualify the mixture from being considered a *ta'arovet* where *issur* can be *batel*. Thus, it seems that Rashba and Ra'ah are disagreeing on exactly the point noted in the text: is the requirement to remove the *issur* from a mixture based on *davar sheyesh lo matirim* (which has limitations) or because such mixtures are not a *ta'arovet*. If this is correct, then the fact that *Shulchan Aruch* 102:3 & 122:8 accepts the lenient opinion of Rashba would indicate that he follows the more lenient approach. [Although some *Poskim* disagree as to whether *kashering* is considered an unreasonable amount of trouble (*tirchah)*, they seem to agree in principle to *Shulchan Aruch's* ruling.] This requires further consideration.

52. A food which is currently forbidden but will not be forbidden in the future (or with minimal effort). For example, an egg laid on *Yom Tov* which is forbidden on that day but will be permitted once *Yom Tov* ends.

53. A seemingly related issue discussed in the *Acharonim* is whether a mixture, in which one can see the *issur* but not remove it, is considered a *ta'arovet* that is able to take advantage of *bitul*. *Chazon Ish* 30:3 (see also *Chazon Ish* 14:6) says that this question is actually a disagreement, with *Shach* 104:3 following the lead of Ramo 104:1 to be lenient, and *Taz* 104:1 accepting the decision of *Shulchan Aruch* 104:1 to be strict. (See *Taz* and *Beit Yosef* [to

According to the latter of these opinions, the requirement to filter or remove insects from a mixture is Rabbinic in nature, and – just as with *davar sheyesh lo matirim* – there is a limit as to how much the person must do to satisfy this requirement.[54] All reasonable steps must be taken to remove the *issur*, but if doing so involves unusual amounts of difficulty or expense, the person may rely on *bitul* and does not have to remove the *issur*. On the other hand, the first opinion holds that the need to remove the *issur* is essentially a Torah-based halacha, and one must go to any lengths to fulfill the requirement.

Our case appears to be a perfect example of where these opinions would differ; it is physically possible to remove the insects and covers from the mixture but it truly takes a considerable amount of effort to do that. First the juice must be filtered with a 230 mesh cloth, and then one must painstakingly pick through the particulate to segregate the scale. According to the lenient/latter opinion, that effort is beyond what is expected for a *davar sheyesh lo matirim* and therefore the insects are "in a *ta'arovet*" and consequently become nullified, *batel*.

However, according to the strict opinion that a mixture only qualifies for *bitul* if there is absolutely no way to separate the *issur* from the *heter*, should the insects and covers in the juice be an example of that? Should we say that since it is possible to remove the insects, one is required to do so, and if one doesn't, it is unacceptable to claim that the insects are *batel* in the juice?

115:3] that the question may be dependent on a disagreement between *Rishonim* regarding the status of חמאת עבו"ם; see Rambam, *Hil. Ma'achalot Assurot* 3:15 and *Torat HaBayit* 3:6 page 90b.) On this question, *Pri Chadash* 104:3 is *machmir* as is *Chazon Ish. Chavot Da'at* (*Biurim* 104:1) follows Ramo and *Shach*, and *Minchat Yaakov* 85:17 says that a priori (*l'chatchilah)* one should be strict but in cases of great loss (*"hefsed merubah")* one can be lenient. (*Chochmat Adam* 51:3 appears to accept this approach).

54. See, for example, *Shulchan Aruch* 102:2 & 4.

This question was posed to a number of contemporary *Poskim* who essentially all agreed that – although in general one should be *machmir* for the strict opinion noted above – in this case one is not required to do so. The basic reason for this was that for the average person it is truly impossible to remove the insects, and there are so few people who have the expertise to find and remove these insects from the juice that it is virtually as if there is no way to remove them. Some of the nuances of how different *Poskim* said this are presented in the footnote.[55]

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55. Rav Shmuel Felder, *Posek* in Beth Medrash Govoha in Lakewood, (personal conversation with the author) and Rav Moshe Heinemann (as reported by Rabbi Sholom Tendler) said that one is not required to learn the special skill required to identify and remove the insects from the juice. (At the same time, Rav Felder was of the opinion that removing covers from the juice is a skill that anyone can easily learn with a minimal amount of training [others questioned this assumption]. Therefore, according to those who consider covers to be forbidden as *yotzeh* (see Section H of this document), the covers are not *batel* since they are removable from the mixture.)

Rav Shlomo Miller, Rosh Kollel in Toronto, (as reported by Rabbi Feingold) based his position on a question: if the halacha is that anything removable is not *batel*, what is the case where a *beryah* is not *batel*? Clearly the *beryah* must be mixed in a manner where it is considered a *ta'arovet*, yet the insect must be complete to qualify as a *beryah*. If so, how is it possible that a complete insect cannot be removed even with herculean means? (Although one could possibly answer that *beryah* is not *batel* when the insect is so perfectly camouflaged as to be impossible to remove, Rav Miller was uncomfortable limiting the halacha of *beryah* to such a specific and limited case.) This indicates that even within the opinion that one must do "anything" to remove the insect, there is some limit to "anything". Although the exact guideline as to what the extent of "anything" is, Rav Miller was convinced that the effort required to remove the exceedingly small insects from orange juice was beyond what is required.

Rav Asher Anshel Eckstein, Belz Kashrut, writes in his *teshuvah* on the topic that even after experts remove the suspected insects from the juice, they find that more than half of what they've removed is actually not an insect, such that the insects remain (in a *ta'arovet* and) are *batel* in the non-insects. Although Rav Eckstein presumably is aware that there are a handful of experts (at least 4 of which are known to this author) who can actually identify and isolate just the insects and covers, the underlying assumption of

Conclusion

It is physically possible to remove the insects from the juice, but due to the extreme difficulty in doing so the mixture of juice and insects is considered a ta'arovet such that bitul remains appropriate. Although many Poskim disagree with the aforementioned approach as relates to most mixtures, in the case of orange juice where there are a mere handful of people who can actually remove the insects, all should agree that the insects are batel.

L. Summary

The outside of orange peels harbor tiny scale insects, and these insects, together with their covers, can be found in containers of orange juice. There are two primary reasons why the juice might nonetheless be permitted: the insects may be too small to be forbidden, or they may be *batel* into the juice. There are many prominent *Poskim* who disagree with the first of these reasons, but there seems to be agreement that the

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the *teshuvah* is that one can ignore this possibility since the expertise of those individuals is deemed insignificant.

An alternate reason to be lenient was suggested by Rabbi Boruch Moscowitz (author of *Vedebarta Bam*) (as reported to this author by Rabbi Dickman, and as presented in a somewhat different manner by Rav Nissim Kaplan, of *Yerushalayim*, in a recorded *shiur* in January 2015). One violates an *issur d'oraitah* for eating an insect if they (a) eat a *kezayit* of insects, (b) eat a whole insect (*beryah*), or (c) if they eat less than a *kezayit* of a partial insect, but that partial insect qualifies for the principle that חצי שיעור אסור מן התורה. Clearly, no one will possibly eat a *kezayit* of insects in their orange juice ("a"), and we have already established that the insects are not *beryot* ("b"), such that the only possible *d'oraitah* violation is based on the assumption that these qualify as חצי שיעור אסור מן התורה. In this regard, one can rely on the opinions that when a חצי שיעור is mixed with other foods (even if those don't technically qualify as a "*ta'arovet*") there is no *d'oraitah* violation. [For more on that, see *Chavot Da'at* 109:5 (*Biurim*) and the many opinions cited in *S'dei Chemed* Volume 2 pages 372-375 (כללים, מערכת חי"ת, כלל ט"ז)]. If so, a person drinking orange juice with insects in it is (at most) only violating an *issur d'rabannan*, and to avoid an *issur d'rabannan* the person is not required to make the strenuous efforts required to segregate insects from the juice (as above regarding *davar sheyesh lo matirim*).

second reason is valid. Although at first glance one might think that *bitul* is inappropriate due to the insect being a *beryah* or being "removable" from the mixture, further analysis shows that this does not appear to be correct, and orange juice is therefore permitted.

Otzar Beit Din In Our Day

Rabbi Yosef Tzvi Rimon

The Sabbatical Year, known as *shemittah,* is a year in which those living in *Eretz Yisroel* are forbidden from doing many forms of farming work, and any produce which grows on its own is considered *hefker*, ownerless. Thus, whatever grows does not belong to the person who is nominally the landowner; the land belongs to God, and in the seventh year, He has decreed that the land's bounty accrues to all.

