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PAPAYA AND PAPAIN

by Rabbi Dovid Cohen

Rabbi Cohen is the Administrative Rabbinical Coordinator at cRc Kosher, where he leads the research and policy development efforts.

The following is an excerpt from Imrei Dovid, Bitul and Blios, Chapter 66, by Rabbi Cohen. Additional details and sources are found there.

PAPAYA

Papaya plants grow very quickly and produce fruit within a year, after which they continue to produce fruit for a few more years. However, since the tree produces less fruit each year, by the time the tree is three years old, it is producing so little fruit that typically it is cut down and replaced with a fresh tree. That appears to present a very clear halachic issue, because fruits are forbidden as *arlah* if they grow during the first three years of a tree's life, and that halacha applies even to items which grow in *chutz la'aretz*.

If papaya trees are regularly cut down before they are three years old, that would mean all papaya is *arlah*!

> At this point in our discussion, we will assume that papaya is halachically classified as a fruit (rather than a vegetable) and is therefore subject to the prohibition of *arlah*. However, we will see towards the end of this article that this is not a foregone conclusion.

This issue is actually not so meaningful for papaya itself, based on a combination of two factors. Firstly, not <u>all</u> papayas are *arlah* since some trees are kept for somewhat more than 3 years. In fact, in *Eretz Yisroel* where they track this issue, they find that 20% of papaya is <u>not</u> *arlah*. Secondly, there is a significant halachic difference between *safek arlah* (i.e., cases where one is unsure if a given fruit is *arlah*) for fruit grown in *Eretz Yisroel* as compared to *chutz la'aretz*. If fruit grew in *Eretz Yisroel* and one is unsure if it is *arlah*, they must be *machmir* and not eat it, just like with any other *safek d'oraisah*. However, if the same *safek* arose with fruit that grew in *chutz la'aretz*, the fruit is permitted, even though *arlah* in *chutz la'aretz* is also *assur mid'oraisah*.

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CHILD CUSTODY DETERMINATIONS IN BETH DIN

by Rav Yona Reiss

Rav Yona Reiss is the Av Beth Din of the cRc Beth Din. Under Rav Reiss' leadership, the Beth Din presides over many Jewish divorce (Get) and child custody cases.

The Gemora tells us that קשין הגירושין – divorce cases are very difficult.[1] One of the most vexing challenges when dealing with a divorce case is making custodial determinations in terms of which parent will have primary custody of the children. As with any type of dispute, it is improper for such matters to be litigated in a secular court.[2] As a result, when our Beth Din deals with divorce cases, it is common that we also deal with custody and visitation issues.

There is a complication with respect to the enforceability of the ruling of the Beth Din. In the formulation of the requirement to establish rabbinical courts, the Torah states[3] שופטים ושוטרים תתן לך – "you shall appoint judges and police officers." The Midrash[4] remarks that אם אין שוטר אין שופט – if there is no police authority capable of enforcing the Beth Din's decision, then there is no ability for the rabbinical judges to function in their judicial capacity.

In many states, decisions by an arbitration tribunal regarding parenting arrangements are not capable of enforcement by the courts based on the *parens patriae* principle that the courts are the guardians of the children in divorce cases and therefore the parents have no right to delegate child custody decisions to an arbitration tribunal outside of the court system.[5] However, as Rabbi J. David Bleich points out,[6] this limitation on the Beth

1. See *Sanhedrin* 22a. 2. See *Choshen Mishpat* 26:1 (it is prohibited for any dispute between Jewish parties to be litigated in secular court). 3. *Devorim* 16:18. 4. *Midrash Tanchuma, Shoftim*, paragraph 2. 5. See, e.g., Glauber vs. Glauber 600 NYS2d 740 (2nd Dept. 1993). 6. *Contemporary Halachic Problems* V, p. 33.

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CHILD CUSTODY DETERMINATIONS IN BETH DIN

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Din's authority can be rectified by the parties through their signing the arbitration decision meted out by the Beth Din. The same way that a court will honor the parties' signed parenting agreement (unless it manifestly disregards the welfare of the children), a court will honor the parties' signed parenting agreement that is based upon a decision of the Beth Din.

