

## Eating Etiquette

### The Halachot of Proper Dining

Adapted by Rabbi Ariel Ovadia[1]

**Q: I am sitting at the table with my mother. Should I wait for her to take from the main dish first, or am I permitted to serve myself, and then serve her?**

**A:** Maran writes in *Shulhan Aruch* (O.H. 170:12) that one must allow the more important person present to serve himself or herself first. This even applies when each individual has his or her own serving dish (e.g., a small appetizer plate). You should wait for your mother to eat first, and only afterwards partake of the food yourself (*Mishna Berura*, ad loc., 28). If the parent has made it clear that he or she does not mind, then it would be fine to take for yourself first.

**Q: It seems that most people disregard the Halacha of not conversing during a meal. What is the reason?**

**A:** The *Shulhan Aruch* (O.H. 170:1) writes that one may not speak during a meal, because it is a choking hazard. However, the *Perisha* (ad loc.), a sixteenth century commentary on the *Tur*, already in his day observed that people were not careful about being silent while eating. He therefore suggests that perhaps the restriction is specific to those who recline while eating, which was the custom in the times of *Hachamim*. He speculates that today, when we sit upright, the hazard is not applicable.

The *Aruch HaShulhan* (170:2) adds that another leniency in this matter relies upon the principle of “שומר פתאים” – “Hashem guards the naïve/foolish” (*Tehillim* 116:6), a principle that is applied in cases of a possible hazard to one’s health as opposed to an obvious one.

These leniencies are cited by Hacham Ovadia Yosef זצ”ל (Yabia Omer Vol. 5 15;20)

According to the original letter of the law, one is still permitted to speak between courses (*Mishna Berura* 170:1). In fact, one is encouraged at those points to discuss *Divre Torah* (*Avot* 3:3).

**Q: We have a frequent guest that tends to help himself to a lot of food. Thankfully we’re not lacking, but I don’t think it’s right that he is so generous with himself. I sometimes catch myself staring at him, or rather at his portion. My wife tells me to avoid doing this. Is she right?**

**A:** The *Rambam* states that one should not stare (*yistakel*) at a person while he is eating, or visually take stock of his portion, lest he be embarrassed. This is quoted in *Shulhan Aruch* (O.H. 170:4); the *Aruch HaShulhan* (ad loc., 7) understands that this is referring to staring at a guest.

**Q: Are there any Halachot about devouring one’s food?**

**A:** Maran in *Shulhan Aruch* writes that one should not take a very large portion of food in his hands (O.H. 170:7) or gulp down a glass of wine in one shot (ibid 8). In our times, there are a number of foods which are commonly

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eaten while being held, like a sandwich or a falafel. We drink beverages that are easily swallowed. However, the principle *Hachamim* imparted remains relevant: one should eat and drink at a moderate pace, and with a measure of refinement.

**Q: Sometimes one of my children does something at the table that another child finds disgusting. Are there any such *Halachic* sensitivities?**

**A:** Yes. One of the examples that *Hachamim* give is taking a bite out of a piece of bread from a main serving dish and returning the remainder of the bread back to that dish (O.H. 170:14). Others are understandably repulsed by this. Accordingly, one should be respectful to other people's sensitivities at the table (within reason) when it comes to doing something that others may find objectionable.

#### Footnotes:

[1] From the archives of the OU

## BET DIN OF APPEALS / PART 2

*Is there a concept of appealing a Bet Din's decision in Halacha?*

By Dayan Yitzhak Grossman[1]

### Introduction

In Part 1 of this series, examined a *Talmudic* precedent for the possibility of appealing a decision of a *Bet Din*. We noted a few sources which appeared to indicate that appealing a decision would not be recommended or permitted, while others may have supported the idea, at least when one of the litigants had been forced to go to a specific *Bet Din* against his will. We concluded with the citation of the *Noda B'Yehuda* who argued that even if a litigant received a summons to go to *Bet Din*, this too may qualify as being "forced" to go,

and he may be allowed to question or appeal the decision. In this article, we will analyze whether it may be easier to permit appealing in later generations for some reason, and the practical opinions of *Poskim* today on the subject.