There is an obvious difficulty in arranging how this beautiful concept should work in real life, and many years ago, when the Jewish people were still living in their land, certain methods were devised to fulfill the biblical mandate and yet assure orderly and equitable distribution of the earth's bounty during the *shemittah* year. One of these procedures was the organization of an *Otzar Beit Din* (which will be explained hereinafter), which would supervise and direct these endeavors. For many hundreds of years, with the Jewish people exiled from their land, application of the laws of *shemittah* was basically moot. However, with the return of Jewish involvement in agriculture in the Land of Israel in the modern age, it has once again become necessary to devise methods for implementing the laws of *shemittah*.

We have been fortunate to create an *Otzar Beit Din* in *Gush Etzion* and in other parts of Israel, so that we can eat plenty of

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fruit[1] which is endowed with *kedushat sheviit* (the sanctity of the seventh year). In this article we will clarify the underlying principles of an *Otzar Beit Din*, and discuss a number of practical applications. This discussion is a renewal of halachic issues which have been dormant for hundreds of years, and which today are very much a part of everyday life in Israel during *shemittah*.

Sources

The primary source for *Otzar Beit Din* is the *Tosefta*[2] which states:

> Originally,[3] representatives of *Beit Din* would sit at the entranceway of the city and allow each farmer to take three meals' worth of food, and the rest they would [confiscate and] put into the city storehouse (*otzar*). When the figs ripened on the trees, representatives of *Beit Din* would hire workers to harvest and dry the figs, put them into containers, and bring them to the city storehouse. When the grapes ripened on the vine, representatives of *Beit Din* would hire workers to harvest the fruit, press the juice in a winepress, put the juice into barrels, and bring them to the city storehouse. When the olives ripened, representatives of *Beit Din* would hire workers to harvest the fruit, press them in an olive-press, put the oil into containers, and bring them to the city storehouse. Each *Erev Shabbat*, *Beit Din* would distribute the figs, wine, and oil from their storehouse to the people of the city, giving each person an amount relative to the number of people in their household.

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1. *Otzar Beit Din* is primarily used for the distribution of fruits, but is rather limited in its use for vegetables due to the prohibition of *sefichin*. Details of that issue are beyond the scope of this article.

2. *Tosefta*, *Sheviit* 8:1.

3. The significance of the word "originally" will be noted below in footnote 10.

The simple reading of *Tosefta* is that the workers hired by the *Beit Din* would harvest and process the fruit in the same way it was done in all other years. However, this is puzzling, because the Mishnah[4] clearly states that one may not harvest produce during *shemittah* in the typical manner, and one may not press grapes or olives in the standard press used during other years.

Rash Sirilio[5] finds these questions so troubling that he suggests that *Tosefta* is actually discussing pre-*shemittah* produce of the sixth year. According to *Rash Sirilio*, there is no source or justification for the practice of *Otzar Beit Din* during *shemittah*.[6]

However, Ramban[7] accepts *Tosefta* at face value and understands that it is describing a system whereby *Beit Din* would hire workers to collect, process, store, and distribute *shemittah* produce. Chazon Ish[8] explains that the prohibition

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4. Mishnah, *Sheviit* 8:6. See also *Tosefta* 6:20.

5. *Rash Sirilio*, *Sheviit* 9:6 and 9:4. Rabbi Shlomo Sirilio, known as *Rash Sirilio*, was born in Spain shorty before the expulsion in 1492 and eventually settled in *Eretz Yisrael*. He is the author of an important commentary on *Yerushalmi*, *Zeraim* and other works.

6. *Chazon Ish*, *Sheviit* 11:7 notes that the explanation of *Rash Sirilio* is itself problematic, for if *Tosefta* is discussing produce of the sixth year, by what right did *Beit Din* confiscate people's produce and put it into public storehouses for distribution to everyone else? Produce of *shemittah* is ownerless (*hefker*) such that the owner has no particular right to the fruits of his field, but if the produce grew during the sixth year it would seem wrong for *Beit Din* to appropriate it just so that the broader public would have what to eat during *shemittah*.

7. Ramban, *Vayikra* 25:7.

8. *Chazon Ish*, *Sheviit* 12:6.

An alternate explanation for *Tosefta* may be that the basis for the prohibition against harvesting, etc. in the normal manner is because, in truth, each person should only be harvesting as much as he needs for three meals. That limitation applies only to individuals, but when *Beit Din* harvests for *everyone*, then they are permitted to harvest three meals' worth *for each person*, which effectively allows them to harvest as much as they want to. See support to this suggestion in *Responsa Rashbash* 258, who

against harvesting, etc., in the normal manner is limited to the owner of the field, but everyone else may harvest as they please. The reason for this is that in *shemittah* it is actually permitted to remove fruit from the trees (i.e. harvest) and the Torah only forbids harvesting in a manner which indicates your ownership of the produce. When the owner of the field harvests (or presses) in the typical manner, he is acting in the same way that he does every other year and gives the message that the fruit is his, and therefore that is forbidden. But when others – such as the representatives of *Beit Din* – perform those same acts, there is no violation. In fact, when *Beit Din* harvests produce for the public at large, it provides a clear indication that the produce is *hefker* (ownerless), and is perfectly permitted.[9]

Rambam does not cite *Tosefta*, and this leads some to conclude that the halacha does not condone this practice.[10] However, Rash, Rosh and other *Rishonim*[11] do quote *Tosefta*,

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suggests that *Otzar Beit Din* operates based on the assumption that they are the "representatives of the poor".

9. For more on this line of reasoning, and discussion as to whether it allows *Beit Din* to prevent others from taking fruit from a field designated for *Otzar Beit Din* use, see *HaTorah VeHaaretz*, Volume 6 pages 389-422, *Likrat Shemittah Mamlachtit Bemedinat Yisrael* 15, and in this author's work, *Halacha Memekorah, Shemittah*.

10. See first answer of Radvaz to Rambam, *Hilchot Shemmitah Veyovel* 7:3, Rabbi Ben Zion Abba Shaul (*Hatorah Vehaaretz*, Volume 3, page 180), and Rabbi Mordechai Eliyahu (ibid.). (See also *Ohr Torah,* Volume 319, which cites Rabbi Ovadiah Yosef as originally sharing this opinion but later accepting the use of *Otzar Beit Din*.) Other reasons to reject *Tosefta* are (a) that the text in *Tosefta* begins with the word "originally" which implies that as later Rabbinic enactments regarding *shemittah* were promulgated, the *Otzar Beit Din* system was no longer viable (see *Devar Hashemittah* to Mishnah, *Sheviit* 9:8, but see *Chasdei Dovid* to *Tosefta* who offers an alternate explanation for the word "originally"), and (b) we have noted earlier that according to Rash Sirilio's interpretation of *Tosefta*, there is no source for the use of *Otzar Beit Din* during *shemittah*.

11. Rash, *Sheviit* 9:8 (not to be confused with Rash Sirilio), Rosh, *Sheviit* 9:8, *Tosfot Rid*, *Pesachim* 51b, and *Tosfot Rabbeinu Yehudah*, *Avodah Zara* 62b.

and some *Acharonim*[12] suggest reasons why Rambam does not cite *Tosefta* even though (they propose) he essentially agrees with it.

Use of *Otzar Beit Din*

For centuries, the *Otzar Beit Din* system described by *Tosefta* was not used. However, in the discussions surrounding the *heter mechirah*[13] for *shemittah* 5670 (1909-1910), Rav Kook[14] suggested that farmers create and participate in an *Otzar Beit Din*. He proposed that the *Beit Din* hire the farmers as their representatives to harvest the produce and prepare it for use by the public. In this way, not only would consumers have fruit to eat, but the farmers who observed *shemittah* could also earn some income as the *Beit Din's* representatives. Even after Rav Kook's endorsement, *Otzar Beit Din* was only used sparingly, until Chazon Ish encouraged its use for *shemittah* 5705 (1944-1945) and 5712 (1951-1952).[15] Since then, the use of *Otzar Beit Din* has continued to grow each *shemittah*.

During *shemittah* 5761 (2000-2001), the large cooperative known as *Tnuva* created an *Otzar Beit Din*, but due to consumer apprehension about using their produce, that *Beit Din* lost approximately 10 million *shekel*. That case notwithstanding, *Otzar Beit Din* is becoming more and more popular to the point that for *shemittah* 5775 (2014-2015), there are many *Mehadrin Otzar Beit Din* (ultra-careful) structures, with *Otzar Haaretz* being one of the more prominent ones.

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12. See the second answer of *Radvaz* ibid., and *Chazon Ish*, *Sheviit* 12:6.