As a result, the Beth Din will routinely hear and decide custodial cases through the mechanism of "collaborative arbitration." This is a special type of arbitration process whereby the Beth Din works collaboratively with the parties and their attorneys to ensure that there is a process that is thorough and incorporates all court-recommended procedures, including consultation with child therapists and experts, and even, if necessary, the appointment of a GIL (guardian ad litem to advocate for the children), so that the attorneys (together with their clients) will be comfortable converting the Beth Din's decision into a parental allocation agreement that will be signed by the parties and enforced by the secular court.

It should be noted that in 2009 the Supreme Court of the State of New Jersey ruled[7] that an arbitration tribunal, including a Beth Din, is granted authority to adjudicate custody disputes, so long as the arbitration tribunal decides the case according to the standard of the "best interests of the children." I recall that this decision to grant arbitration authority came in the immediate aftermath of a case that was handled by the Beth Din of America involving a nasty divorce between parties who resided in New Jersey and had submitted their divorce disputes to the Beth Din for arbitration. The Beth Din had issued several interim orders regarding custody, and the husband filed a court order seeking to void the Beth Din's decisions, arguing that the Beth Din should not have authority regarding custody matters. The court declined the husband's request, stating that the Beth Din seemed to be doing a perfectly fine job in the case. Shortly thereafter, the Supreme Court serendipitously issued its unequivocal decision that custody determinations were now subject to arbitration in the State of New Jersey.

However, it is important to determine the correct standard according to Jewish law for making custodial determinations. The New Jersey court required that an arbitration tribunal follow the "best interests of the children" rule. Is this principle followed according to Jewish law as well?

In this regard, we should note that there are two different categories of child custody. There is residential custody, which is the determination of where the children will reside, and then there is legal custody, which is the determination of which parent shall make major decisions on behalf of the child, such as with respect to schooling and medical care. The chief focus of this discussion will be on residential custody determinations.

According to the Gemora,[8] a daughter remains with her mother regardless of her age. The *Rosh*[9] quotes authorities who understand that this rule was articulated solely with respect to an orphaned daughter whose father passed away, and the question addressed by the Gemora is whether the daughter should be raised by her mother or by her father's relatives. However, the *Rosh* then cites the opinion of the *Ramah* (Rabbeinu Meir HaLevi) that the rule applies to cases of divorce as well. This latter opinion is accepted as normative halacha.[10]

What about the custody of a son? The *Rambam*[11] rules, consistent with other passages in the Gemora[12] that deal with the right of a mother to determine a young child's location for *Techum Shabbos* purposes (i.e., extending the area where the child can walk on Shabbos), that the mother has residential custody of all children below the age of six, including both sons and daughters. The reasoning provided by some authorities[13] is that any child at that tender age naturally requires the assistance of his or her mother. Above the age of six, the son would move to his father's domain. The ruling of the

7. Fawzy vs. Fawzy, 199 N.J. 456 (2009). 8. *Kesuvos* 103a. 9. *Kesuvos* 12:4. 10. See *Shulchan Aruch, Even Haezer* 82:7. 11. *Hilchos Ishus* 21:17. 12. See *Eruvin* 82a-82b; *Kesuvos* 65b.

Rambam is also codified by the *Shulchan Aruch*.[14]

The *Ra'avad* (*ad locum*) disputes this ruling of the *Rambam* since a father has responsibility to provide Torah education to his son, even prior to the age of six. If the son lives with his mother during this time, his father would be prevented from performing this *mitzvah* due to lack of access to his son.[15]

Interestingly, the *Maggid Mishneh*[16] derives from this discussion a right of visitation for the non-custodial parent according to Jewish law. In response to the *Ra'avad's* critique of the *Rambam*, the *Maggid Mishneh* states that while the young son needs to be with his mother to address his physical needs, the father can provide the child with his Torah instruction whenever he comes to visit.

However, the *Rambam* is clear that after the son turns six, the presumption is that the son would live with his father. Furthermore, the *Rambam* states that the father would not be obligated to provide support for his son if he is over the age of six and still living with his mother.