## Are the Decisions of Later Generations More Liable to be Mistaken?

The *Noda B'Yehuda* mentioned that in his generation, it was especially important to allow the review of decisions, since forgetfulness is common, and many errors are made by *Dayanim*. This point is subject to a major dispute, which will play an important role in the halachic development of this issue through modern times.

Although as we mentioned, the *Bet Yosef*, and many authorities after him, rule that one *Bet Din* should



not reexamine the conclusions of another, some argue that in later times, this principle is no longer operable. The *Radvaz* (printed by *Maran* himself in his responsa *Avkat Rochel* 21) was the first to adopt this position, and claims that even in his time (15<sup>th</sup> century), one *Bet Din* can reexamine the conclusions of

another, because they are not as expert as in previous times. The *Radvaz* points to a number of passages in *Teshuvot HaRashba* to prove his stance. It should be noted though that the *Maran* (in the glosses) argues with the *Radvaz* and claims the case of the *Rashba* was unusual and cannot serve as a general example. The *Sho'el U'Meshiv* explains that to mean that that case was of a little known *Halacha*, and only for that reason did the *Rashba* allow appealing that ruling, but in general, appeals are not permitted.

However, the *Mabit* (2:173), another contemporary of *Maran*, cites the *Tzeror HaKessef* (student of the *Rashba*), who also sides with the position of the *Radvaz*, as does the *Ma'aseh Hiyya*, who adds that this is especially true in small towns. He explains that while the *Gemara* asserts that there is no concern of an

erring *Bet Din*; today everyone, even great Torah scholars, are less knowledgeable and prone to error.

Still, most *Aharonim* reject the opinion of the *Radvaz*. The *Shach* says explicitly that even today, one *Bet Din* may not reexamine the conclusion of another, and this is the conclusion of Rav Refael Yitzchak Mayo as well.<sup>[2]</sup> He argues that since the *Rosh*, *Rambam*, and *Bet Yosef* all cite the rule of not reexamining a decision of *Bet Din* without distinguishing between earlier and later generations, we accept this principle for all future generations as well. He adds that even today, as if the losing litigant is allowed to appeal any decision that he wishes, it will cause degradation of the system. Other *Aharonim* who follow this opinion include the *Sho'el U'Meshiv* and the *Hacham Tzvi* (although his main argument is that it is unfair to the winning litigant to have to undergo another case). Rav Hayim Palacci in *Semichat Hachamim* authored a long *Teshuva* on this matter and concludes the consensus is not to reopen a case.

### What if *Bet Din* Just Happened to See the Case?

Even if the rule is accepted that there may be no second-guessing or review, there is one exception mentioned by Rav Hayim Palacci: if the second *Bet Din* did not intentionally reopen the case but rather just happened to see the ruling, and believe that it is incorrect, then their critique of the decision is acceptable. He explains that in this case, the second *Bet Din* can't simply pretend that they didn't see the ruling; once they have seen it, they must evaluate it as they see fit.

Rav Palacci adds that this is a common occurrence, and is included in the *Gemara's* case of "*To'eh BiD'var Mishna*" – a court that errs on an explicit *Halacha* in the *Mishna* (or other undisputed *Halacha*) where the ruling must be retracted. Moreover, he argues that the first *Bet Din* would be happy to have their ruling overturned if they knew it was wrong, citing the *Gemara* in *Bava Metzia* (59b) where even *Hashem* seems to concede to the opinion of the majority of the *Hachamim* exclaiming that "*my sons have bested me...*"

## Appeals in Modern Times

During the modern era, this issue of *Halachic* appeals has become even more relevant, as most Western democracies have a formal system of appellate and review. Consequently, many modern *Poskim* have needed to confront this question in this context:<sup>4</sup>

### Sofia, Bulgaria: The *Hoshen Ha'Efod*

The earliest *Teshuva* on this subject was written in the early 1900s by the *Hoshen Ha'Efod*. In Sofia, Bulgaria, there was a large meeting of the community heads of Bulgaria, who voted to establish a central *Bet Din* to serve as an venue to appeal a local *Bet Din's* decision. Subsequently, a case arose where the loser wanted to appeal, but the winner responded argued that in his country the accepted custom is not to appeal, while the loser responded that it does not matter, as the *Halacha* does not sanction such a practice of compelling him to be retried. The *Hoshen Ha'Efod* leaned strongly to the side that the case may not be reheard, both due to the degradation of the first *Bet Din*, as well as because of the unfairness to the winner.