13. The term "*heter mechirah*" refers to the practice of selling ownership of the land of *Eretz Yisroel* to a non-Jew for the *shemittah* year, so as to remove the *shemittah* restrictions. The validity and appropriateness of the *heter mechirah* has been the subject of considerable debate for the past 150 years, and it continues to be relied upon by many farmers. For more details on the *heter mechirah*, see the article in Volume 26 of this Journal.

14. *Hachavatzelet*, Volume 46 (5670), and *Iggerot Harayah* 1:313.

15. See *Responsa Mishnat Yosef* 3:38-40 and *Halichot Sadeh*, Volume 50, pages 35-37.

In an *Otzar Beit Din*, there is no cost for the fruit itself, since that fruit is *hefker shemittah* produce (ownerless), but rather *Beit Din* is allowed to recoup their costs for harvesting, processing, packaging, and delivering the food to individuals. Accordingly, even though the Halacha forbids selling produce of the seventh year, the restrictions associated with selling *shemittah* produce do not apply to *Otzar Beit Din* produce since the payment is for labor rather than for produce. Therefore, although it is forbidden to sell *shemittah* produce by weight,[16] there are those[17] who permit selling *Otzar Beit Din* produce by weight since it is not the fruit which is being sold, but rather that *Beit Din* charges customers a price per pound for the labor involved. Similarly, although money used in the purchase of *shemittah* produce typically "absorbs" *kedushat sheviit*,[18] that does not occur when one buys *Otzar Beit Din* produce, since the buyer did not pay for the fruit, but instead paid for the *Beit Din's* expenses.

Otzar Beit Din provides the most realistic possibility for Jews to eat *shemittah* produce, and even the most "Jewish" manner in which to follow the laws of *shemittah*, as follows: It provides for a mechanism whereby the *hefker* fruit which grows during *shemittah* can be distributed to the majority of people who live in urban cities far from the farms, and allows those people to continue to eat produce without having to purchase it from non-Jews. Furthermore, participation in the *Otzar Beit Din* system allows farmers to follow the laws of *shemittah* and actually earn significant income (serving as the representatives of *Beit Din*) without having to sell their land to non-Jews and rely on the *heter mechirah*. Thus, *Otzar Beit Din* is a realistic and proper manner in which to observe the laws of

16. Rambam, *Hilchot Shemittah Veyovel* 6:3.

17. *Az Nidbiru* 10:45. However, see *Responsa Mishnat Yosef* 1:23:c and *Halichot Sadeh*, Volume 50, page 35, who disagree.

18. Rambam, *Hilchot Shemittah Veyovel* 6:6-7. Money used to purchase *shemittah* produce is considered to have acquired the sacred status of *shemittah* products, which would severely limit its use.

shemittah, without having to subvert the intentions of the halacha.

As described above, *Otzar Beit Din* seems like a wonderful solution which should provide farmers with income and the ability to observe *shemittah*, and consumers with *shemittah* produce. The standard assumption is that *Otzar Beit Din* produce should cost less than what that same produce would cost during other years. This is for the simple reason that in an *Otzar Beit Din* one merely pays for the labor but not for the fruit, while in other years the consumer must pay for both. However, the following example illustrates why this is not always so:

Peach trees in a given farm in Gush Etzion produce 20,000 buds which will each eventually produce one fruit. If the farmer leaves the field completely fallow, however, the peaches which grow will be so small as to be essentially inedible. In a regular year, the farmers would prune the trees to the point that only 400 fruit would be produced, but those fruit would be large, beautiful and quite desirable. The farmers observing the laws of *shemittah* asked how much they were allowed to prune or trim their trees, so as to produce better fruit. The answer given was that they should primarily prune before *shemittah*, and that all trimming during *shemittah* should be performed by a non-Jew and in a more limited fashion that in other years. (The basis for that ruling is beyond the scope of this article.)

The net result of this ruling is that instead of the farm growing peaches which have a diameter of 65 mm (2.5 inches), the fruit will be only 55 mm (about 2 inches). In a regular year, peaches which are 55 mm sell for 8 *shekel* per kilogram, while those which are 65 mm can be sold for as much as 16 *shekel* per kilogram, and by selling a combination of both types the farmer recovers his expenses and also earns a profit. However, since during *shemittah* the halacha dictates that he will only be producing 55 mm peaches, the *Otzar Beit Din* must charge <u>more</u> than 8 *shekel* per kilogram to even recoup

the expenses of harvesting and delivering the fruit to the market! Thus, in this example, the 55 mm peaches sold through *Otzar Beit Din* will be more expensive than those same peaches would have been during a regular year in spite of – and actually because of – the fact that all halachot were followed.

Kedushah After *Biur*

As part of the halachot of *kedushat sheviit*, it is generally forbidden to take *shemittah* produce out of *Eretz Yisrael*,[19] and therefore it is uncommon for those living outside the land (in *chutz laaretz)* to obtain *Otzar Beit Din* fruit unless they visit *Eretz Yisrael*. However, there is a disagreement as to whether the sanctified status—*kedushash*-- of *shemittah* leaves the fruit once the time of *biur* passes. *Biur* is the point at which no more of the fruit is available in the fields; at that point, one is required to declare the *shemittah* produce which they have as ownerless, *hefker*.[20] For purposes of our discussion, it is significant to know that the time of *biur* for grapes and grape products (e.g. wine) is at Pesach of the year after *shemittah*.[21]

A Mishnah towards the end of *Masechet Sheviit*[22] implies that once the mitzvah of *biur* has been performed, the fruit no longer retains its sanctified status (*kedushat sheviit)*. Based on the *Poskim*[23] who accept this position, there are kashrut agencies in Israel which allow for the export of *Otzar Beit Din* wine after the time of *biur* has passed. (The wine is marked as

19. Rambam, *Hilchot Shemittah Veyovel* 5:13.

20. See Rambam, *Hilchot Shemittah Veyovel* 7:1. The form of *biur* described in the text follows the opinion of *Ramban*, *Vayikra* 25:7, which is generally accepted by *Ashkenazim*.

21. Rambam, *Hilchot Shemittah Veyovel* 7:11.

22. Mishnah 9:7.

23. See Rash, Rosh, and Bartenura to Mishnah ibid. *Chazon Ish*, *Sheviit* 13:5 rules leniently, but see at the very end of Section 26 where he appears to accept the strict opinion.

being from *Otzar Beit Din* and that *biur* was performed.) Since there is no longer any *kedushat sheviit*, the wine may be sent out of *Eretz Yisrael,* and consumers may drink the wine without observing any of the other restrictions of *kedushat sheviit*.

However, many other *Poskim*[24] disagree with the proof from the aforementioned Mishnah and instead are of the opinion that the wine retains its *kedushat sheviit* even after *biur*. They would forbid the export of this wine to *chutz laaretz* and would rule that if one came into possession of this wine they must treat it with the special requirements concerning fruit grown during the Sabbatical year, as being holy. The numerous laws regarding treatment of such fruit are complex, and this is not our topic; however, these laws would impact use of *shemittah* products even outside the Land. Thus, for example, one would not be able to waste or even throw out unused portions.

Etrogim

As noted, it is forbidden to remove *shemittah* produce from *Eretz Yisrael*. If so, may one export Israeli *Otzar Beit Din etrogim* for those living in *chutz la'aretz* to use on *Sukkot*? This question is relevant for the *Sukkot* after *shemittah* when "*shemittah etrogim*" will be available in the market.[25]

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24. See *Tosefot Avodah Zara* 62b s.v. *yazfi*, Ritva ad loc. s.v. *dvei*, Ridvaz *Mishmeret Lehabayit* footnote 26, and *Maadanei Eretz* 10:12-13 (Rav Shlomo Zalman Auerbach). See also *Chazon Ish* cited in the previous footnote.

25. See *Derech Emunah* 4:86, who cites the disagreement in the *Rishonim* as to whether an *etrog's shemittah* status is judged by when it grew or when it was harvested/picked. An *etrog* grown primarily during *shemittah* is considered *shemittah* produce, and those *etrogim* are the ones sold for *Sukkot* after *shemittah*. *Etrogim* sold for the *Sukkot* during *shemittah* are purposely harvested before *shemittah* begins such that all opinions agree that they have no *kedushat shevi'it*.

Chazon Ish[26] rules strictly that this is forbidden, but notes that if the *etrog* was taken out of *Eretz Yisrael* it remains acceptable for use in the mitzvah. Others take a more lenient approach and either permit such export outright or under special conditions, such as that it is performed by a non-Jew or that the *etrog* be returned to *Eretz Yisrael* after *Sukkot* so that the mitzvah of *biur* can be performed properly.[27]

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26. *Chazon Ish, Shevi'it* 10:6.