Nonetheless, the *Rashba*[17] rules that the default principles of child custody can be overridden based on "best interests of the child" considerations. It is generally in the best interests of the daughter to be with her mother so that she can learn the ways of modesty and the proper manner of Jewish women from her mother, and it is generally in the best interests of the son to be with his father or other male relatives (if the father is deceased) so that he can be taught Torah by them. However, if the Beth Din determines that a daughter will learn the ways of Jewish women better if she is not with her mother, or that the sons will be taught Torah more effectively by not being with the father or other male relatives, then the parental arrangements should be modified accordingly.

The practice of rabbinical courts today is in accordance with the opinion of the *Rashba*.[18] Accordingly, while there may be a default rule for young children under the age of six to remain with the mother for physical or psychological reasons, and for daughters above the age of six to remain with their mother to be taught the ways of a Jewish woman, and for sons above the age of six to remain with their father to be taught Torah, all of these default principles are subject to re-evaluation based on a case by case analysis. Thus, if it is determined, in consultation with child therapists and the educational professionals within the Torah community, that the healthy development of the child, from a physical, psychological or religious perspective, would be better facilitated through an alternative arrangement, the Beth Din will take that into consideration in fashioning the custodial arrangement.[19]

Along these lines, the *Radvaz*[20] ruled that in a case where a divorced mother was not particularly modest in her conduct and her lifestyle was antithetical to Torah standards of behavior, that it would be better for her daughter not to remain with her mother under such circumstances. Similarly, in more recent times, Rav Gedalia Felder[21] ruled that when a boy above the age of six still had a psychological need to live with his mother, he should remain with his mother rather than move out to live with his father. In many cases, the Beth Din also needs to consider the psychological fitness of the respective parents, particularly if one parent is unfortunately abusive, in terms of ensuring that the children be in a healthy and nurturing environment.

Nowadays there are a number of factors that influence a Beth Din's decision with respect to "best interest of the child" determinations: (1) the fact that in many families, it is healthier for the well-being of the children for them to live with each other rather than have the boys live with the father and the girls live with the mother; (2) the possibility of having one parent serve as the primary residential parent for the children if the children thrive better with that parent, while granting the other parent generous visitation, so that the non-residential parent can also exert a possible influence on the growth of the children; and (3) the realization that the "best interests" of a child may not be an all or nothing

13. See, e.g. Rashi, *Kesuvos* 65b, s.v. *Yotzei*. 14. *Shulchan Aruch, Even Haezer* 82:7-8. 15. See *Biur HaGr"a* 82:10 who notes the opinion of the *Ra'avad* as well. 16. *Hilchos Ishus* 21:17. 17. *Teshuvos Rashba Meyuchasos L'Ramban, siman* 38. 18. See *Chelkas Mechokek, Even Haezer 82:10; Nachlas Tzvi* 2:285-286. 19. Based on these considerations, if the Beth Din deems it proper for a son to remain with his mother past the age of six, the father would still be required to provide child support. See *Nachlas Tzvi*, supra note 18. 20. *Teshuvos Radvaz* 1:263. See also *Tzitz Eliezer* 15:50. 21. *Nachlas Tzvi supra*, n. 18. Rav Felder also addresses the issue of the degree to which the child's own wishes should be considered, something which the *Beis Shmuel* (*Even Haezer* 82:9) records as a relevant factor. Rav Felder writes that when it is clear from the context that the child's wishes are reflective of his best interests, the child's wishes should be respected – רז"ל ומובר שזהו רצונו האמיתי של הילד ולא רק פרי הסתה מצד האם. *Cf. Radvaz, supra n.* 17 (daughter's desire to stay with promiscuous mother should not be respected when motivated by improper inclinations).

proposition, and that just as earlier rabbinic authorities would place the son with a different parent depending on whether he was below or above the age of six, it sometimes makes sense to alternate different days or weeks between the two parents as well.

In this vein, it is important to recognize that according to Jewish law one cannot "waive" the right to parental custody or visitation.[22] The *Mabit*[23] addressed a case in which a mother had forfeited her custodial rights to her daughters, based on *shalom bayis* concerns, when she got remarried to another man. Subsequently, the father married another woman with whom the daughters did not get along, and the daughters really wanted to return to their mother. Meanwhile, the mother's new marriage unraveled, and she was more readily able to bring back her daughters to live with her. The *Mabit* ruled that since parenting is not fundamentally a right but a responsibility, there is no such thing as a binding "waiver" with respect to giving up custody of the children, and therefore since it was in the best interests of the daughters to return to live with their mother, it was appropriate to modify the custodial arrangements accordingly.