Towards the middle of the discussion, he changes direction claiming that in this case, since there was an official enactment, designed to function as the regular system, it certainly must be followed like all other enactments in monetary *Halacha*. He adds that even though it also involves a potential prohibition of degrading a *Bet Din*, nevertheless, once this has become the official policy of the community, the consideration of disrespect to a *Bet Din* is no longer relevant. Finally, he says that all parties litigate with this possibility in mind and thus it should be the proper recourse.

### Rav Kook and the *Rabbanut*

In contemporary times, the *Rabbanut* in Israel, does have a *Bet Din* of appeals (*Bet Din L'Ir'urim*), which was instituted in 1920 when *Eretz Yisrael* was under the control of the British, who may have pressured them to introduce the appellate system based on the Western legal system. It became a hot topic of debate among the



*Rabbanim*, and ultimately, Rav Avraham Yitzchak Kook, the chief rabbi of Palestine (as the territories of *Eretz Yisrael* were referred to by the British), felt that they could and should establish it, following the logic of the *Hoshen Ha'Efod* that it is just like any other *Takana*. Rav Kook also gives several examples of other *Takanot* that went against rules given by the *Gemara*, and are nevertheless valid and binding.

### The Tzitz Eliezer

The *Tzitz Eliezer* (16:67) also discusses this question in the context of the current Israeli *Bet Din L'Ir'urim*, in addition to siding with the *Hoshen Ha'Efod*, he notes that because the *Bet Din* gives a summons to appear before them, forcing the litigant to appear, then the litigant can ask for an explanation to bring to another *Bet Din* for review. Rav Waldenberg concludes by assuring the questioner that in a case of such a modern system of appeals, "*Ein Makom L'Ar'er K'lal*" – there is no reason to object whatsoever[3].

### The Mishpete 'Uziel

Rav Ben-Zion Uziel (the first Sephardic chief rabbi of the modern-day *Rabbanut*), in *Mishpete Uziel* (H.M. 1) also defends the appeals system, against the objections of other *Rabbanim* such as Rav Hayim Hirschenson (author of *Malki BaKodesh*). He first argues that the *Gemara* who said that a *Bet Din* another *Bet Din's* decision only means that it was common practice not to

do so, but not that it is prohibited. Although such a system did not exist in the times of the *Gemara*, Rav Uziel insists that this was because that wanted the rulings of the *Bet Din* to be reliable, however, if a mistake was suspected, even in the time of *Hachamim* it would be reviewed.<sup>8</sup>

Rav Uziel also presents some non-halachic considerations, stating his opinion that if the people desire it, then we should not block a *Halachically* legitimate demand of the people, invoking the idea that we must accept the truth from those who state it.

### Hacham Ovadia Yosef

Hacham Ovadia Yosef also discusses this question (*Yabia Omer*, Vol. 9 H.M. 2) with regard to the system in Egypt and Israel. He discusses the various points of the *Mishpete Uziel*, and concludes that it is a worthwhile system which will give legitimacy to all rabbinic rulings issued in *Bet Din*, and allow the government to incorporate the *Bet Din* into its legal system.

### Footnotes:

[1] Based on an audio *Shiur*. [2] Author of *Shorshe HaYam*. One *Teshuva* is printed in *Hikre Lev*, the other in *Sefat HaYam* [3] C.f. *Tehumin* 15, p.187, article by Rav Hayim David HaLevi (former chief rabbi of Tel Aviv). [3] A play on words, as the Hebrew word for appeals is *Ir'ur*, the same root as *l'ar'er*, to object.

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