27. See sources and opinions cited in *Piskei Teshuvot* 649:7.

Sale of *Chametz* for Students in College Dorms

Rabbi Yaakov Jaffe
and
Rabbi David Pardo

Many American Orthodox Jews attend secular universities during their college years, studying general knowledge and preparing for a career while dorming and living on the campus at which they study. Without entering into a discussion whether this practice is halachically permissible,[1] it is necessary to realize that this practice does exist, and does occasionally raise specific halachic issues. In this study, we will address one such issue – the "sale of *chametz*" in college dorms.

Within the last few decades, the Orthodox Union has created the JLIC program, designed to serve the needs of American Jews who attend these universities, in an understanding that the needs of this group of students are different than the needs of Jewish families in conventional communities.[2] The creation

1. For a lengthy treatment, see *Iggerot Moshe Yoreh Deah* 4:36. The purpose of this article is not to explicate, expound or discuss the various positions tied to attendance at these universities. Rather, we merely point out that though some authorities object to young people attending these universities, many Orthodox young men and women do find themselves in secular college and as such their halachic needs must be addressed.

2. The program was founded by Rabbi Menachem Schrader in the year 2000, and now serves twenty-one universities in the United States and

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of the JLIC program, thus, is in response to this growing trend in the life of American Jews at the end of adolescence.

One area where the halachic needs of university students differs from the needs of their parents is in the area of the sale of *chametz*, where the setup of university life creates complications in the sale of *chametz* procedures that are unlike those in conventional communities. This essay will address those areas: ownership of the *chametz*, providing access to the *chametz*, issues of travel and time zones, and the challenges of making *kinyanim* (halachically valid sales) on *chametz* in a secular university. It will be of interest both to university students and their parents who must confront these issues head on, to rabbis of both those students and their parents, and also to those who seek to understand the process of the sale of *chametz* more generally.

Over the course of our discussion of how university students tackle the questions of the sale of *chametz*, we will have the opportunity to investigate also other areas of halacha where university students face unique challenges and questions, including the laws of Chanukah candle lighting, *Mezuzah* placement, Shabbat Candle Lighting, *Eruv*, and shared apartments. To be sure, some challenge areas facing university students are the same as those facing their parents (including Kashrut, *Eruv*, Succah construction, and working on *Chol Hamoed*, Purim and other holidays); this article focuses specifically on areas where the experience of the university student differs from that of the married adult living in his own residence.

At the onset, we will also note that that many prominent rabbis objected, more generally, with the sale of *chametz* altogether; these include the Vilna Gaon[3] and Rabbi Yosef Dov

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Canada. One of the authors of this paper serves as the JLIC educator at Brandeis University; the other formerly lectured at the Columbia University Beit Midrash before the establishment of JLIC at that university.

3. *Maaseh Rav* #180.

Soloveitchik.[4] According to these authorities, all Jews, even those not in universities, should refrain from a sale of c*hametz*. Yet, conventional practice is to permit the sale. A lengthy discussion of the permissibility of the sale of *chametz* more generally is found in *Mekor Chaim (*488:11), where two independent questions are asked to establish if and when *chametz* may be sold before Pesach.

Firstly, one needs to ask whether the sale in question is a genuine sale, or is just a "*ha-aramah*," a situation in which legal/formal procedures create a moment of dissonance wherein the technical legal circumstance seems radically different from the superficial appearance of what has actually happened. As an example, *Shabbat* 139b dubs a situation "*ha-aramah*" when an individual enters a boat on Shabbat with the expressed intention of his next hour being defined as "taking a nap;" he wishes to technically and formally define this time as napping. When the boat reaches its destination, and the passenger awakes – having been transported illicitly on Shabbat – we experience a moment of dissonance between a technical description of the events (napping, permissible on Shabbat), and the apparent description (traveling by boat, prohibited on Shabbat). In considering the sale of *chametz*, *Mekor Chaim* wonders whether we have such a dissonance between formal truths (a sale) and apparent truths (the Jew has left *chametz* in his or her possession for the duration of the holiday), or whether a valid sale of *chametz* – conducted with a written contract and no conditions that invalidate the sale – is not a "*ha-aramah*" because the objective onlooker would agree that in this sale, the *chametz* has been purchased by the gentile, and the legal-formal truth remains the same as the apparent one.

Even if we were to grant that the sale of *chametz* is a "*ha-aramah*," we still would permit the sale to obviate a Rabbinic prohibition, since "*ha-aramah*'s are generally permitted to

4. *Nefesh Harav,* 177.

obviate Rabbinic prohibitions. *Mekor Chaim* suggests that many of our instances of sales are only to avoid Rabbinic prohibitions, and so they remain permitted. Thus, one might permit the sale on one of two grounds: either because the sale is not a "*ha-aramah*," or because it is a "*ha-aramah*" but a permissible one that only obviates a Rabbinic decree.

This article assumes that the students in question will follow the opinion that permits the sale, in general, with recognition that some would frown on any sale of *chametz*, and perhaps even more so on sales conducted in less ideal circumstances, such as the ones to be discussed further, below.

Section One: Ownership and Possession

Ownership of the *Chametz:* Children and Parents

Though Halacha imparts to children the full rights of adulthood at the ages of 12 and 13,[5] Halacha also notes a special category of a "child who eats upon his father's table". As such: despite being above the age of majority – he is nevertheless not considered his or her own financial actor, but rather only an extension of the parent's household. Such a child is considered part of the father's household both with respect to the laws of found objects, which become the possession of the father (*Bava Metzia* 12b), and with respect to the inability of such a child or young adult to take possession of an *Eruv* on behalf of others (*Tosafot* and *Rosh* loc. cit.). *Shulchan Aruch*[6] extends this rule even to certain earnings of the young adult at this stage of life.[7] As we seek to understand how the *chametz* of university students should be sold, it is imperative to determine the status of those students, and thus clarify who really owns the *chametz* in quesiton.

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5. And for some business matters even before that age, see *Gittin* 59a.
6. *Choshen Mishpa*t 270:2.
7. For a longer discussion, see also *Responsa of Betzalel Asheknazi*, #35.

What is the status of dorming university students? Do they "eat from the father's table" or not? The answer might need to be resolved on a case-by-case basis. Some students might be paying for university, room, and board entirely through their own work-study, scholarships, and loans, with no parental support, and would thus be considered full adults financially. Others, in contrast, might still be totally dependent on their parents, who might be providing for all their expenses, including tuition, room, and board. Some students fall somewhere in between the two extremes.

Many contemporary authorities try to apply these categories to contemporary situations. R. Menashe Klein[8] discusses the application of these rules to dorming yeshiva students, and does consider them "eating upon the father's table", as the student typically does not provide for his own support.

Yet, there are two differences between dorming university students and yeshiva students, for two reasons. First, whereas in yeshivot, a central cafeteria generally provides the students with food, many university students live in apartments with private kitchens that students stock with their own purchases of food – usually with funds provided by parents. Second, some students might take part-time jobs and thereby purchase food alone, while parents pay for tuition and rent.

Further complicating matters is the opinion of R. Moshe Sternbuch,[9] who distinguishes between whether the allowance of the parents was given to the child, who has full choice as to how to spend the funds, or if the parent severely limits how the funds can be spent. Some parents might give students an allowance with no limits how the funds are to be spent; in this case, food purchased by the student might be considered the possession of the student. Others might take advantage of a university-sponsored debit card which significantly limits how

8. *Mishneh Halachot* 6:289.

9. *Teshuvot Ve-Hanhagot* 3:282.

the funds are to be spent, for example limiting them only to purchases of school supplies or food; in this case food purchased by the student might still be considered the possession of the parent. We can conclude that some students probably meet one criterion or another to be considered financially independent, while others clearly are not financially independent, with others in between, depending on which criterion is used. But without a clear set of criteria different authorities might stress one criterion over another and reach a different conclusion about the same student.