Since the halacha recognizes the value of each parent's participation in the child's life, many rabbinic authorities disfavor the moving of one parent away from the other parent, unless the other parent agrees, and appropriate arrangements are made for the other parent to still play a role in the child's life. There is a particular emphasis on the importance of a father to remain within close geographical proximity of his sons in order teach them *Torah*.[24] With an increase nowadays in travel, and the possibility of telephone communications and the like, this type of long-distance arrangement has become more prevalent, particularly in cases when it becomes desirable for the main custodial parent to move away for remarriage purposes. However, in most cases the parents reside within the same geographical area.

As mentioned above, in addition to making determinations with respect to residential custody, there is also a need for the Beth Din to decide upon legal custody, which is the determination of which parent shall have primary authority to make determinations regarding the schooling, health care, extra-curricular activities, and religious standards for the children. In most cases where both parents are competent, religiously committed, and involved in the lives of their children, these functions will generally be subject to joint custody, meaning that the parents will participate equally in decision-making responsibilities. On occasion, the Beth Din will assign primary legal custody in one or more of these areas to a particular parent, depending upon the circumstances of the case, and the "best interests of the children" in terms of their physical, psychological or religious welfare. Sometimes, even when joint legal custody is appropriate, the Beth Din still needs to serve as the "tiebreaker" decision-maker when the two parents are unable to agree upon a school, or a health provider, or some other important determination.

> It is especially important for *dayanim* to be mindful of the dictate of הוו מתונים בדין – being deliberate in judgment, because these cases are in the realm of *dinei nefashos* – decisions that will have a profound impact on the future lives of the children.

Unfortunately, custody determinations can sometimes be contentious, particularly in the context of an acrimonious divorce. Rav Ezra Basri, a prominent *dayan* in Israel, cautions parents against using their children as cudgels in their battles against each other.[25] Similarly, he notes that it is important for *dayanim* to recognize how the facts of the case can sometimes be misrepresented by attorneys and rabbinic advocates. On these occasions, it is especially important for *dayanim* to be mindful of the dictate of הוו מתונים בדין – being deliberate in judgment,[26] because these cases are in the realm of *dinei nefashos* – decisions that will have a profound impact on the future lives of the children.

Because of the delicate nature of the process, Rav Yaakov Yeshaya Blau notes in his seminal work, *Pischei Choshen*,[27] that the Beth Din also needs to remain mindful of changes of circumstances that could require a shifting in the arrangements for the benefit of the children. It is not unusual in these types of cases for the Beth Din to remain involved with the parties for many years to assist them with respect to changes in the custody and visitation schedule and arrangements. Ultimately, הוו מתונים בדין in this type of case has not only the connotation of being deliberate in judgment, but also being patient and forbearing in terms of the readiness to deal with the issues in the case for the long term, as part of the responsibility of the Beth Din to the parties, the children, and the broader Jewish community.

As with all matters, we pray for the worthiness to receive the requisite *Siyata Dishmaya* (assistance from Heaven) to render the proper judgments on behalf of our precious Jewish families.

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22. See *Maharshdam Even Haezer* 123 (the "right" of custody for a daughter to reside with her mother belongs not to the parent but to the child). 23. *Teshuvos Mabit* 2:62. 24. See *Minchos Yitzchak* 7:113 (mother had no right to take a one year old son to California when father lived in Brooklyn and had already begun to cultivate a relationship with his son). See also *Pischei Teshuva Even Haezer* 82:4. The authorities disagree as to whether the same requirement to provide easy access for a father pertains in the case of a mother who wishes to move away with her daughter against the father's wishes. See *Be'er Heitev, Even Haezer* 82:6. 25. *Dinei Ishus*, chapter 16 (introduction). 26. *Pirkei Avos* 1:1. 27. *Pischei Choshen, Yerusha V'Ishus*, chapter 9, note 105.