When the funds are considered to still be the parents' funds, the *chametz* purchased would ostensibly still belong to the parents, and so the sale of such *chametz* should be included in the parents' sale conducted in their own home. In contrast, if the funds are considered to be an unconditional gift to the student, then the *chametz* belongs to the child and not the parents, and all obligations vis-a-vis the ownership on Pesach and the sale belong to the student. Each university student should consult with his or her parents and with their Rabbi, to determine who actually owns the *chametz*, and who would be the party with the most direct path towards selling it. Rabbis on and off campus should encourage families to have conversations about who owns the *chametz* and who will sell it prior to each Pesach.[10]

If the parents sell the *chametz* located at the university to a gentile located near their own communities, the problem of access to the *chametz*, to be discussed below, becomes more acute. Conventionally, the gentile purchases *chametz* in his own vicinity where he can readily access it should he wish to

10. One could argue that the child can still sell the *chametz*, even if it is owned by the parent, as a pre-appointed adult agent of the parent, much as the initial purchase of the *chametz* was also done by the child on behalf of the parent with the parent's funds to conform with the parent's wishes (in this case, having food for the child). However, clearly the most direct path towards selling the *chametz* would be if the *chametz*'s rightful owner is the one who engages in the sale.

eat from it on Pesach. If parents across the United States sell their *chametz* which is housed in universities far away, the sale will seem closer to a "*ha'aramah*" in nature.

Ultimately, however, a child who sold his parents' *chametz* that was in the child's physical position without consulting them first, and without asking permission – would probably have effected a legitimate sale. This would fall under the legal principle of *meishiv avaidah le-chaveiro* – that since the *chametz* would become prohibited if not sold and the child's sale is the way to protect another Jew's property that is in his physical control, one may conduct the sale and protect the property. This principle is first explicated regarding the laws of borrowing and lost objects,[11] but it is also applied regarding *chametz* of another Jew found in my possession.[12] Even if the parents own the *chametz*, and the child sells the *chametz* without the parents' permission – the sale is binding.

What about the reverse case? What if the *chametz* actually belonged to the child, but the parents sold it, either thinking it was theirs, or hedging their bets and selling on the child's behalf to avoid the prohibition of owning *chametz*? This case differs from the case of the child selling for the parent, because here the seller of the *chametz* has neither title nor physical possession of the *chametz*. Thus, in this reverse case, there is more debate among the various authorities. *Chatam Sofer*[13] is of the opinion that this case, too, constitutes a valid sale, based on the slightly different principle known as *zachin le-adam shelo befanav*, one person may undertake a transaction to benefit another even without their knowledge. Since the *chametz* would need to be destroyed anyway, and would be prohibited from benefit, it is a clear benefit to the parent for the *chametz* to have been sold.[14] However, with the ubiquity of phone access

11. *Bava Metzia* 38a.

12. *Pesachim* 13a, *Shulchan Aruch* 443:2.

13. *Responsa, Even Ha-Ezer*, 11.

14. See also Shmuel Stern, *Seder Mechirat Chametz Ke-hilchato* (Bnei Brak,

and alternative communication available today, it is hard to imagine the situation where a child had absolutely no way to consult with the parent before the sale of *chametz*, and this should be urged upon all Jewish university students, instead of just relying on the principle of selling the *chametz* of another Jew on their behalf without their own knowledge. Clearly being appointed for the sale of *chametz* is preferred over selling someone's *chametz* without their knowledge.

Application to the Lighting of Chanukah Candles

The question of whether children in universities are still considered part of the parents' households finds significant application in regard to the manner of lighting Chanukah candles. In general, the laws of Chanukah lighting do not relate to ownership of the place where the lights are lit, and so a guest lights in whatever place he happens to be staying, irrespective of whether they are renters, owners, or none of the above.[15] Consequently, most Jews will light Chanukah candles wherever they will be sleeping the nights of Chanukah, without giving the matter much additional thought (See *Taz*, 677:2.). Even students are advised to light their Chanukah candles in their dorm rooms for the duration of the holiday – irrespective of whether they are independent financial actors, or are part of their parents' household.[16]

Unfortunately, many universities have fire codes that far exceed what is normally allowed in most homes, communities, and rentals. Dorms are often not equipped with kitchens, as students eat in a communal cafeteria, and so no fire may be used in those dorms, at the threat of the student being removed from the dorm or even expelled. Whereas a Jewish university might offer a special exception in honor of the

1989), 112-113, for a longer discussion.

15. *Shulchan Aruch* 677:1.

16. See *Iggerot Moshe* OC 4:70:3.

holiday, a secular university might be less inclined to make such an exception. Some accept the use of incandescent bulbs to suffice for university students to fulfill the mitzvah of Shabbat candle lighting,[17] but they are insufficient in regard to Chanukah,[18] and so students in secular universities have little opportunity to fulfill the mitzvah of lighting Chanuka candles while at school.

The Halacha does provide one potential solution to this problem: if someone's family lights in the family home, they can fulfill the mitzvah through their lighting, even if they are not present there at the time of the lighting.[19] Thus, Rav Ovadya Yosef[20] rules that students' parents can light on their behalf at their home of origin and students can thereby fulfill the mitzvah, even if they are unable to light in the dorm.

Yet, this solution only works when the students are still defined as being members of the same "*bayit*" or family unit as their parents. A self-supporting student living in a dorm apartment where the student purchases and then cooks his own food might no longer be considered a member of the parents' household, while a student who is fully supported by the parents is still considered a part of the parents' *bayit*, and can fulfill the mitzvah of candle lighting through the mitzvah of the parents at the family home. Here, too, the definition of a particular student's legal status needs to be determined on a case-by-case basis.

Ownership of the *Chametz:* Jews and Gentiles

Though not a generally recommended practice, some Jews in secular universities might share an apartment with non-Jews, and thus potentially enter into a partnership with a gentile as

17. See *Melameid Le-hoil* 1:47, *Yabia Omer* OC 2:17, *Har Tzvi*, OC 1:143.
18. See sources cited in Shimon Eider, *Halachos of Chanukah,* 10.
19. *Shabbat* 23a, *Shulchan Aurch* 677:1.
20. *Yechaveh Daat* 6:43.

to the ownership of various kitchen products. Such an arrangement poses numerous practical and halachic problems, such as ensuring the kitchen remains kosher and being careful for the prohibition of gentile cooking (which has the capacity to render kosher pots un-kosher even if they were used only for kosher food), and ensuring Shabbat settings remain unchanged throughout the day, to name a few.

What would be the necessary procedure if a Jew had partial ownership in his or her apartment's communal pasta or *chametz* stock? Clearly, the Jew must divest himself of his portion of the *chametz* (see *Be'er Heitev* 488:1). Ideally, that sale or divestment should be made to the gentiles who own the remaining shares of that *chametz*, to avoid complications wherein the other partners object to the Jew's selling his or her share to a third party or wherein they chose to use the *chametz* on the days of Pesach. These university students might need to participate in a general sale for their own personal *chametz* (to be bought back after the holiday), and also a specific sale for the products owned jointly.

Section Two: Access to the *Chametz*

Delivering a Key

As part of the practice of selling the *chametz* to the gentile, the gentile is given a method by which to access the purchased *chametz*.[21] This is often provided when the seller of the *chametz* gives a key to the gentile, or at least gives the key to the rabbi or some other neighbor who pledges to give the gentile access to his own *chametz* upon request.

Providing access is more complicated in university settings, for two reasons. First, in many universities, a very significant percentage if not a majority or totality of the students travel

21. *Mishnah Berurah* 448:12 (second half), and see Stern, 13-15, for a brief summary of the positions.

home for Pesach – and if not for all of the holiday, at least for the *sedarim*. When Pesach falls on a Tuesday and Wednesday, many students have only one day of class that they can attend during *Chol Hamoed* and hence will spend all eight days away. This will require greater collection of keys and access materials than in a conventional community, and if the entire community leaves, the keys will need to be transferred to others in a nearby community.[22]

Access to the Premises

The second problem relates to the limitations the university may place on access to specific dorm apartments. Suppose the university states that – for security reasons – non-university students cannot enter any of the dorms without being signed in at the time of entry by a university student who resides in that specific dorm building. In that case, should the gentile arrive on the first day of Pesach to access his *chametz*, the university would not allow him into the dorm, and the rabbi, likely a non-resident himself (and anyway unable to sign in), would not be able to allow the gentile access. This problem is not common in typical communities, where standard rentals dominate and the renter can give access to anyone he might choose. Most university dorms do not operate as rentals, as we will discuss below, and thus require different arrangements to provide for access.