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This is because the *issur* in *chutz la'aretz* was taught through a *halacha l'Moshe m'Sinai*, and that transmission included a special leniency that *safek d'oraisah l'chumrah* does not apply in this case. Thus, one may eat papaya which grew in *chutz la'aretz* because some papaya is not *arlah*, and the mere possibility that any given fruit is one of those permitted ones, is enough to permit it.

PAPAIN

Our discussion now moves to papain, an enzyme (used in meat tenderizers and certain other items) which is made from papaya. If we consider how papain is collected, we will see that the line of reasoning noted above for papaya, will not suffice to permit it.

We have already seen that papaya trees are uprooted every three years, and new shoots are planted in their place. Farmers rotate this process, so that at any time, some of the trees are newly planted, and others are 1, 2, or 3 years old. As the papayas ripen, the farmers gently scrape or scratch the fruits so that the papain will ooze out of the peel without ruining the fruit itself. [Does the prohibition of *arlah* apply to the peel? See the sidebar page 7.] A small amount of papain is obtained from each fruit (each fruit can be tapped a few times before it ripens), and all the papain from the field is mixed and brought to a central location for further processing.

This brings us to another halacha regarding *arlah*. Although, *safek arlah* is permitted (in *chutz la'aretz*), if *arlah* is mixed into other foods, it makes those foods forbidden unless the *arlah* is *batel*. [If the mixture is *min b'mino*, the *arlah* must be *batel* in 200 times its volume, and if it is *aino mino*, then standard *bitul b'shishim* suffices.]

In other words, if someone is unsure if a given papaya is *arlah*, they can be lenient and eat it, but when papain from *arlah* and non-*arlah* are mixed together, the overall mixture is forbidden. Thus, the permissibility of *safek arlah* does not seem to be enough to allow papain.

PAPAYA REVISITED

Our entire discussion follows the assumption that papaya is a fruit which is subject to the *issur* of *arlah*. This is logical, since papaya meets the criteria given by the *Gemara*[1] and *Tosefta*[2] for determining which produce is classified as a fruit (and obligated in *arlah*) as opposed to a vegetable (which is not).

However, several later *Poskim* suggested alternate criteria for identifying a fruit/tree, according to which, papaya is not halachically considered a fruit at all. [Most of those *Poskim* were not discussing papaya, but rather other foods where similar issues apply; see more on this below]. Among those proposed criteria are that a plant which (a) produces edible crops during its first year of planting,[3] or (b) whose crops are better in the first year than in later years,[4] is so different from a typical tree, that it is not considered a "tree," and its produce is halachically classified as a vegetable.[5] Papaya fulfills both of these criteria, so that these *Poskim* would say that it is not a "fruit" and not subject to the *issur* of *arlah*