Many *Poskim* argue that even if the gentile need not be handed a physical key per se as a sign of access, and need not be given *actual* access at the time of the sale, the sale must at least contain the unequivocal *right* to access of the *chametz* at any time. If it cannot be granted for certain university

22. Given the remote location of many universities, especially distanced from other Jewish communities, this is often a non-easy task. Many of the universities with JLIC programs are situated as such that the nearest standard Jewish community can sometimes be a thirty-minute drive away from the university!

students, this lack of even theoretical access may invalidate the sale.[23]

Using a gentile university student as the purchaser would obviate this problem, although using a student as the purchaser creates other problems. One can question whether the process of selling hundreds of dollars of *chametz* to a different naive, penniless, debt-ridden, teenage first-year university student each year will lead to years where the purchaser of the *chametz* does not realize the gravity of the sale or even understand the legal principles that underlie the sale itself. Many have the custom of asking a gentile who has business experience or who is a lawyer to purchase the *chametz*, to ensure that the purchaser understands the intricacies of the sale; most college freshmen do not have the requisite knowledge to fulfill this custom. Thus, here, rabbis must make a difficult choice between a sale to a business person that seems legitimate, with a limitation of access, and a sale to a college student with access, that seems like more of a "*ha'aramah*."

Application to *Mezuzah*

In a university context, most students do not have ownership of their own dorm space. They are not even considered renters; instead they pay a "rooming fee" to the university, which entitles them to use a pre-furnished room, provided to them from a large stock of university rooms, at the university's discretion – with many regulations that are often not found in a regular rental,[24] and often with an even further clause allowing the university to relocate students at any point at the university's sole discretion. As we will discuss later, there is also usually no permission for the student to sublet the room to an individual of his or her choosing, especially if that

23. See Stern, 15 (paragraph 21).

24. Such as a prohibition upon the lighting of candles, and providing access to visitors, as we discussed above.

individual is not a student at that same university.

Though the stay is longer, a university dorm most closely resembles the setup of a hospital room, where the individual pays a fee to stay in the facility, but never really takes ownership of the living space – neither by purchase nor rental. To be sure, at first glance, one would equate a university setup with a one-year lease. However, a closer inspection of the way the landlord-resident relationship has been formulated reveals that the hospital parallel is more apt.

Many authorities discuss whether a hospital stay qualifies as real ownership of the space, and most agree that it does not.[25] *Avnei Nezer*[26] rules that a resident in a hospital does not require a *mezuzah* because (a) the resident pays a "fee to stay in the room" but never takes any ownership in the room, and (b) the hospital room is clearly not the possession of the sick resident, and no one would err and think it was his. These criteria would seem to apply to university students, and thus there seem to be strong grounds to exempt them from the mitzvah of *mezuzah*. Even should they choose to place a *mezuzah* without being obligated, perhaps to remind them of their Creator each time they leave and enter (see Rambam, *Hilchot Mezzuzah* 6:13), the placement of a *mezuzah* should not require a blessing.[27]

Section Three: Time Zones

The issue of different time zones and the sale of *chametz* is not a new one. Rav Moshe Feinstein already addressed the issue regarding the difference of time between Israel and the

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25. In addition to *Avnei Nezer*, See *Shut Shevet Halevi Yoreh Deah* 2:156 (final section), *Yalkut Yosef*, *Sova Smachot*, notes to 1:34.

26. *Yoreh Deah* 380.

27. This setup seemingly also exempts the various dorms from requiring an *Eruv Chatzeirot* on Shabbat , as per *Shulchan Aruch* (370:2).

United States in two *Teshuvot*.[28] The general practice is that the *chametz* should be in the possession of the gentile for the entire time of the prohibition – both from the perspective of the location of the *chametz*, and from the perspective of the location of the owner.[29] In many communities, the families selling *chametz* are either in the same time zone as the *chametz*, or are in Israel, so the number of different calendars and times needed to be established for the community sale tends to be small.

On a university campus, the student body can include students from across the United States, including all four time zones, and sometimes includes international students hailing from yet more time zones. This will require the rabbi to quantify the correct time of sale and repurchase for each student. In our experience selling *chametz*, students came from or traveled to at least eight different time areas, which led to a significantly complicated set of times for the sale and repurchase of *chametz*.

Section Four: Effecting the Sale

One of the most legally complex aspects of the sale of *chametz* is undertaking the proper *kinyanim,* or "methods of legal acquisition" for commerce with non-Jews. Each instance of any sale must contain a moment when the property is transferred from seller to buyer. When is that moment, and what is the "method of legal acquisition" that effects the transfer of ownership? The Gemara in *Bechorot* (13a) outlines the basic opinions regarding interfaith commerce:

(1) The opinion of Reish Lakish is that interfaith commerce is actualized through the payment of the purchase price (although in Jew-to-Jew commerce, the purchase of an item from a Jew is actualized through taking possession of the item

28. *Orach Chayim* 4:94-95.

29. Stern, 23-24.

through pulling *(meshicha*). The method of acquisition is the transfer of funds, and the time is when the funds are transferred.

(2) The opinion of Ameimar is that interfaith acquisition is actualized through the buyer's dragging of the item to indicate ownership (though intra-faith commerce is probably actualized through the payment of the purchase price, which is the opinion of Rabbi Yochanan in *Bava Metzia*). Thus, the method and time is when the object is dragged.

(3) Rashi adds (s.v. *klal*) that if the purchaser had actually brought the item physically into his or her own domain, then all agree that the sale has been effected. The debate is over a scenario where the purchased item never entered the domain of the purchaser, but money did exchange hands, or the item was dragged.[30]

Which opinion do we follow? Conventionally, when Reish Lakish disagrees with Rabbi Yochanan, the Halacha follows Rabbi Yochanan (*Yevamot* 36a). In our case, however, we find a debate between Reish Lakish and Ameimar, and there is no clear set-in-stone rule whom to follow in the case of such a dispute.

Rabbenu Tam is of the opinion (*Sefer Ha-Yashar* 693, 698), that though Rabbi Yochanan never explicitly adopts position #2, it is logical to assume that he does follow that position. The Talmud in *Bechorot* seems to work under an assumption that interfaith commerce and intrafaith commerce must involve opposite acquisition methods. Since Rabbi Yochanan adopts the "payment of funds" interpretation for intrafaith commerce, he must follow position #2 regarding interfaith commerce. Consequently our ruling must follow position #2, following the conventional principle that we follow Rabbi

30. A fuller discussion of this option, which is outside the scope of our study, is found in *Maharit Al-Gazi* at the top of 10a (in the pages of Ramban's, *Laws of Bechorot*).

Yochnanan whenever he disagrees with Reish Lakish.

Rav Chaim Cohen (in Tosafot, *Bava Metzia* 48b) and others (probably including Rambam *(Bechorot* 4:5)), in contrast, believe that Rabbi Yochanan never took a stand on this debate, and so the question of interfaith commerce is only a debate between Ameimar and Reish Lakish. If anything, it may be Rabbi Yochanan adopted position #1, to allow a similar method of acquisition for both intrafaith and interfaith commerce. Thus, we are not required to follow position #2, and it is possible that the correct ruling follows the opinion of Reish Lakish, position #1.[31] Even though we follow the opinion of Rebbi Yochanan against Reish Lakish regarding *intrafaith* commerce (See Rambam, *Mechirah*, 3:1), we can still follow Reish Lakish regarding *interfaith* commerce. In essence, the historical question as to what Rabbi Yochanan actually believed becomes the crux of the halachic question which position we should follow.

Because of the significant debate as to the best way to effect interfaith commerce, the recommended practice is to conduct *both* a *kinyan kesef* and a *kinyan meshicha*, (i.e.,both transfer of funds and pulling the object) to fulfill both opinions. However, in most circumstances, when large quantities of *chametz* are sold to a gentile, a *kinyan meshicha* is not possible, as the gentile cannot take physical possession, or even take hold of so much *chametz* in so many locations, which poses a clear problem to the opinion of Rabbenu Tam. Consequently, the accepted contemporary ruling is that the sale of *chametz* today should involve multiple redundant gestures to indicate transfer of ownership and to effect the sale to ensure each opinion would

31. This is also the position of Rashi in *Bechorot* 3b (s.v. *kinyan*), and *Kiddushin* 14b (s.v. *ho'il* – compare Tosafot, loc cit.) Rambam's position is somewhat more complex given his ruling in the *Laws of Zechiya* 1:14 that seems to also allow payment of funds to effect the transaction. A fuller account of the Rambam is outside the scope of this paper – although a brief summary of his positions is found in *Maharit Al-Gazi*, loc., cit., column 2.

accept the transfer of the *chametz* assets.[32]

Acquisition of the Property

One additional gesture or method judged to be critical to effect the sale is built upon a transfer of ownership of the property associated with the *chametz*.[33] By conducting a cash sale or rental on the location of the item,[34] the Jew undertakes an additional *kinyan* of transferring ownership to the gentile by virtue of the fact that the item is now found in the gentile's physical possession. This theory and approach for interfaith commerce was already advocated by the Rosh in the late 13th century (end of *Bechorot* 1:2), and remains in practice to our times.

Rosh mentions the need for the gentile to acquire the item through an acquisition of the property, and mentions the fact that the property itself is acquired through the payment of cash. Yet, Rosh does not specify the method through which the item changes hands when it is acquired. Two different types of acquisition are theoretical possibilities in this case, (a) "*kinyan chatzer*" the principle that I acquire items found in my property, and (b) "*kinyan agav*" the principle that less significant portable items can be acquired together with more significant real property, as an offshoot and continuation of the acquisition of the more significant item. The principle of "*kinyan agav*" is explicated in *Kiddushin* 26a, and *Shulchan*

32. *Mishnah Berurah* 448:19, *Aruch Ha-shulchan* 448:28.

33. See Stern, 44. The conventional list of *kinyanim* are (1) transfer of funds, discussed above; (2) *chatzer* and (3) *agav* discussed below; along with (4) exchange through a symbolic *kinyan chalifin*, and (5) the conventional acquisition method of merchants [*situmta*] which today constitutes a handshake.

34. All agree that property can be transferred in interfaith commerce by virtue of a cash payment, even if moveable property requires an additional method of acquisition such as *meshicha*.

Aruch Choshen Mishpat 202, while the principle of "*kinyan chatzer*" is explicated in many locations in the Talmud, including *Bava Metziah* 10b.

Though Rosh is silent which method he had in mind, *Kitzur Piskei Harosh* rules that we refer to a *kinyan agav*, that as an offshoot of the possession of the property, the item found therein is also transferred along with it. However, *Maharit Algazi* (10a and 2a) clearly understood this to be a *kinyan chatzer*, taking possession of an item by dint of its being found inside the gentile's real property. This second reading is also found in the end of the penultimate section of "*Hilchot pidyon bechor*" found at the end of the Rosh to *Bechorot*[35]

Application to a University Context

For our purposes, it is clear that if the university owns the rooms, cabinets, cupboards, closets and shelves in which the *chametz* is found – that the student cannot sell or sublease any part of his room to the gentile to purchase the *chametz*. This jeopardizes one of the methods of *chametz* acquisition that is generally included in the sale of *chametz*.

A *kinyan agav* – wherein the gentile takes possession of some property, and thereby also takes possession of other moveable objects along with it, is technically possible if at least one student selling to a particular gentile, or the rabbi, actually does own or rent their own apartment. This is because a *kinyan agav* is effective even on *chametz* found in a different location. So long as the gentile takes control of any real property, he can thereby and along with it also take control of numerous *chametz* items from numerous buyers in many locations. In that case, however, the regular document of sale must be

35. However, Rav Yom Tov Lipman Heller argued (8:8:*Ayin*) that this work was not written by the Rosh, but by another member of his circle, perhaps his son. At the very least, Rav Heller proves conclusively that the *Laws of the Exchange of the Firstborn* are written later than the Rosh's basic work, and so reflects the position of an additional scholar.

amended from the usual "and by taking possession of the *chametz* storage places, you will also take possession of the *chametz* found therein (*Agav*)" to the more unusual "and by taking possession of the *chametz* storage places that belong to me, the rabbi, who owns his home, you will also take possession of all of the *chametz* being sold to you by the students who have appointed me to make this sale *(Agav)*."[36] However, a "*kinyan chatzer*" where the gentile takes possession of the *chametz* by its being found in his property will be impossible for most students, since the gentile never acquires that location. The sale is still valid for most if not all *poskim* (as it likely involves a *kinyan kesef, kinyan chalifin* and *kinyan agav*)[37], but it will lack the accepted stringencies that are achieved in the conventional sale.

As an aside, we must also note that the transfer of the location of *chametz* storage may achieve an additional goal, beyond effecting the sale itself; and that is ensuring that the *chametz* is not found in the Jew's domain on Pesach. Though this, too, is not an absolute requirement, this stipulation is also left unfulfilled in a university context.[38]

Conclusion

Jewish college students who dorm at major United States universities face a myriad of challenges and difficult situations for their religious well-being.[39] A network of community rabbis and JLIC rabbis strives to assist and support them in the face of those challenges. The sale of c*hametz* is no different

36. Focus on this language can be found also in *Mekor Chaim* of the *Chavat Da'at* end of 448:9 (*beiurim*).

37. We should note, however, that some sources deny that a *kinyan agav* is efficacious for the sale of *chametz* at all. See Stern, 82, and *Mekor Chaim* 448:5 (*beiurim*).

38. See *Mishnah Berurah* 448:12, first part.

39. Among other sources, see Joseph Polak *An Open Letter to Orthodox High School Seniors Busy Selecting a College* (New York: OU/NCSY, 1991); or the Winter 2013 edition of *Jewish Action*.

from the other challenges to faith and religious well-being, and rabbis must be trained in the challenges and adjustments needed when selling the *chametz* of college students.

Parents and community rabbis must also be mindful of some of the halachic challenges involved in the sale of *chametz* when considering whether to advise students to engage in a sale in a university selling at all – or whether a full removal of all *chametz* (*biur)* is advised, given the added complexity. Though some of the unique conditions of university students require an adjustment to the conventional sale (such as in regard to time zones, the complexity of determining the true seller or the re-worded *kinyan agav)*, other conventional aspects of the sale can almost never be fulfilled in regard to university students (such as in regard to the problem of access and a *kinyan chatzer*), and so perhaps a complete disposal of *chametz* is most desirable.

To be sure, rabbis who work at college campuses must be mindful of the changes they need to making when supervising a sale, as most contemporary handbooks do not provide a step-by-step guide designed specifically for the university context.

Clearly, the university years are ones of great growth and change in the lives of Jewish young adults, and a misstep in their religious experiences during those years can have exponential repercussions over the course of a lifetime. It therefore behooves us to take the time to focus on proper fulfillment of all of Halacha as presented for university students, beginning with the topics outlined here.

Letters

Vaccination

Rabbi Yitzchok Zilberstein

The following is a translation of an exchange of letters between Dr. Shmuel D. Tennenberg and Rabbi Yitzchok Zilberstein. It relates to the article in Issue LIX of this Journal, entitled "Vaccination in Jewish Law" by Rabbi Alfred Cohen, and – with the recent measles outbreak – it is once again an issue which has come to the forefront.

Question

Recently, in the United States, we have once again been faced with the question of whether one is required to be vaccinated so as to fulfill the requirement of guarding one's life and to avoid the prohibition of *lo tasim damim b'veiteichah* (do not cause bloodshed in your home – *Devarim* 22:8). Accordingly, I pose the following three questions:

1. Is a person required to have his children vaccinated?

2. Can a school refuse to accept a child who was not vaccinated?

3. Are adults required to have a yearly flu shot?

I appreciate your taking the time to answer these questions.

Dr. Shmuel Tennenberg

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Dr. Shmuel Tennenberg MD, FACS, FCCM, is Associate Professor of Surgery and Anesthesiology Associate Program; Director, Surgical Critical Care Fellowship, Wayne State University School of Medicine, Detroit, Michigan.

Response of Rav Zilberstein:

Question #1

Every vaccine carries with it a small percentage of risk, as for some people the vaccine is ineffective and instead they react to the bacteria injected into their bloodstream. This is similar to the point made by Gemara, *Nedarim* 30b, that some people do not respond positively to specific medicines, such that not only might the vaccine not be helpful to certain people but actually may be detrimental to their health.

This leads to the question: must a healthy person do something to himself which causes a small increase in risk to him, as a way of avoiding a potential illness in the future? Furthermore, in general, vaccines are not primarily given to protect the individual recipients but rather to root out the entire illness from the broader population. For example, most people survive bouts of chicken pox and flu and are not endangered by those illnesses, but it has been decided to vaccinate everyone so as to protect the small percentage of people for whom those sicknesses will be fatal.

Accordingly, we can rephrase the original question: is a person allowed to vaccinate himself to avoid an illness which will likely not damage him in a significant manner, when the vaccination itself poses a very small danger?

This issue was discussed in *Tiferet Yisrael* (*Yoma* 8:3, *Boaz*) who states that, "*It appears that one may be vaccinated against smallpox even though one in a thousand people will die from the vaccination. The reason for this is that if one were to be struck by a natural case of smallpox the danger is even greater, and therefore one may subject themselves to something which rarely leads to danger in order to avoid a more likely danger*."

A clear proof to this point can be deduced from *Beit Yosef* (CM, end of 426) who cites *Yerushalmi* as stating that a person must enter into a situation of possible danger in order to save someone else from a situation of definite danger. When a

person sees someone else drowning in a river and is unsure if he should jump in to save him, it is not clear that if he doesn't jump in then the person will drown (since he might be saved through some other means), yet he is required to jump in and save him in spite of the small danger which that poses to him (the rescuer). If a person is required to do that in order to save someone else, then he can surely do something similar in order to save himself from possible danger. Although *Rif*, *Rambam*, and *Tur* do not cite this *Yerushalmi*, that may be because they accept the opinion of Rabbi Yossi (Gemara, *Nedarim* 80b) who says that the obligation to save one's own life takes precedence over saving someone else's life. Nonetheless, to save one's own life (where this is not a consideration) one may not be required to enter into a situation of possible danger, but they are surely permitted to choose to do so.

The wording of *Beit Yosef* implies that one is not required to vaccinate themselves, but is permitted to do so if they want to take the smaller risk so as to avoid the larger one.

However, *Minchat Shlomo* (2:29:d) cites *Responsa Rabbi Akiva Eiger* (1:60) who states that any situation where there is pain and significant discomfort and there is a one-in-a-thousand chance that it can lead to a *sakanah* (danger), that is treated as a "*sakanah*" (even though in some regards we do not treat it as even a doubtful dange, *safek sakanah*).

Minchat Shlomo continues with a definition of the term "*safek pikuach nefesh*" (possible danger to human life), and states as follows:

> *I personally was unsure about this, but feel that logically safek pikuach nefesh should be defined as whatever most people avoid in the same manner as they avoid danger, and those are the situations where we apply the rule of 'vachai bahem v'lo sheyamut bahem' (one should live with the mitzvot, and not die for them – Gemara, Sanhedrin 74a). If however, most people are not afraid of something, then that is not considered a sakanah. Vaccinating against smallpox is somewhat of an*

example of this: once the doctor says that the time for the injection has come, the halacha technically requires that people should make every effort to have it as soon as possible. Nonetheless, people don't have a sense of urgency as far as scheduling these shots. Therefore, even if in truth this delay involves some sakanah, we can apply the words of Chazal that 'Hashem guards the foolish' (Tehillim 116:6), and therefore Heaven-forbid that one should violate Shabbat in order to obtain this vaccination. On the other hand, if someone was in a place where if they would not obtain the smallpox vaccination on Shabbat they would have to wait 4-5 years for the next opportunity, since waiting for so long is something that people would be afraid of, that would possibly be considered safek pikuach nefesh, and one could violate Shabbat to be vaccinated.

One can see from this that *Minchat Shlomo* is of the opinion that if most people assume that not being vaccinated is a *sakanah*, then – although the possibility of danger is quite remote – in specific situations it would be permitted to desecrate the Sabbath in order to be vaccinated, and surely someone must obtain vaccination on a weekday since the public considers not vaccinating to be a *sakanah*, albeit a remote danger.

Similarly, *Chazon Ish* (*Ohalot* 22:35) writes that if there is a plague in the area which the authorities warn people about, then although there may not be any sick people in this town it is considered a "travelling sickness" and is similar to a situation where foreign forces have laid siege to a border city that one can desecrate the Sabbath. That is to say that plagues which the authorities warn people about are considered a *sakanah* even if we are not aware of any people who are presently sick, and surely in our situation where there is no need to desecrate the Sabbath for the vaccine. Therefore, since doctors warn people that if they are not vaccinated there may be a plague, a person must be vaccinated in spite of the very small possibility of danger from the vaccine itself.

Question #2

As relates to the question of whether one can force parents to vaccinate their children, see my work, *Shiurei Torah L'Rofim* (3:215), where I wrote that the potential chance of damage from vaccination is so small that it is too miniscule to be concerned about (*l'miutah lo chayshinan*). Furthermore, the Torah specifically licenses doctors to heal people in spite of the possibility that they might inadvertently cause damage to the patients, as *Shach* (YD 336:61) states, "*A doctor should not say why should I get involved with healing people, maybe I will make a mistake and accidentally kill someone*", and therefore a doctor can conceal from parents the small risk of vaccination.

As relates to the specific issue of a school refusing admission to a child who is not vaccinated, see *Ramo* (YD 334:6) who says that if a person is excommunicated, the *Beit Din* is entitled not to circumcise his son, to refuse to bury his relatives, and to expel his children from school and his wife from *shul*, until he agrees to comply with the *Beit Din's* instructions. This means that even when children are completely innocent, *Beit Din* may punish them for the misdeeds of their parents, as a way of pressuring the parents to rectify their ways. Similarly in our case, the local Rabbi who has been put in charge of the school is the decision-maker in all issues relating to the school. If he judges that children who do not vaccinate are not following the requirements of halacha, he has full rights to deny entry to those children into the school until they receive the vaccinations.

Question #3

As relates to the question of whether adults must take an annual flu shot, it appears that they have an even greater responsibility to do so than in the previous situations. This is because the medical profession has come to the conclusion that the danger from flu is relatively high for senior citizens and the risk is quite small, such that there is a mitzvah for

these adults to be vaccinated as a fulfillment of the requirement to guard their health and life.

Summary

1. If most people consider not vaccinating as a dangerous practice, then although the danger from vaccinating is minimal, parents are required to have their children immunized.

2. The Rabbinic head of a school can establish its rules and procedures, and therefore if he believes that children who are not vaccinated should not be allowed into school, it is within his rights to make that decision. This decision must be made by the Rabbinic leader of the school, rather than the school's principal.

3. Senior citizens who the doctors have determined will be endangered if they do not take an annual flu shot, have a mitzvah to be vaccinated and this will be a fulfillment of the requirement to guard one's health.

* * *

To the Editor:

Rabbi Bechhofer has an interesting discussion of the relevance of *psak* to *hashkafa* (idelogoy) questions (issue LXVII pages 23-36). He concludes by stating "it is a matter of dispute whether *psak* pertains equally to *hashkafa* in general which would require that an observant Jew must accept the majority opinion, just as in Jewish law".

In an article of mine "The Nature and Limitations of Rabbinic Authority" (Tradition 27(4) 80-99), I have argued that even in strict halachic questions there is no requirement to follow the majority opinion, since the end of the Great Sanhedrin. Of course *psak* from the Talmud is binding, though the reason for this is controversial. Even decisions from the greatest of rabbis bind only their community. Thus, the

takkanot of Rabbenu Gershon and later Rabbenu Tam were accepted by Ashkenazic communities and not Sephardic communities. *Sridei Eish* discusses going back to Spain. He declares that even if such a ban had existed before it does not bind other communities. In fact, to quote from an article from Rabbi Bechhofer himself:

> Rav Ovadia Yosef suggests an explanation based on the principle that a majority of judges only overrule a minority of judges when they have considered a matter as a group, in face-to-face deliberations in a court of law… This principle does not apply to cases in which the authorities have issued their rulings separately and independently, in their writings across the span of ages.

Hence, it is clear that in the modern age no group of rabbis can impose halachic decisions on other communities. In my article I also discuss the application to non-halachic issues.

To emphasize the issue, I list several halachic issues where different communities have differing opinions and each community is beholden only to their own decisors and not any majority of opinions (*Maharatz Chajes* already noted that there is no way of deciding the majority in the modern setting).

- Rabbi Bechhofer mentions the example of the attitude towards the state of Israel. However, this also has halachic consequences such as saying *Hallel* on Yom Ha'azmaut with some claiming that any *bracha* would be in vain while otherwise insist on it.
- For *shemitta* the main options are *heter mechira, otzar beit din*, and buying Arab produce. Each group claims that their way is the best. I would venture that the *Edah HaCharedit* is the minority view. Nevertheless, that is their tradition and they don't yield to the majority view.
- Every kashrut organization has a *posek* who is followed independent of any majority opinion. An example is the controversy over insects in some salmon, where the

OU insisted they follow their own *poskim* even though many other prominent rabbis disagreed.

- Rabbi Bechhofer is an expert on *eruv*, having written a book on the topic. Some communities rely on a community *eruv* while others claim that anyone who carries there is invalid to be a witness. Again, each community follows their *poskim* without any attempt to identify a majority opinion.

Hence, I would conclude that an observant (or really every) Jew is required to follow the opinion of the rabbis of his community, both in halachic and *hashkafic* issues and it is irrelevant what rabbis of other communities decide. There have been attempts to crown certain rabbis as *"posek ha-dor"* or at least THE *posek* of a certain country and their decisions are binding on everyone. However, such a stand has no basis in halacha. Furthermore, there is no way to objectively make such a choice.

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