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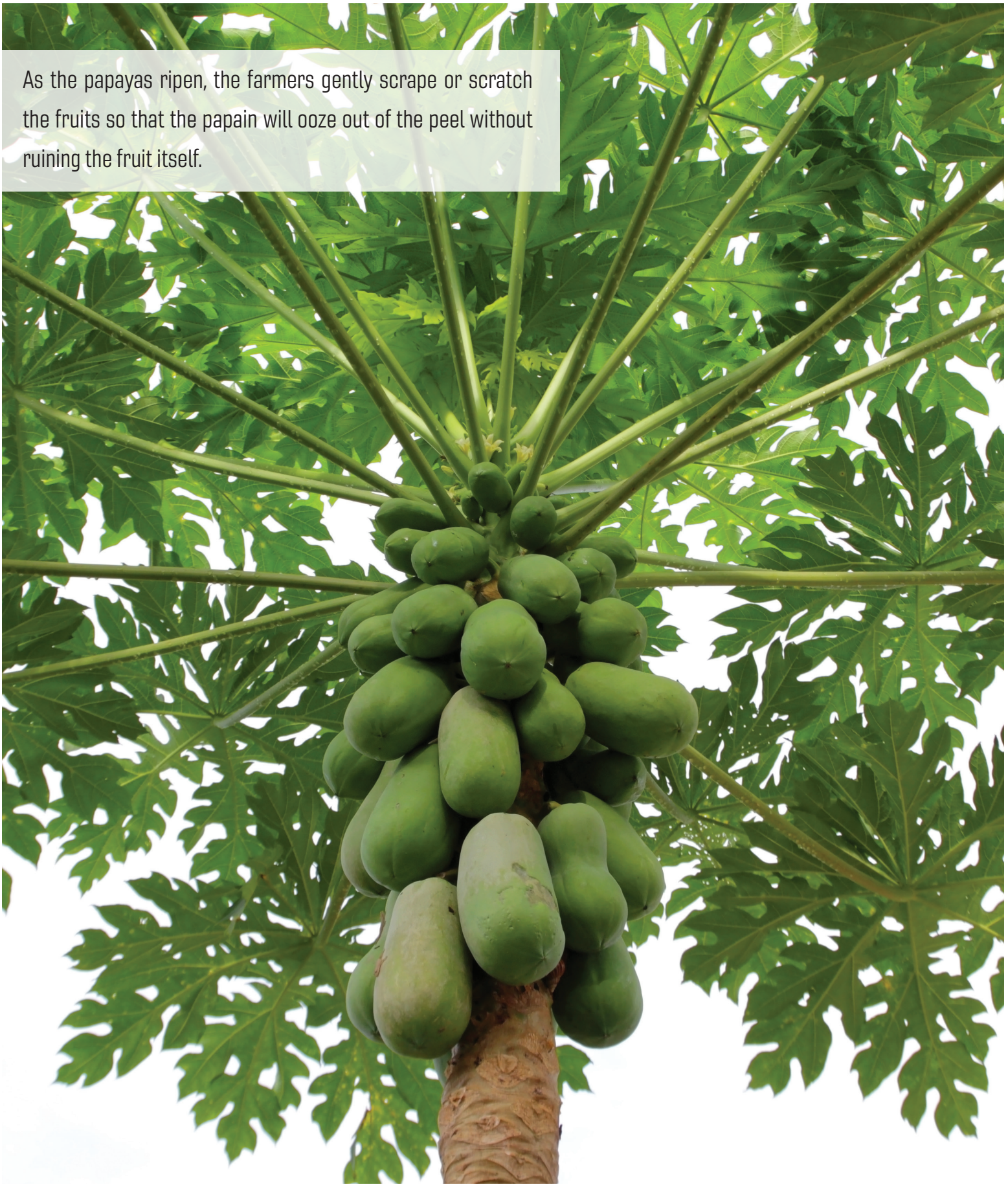

As the papayas ripen, the farmers gently scrape or scratch the fruits so that the papain will ooze out of the peel without ruining the fruit itself.

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at all, even if we know it grew within the first three years after planting.

Other *Poskim* disagree with these alternate criteria. Nevertheless, it is generally accepted[6] that, as relates to papain from *chutz la'aretz*, one can follow the lenient approach based on the principle of בל המיקל בארץ הלבה במותו בחוץ לארץ.

EGGPLANT PLUS

Until now we have discussed papaya, which is commercially never grown for more than three years, thereby raising a question that its fruit should always be *arlah*. That issue was based, in part, on the assumption that the two ways to identify a "tree" is based on the criteria given by the *Gemara* (plant lasts from year to year) and *Tosefta* (leaves do not grow from the trunk). However, we noted that later *Poskim* offer two alternate ways of identifying a tree. Since papaya does not fulfill those criteria, it is not a "fruit/tree" and is therefore excused from *arlah*. The two alternate criteria for a tree are:

A. Year 1 The trees do not produce edible crops in the first year after planting.

B. Improvement Produce of the tree is better in later years than in the early years.

Papaya produces fruit during the first year, and the subsequent crops are worse than that first year's fruit. Therefore, both approaches would say that papaya is not a fruit. The *Poskim* who suggested those criteria were not discussing papaya but were rather taking positions on the permissibility of eggplant.

In most parts of the United States, eggplant does not survive the cold of winter and must be replanted each year. If so, it seems obvious that eggplant is not a "tree" since it does not meet the *Gemara's* criterion of a tree/fruit. The reason so many *Poskim* discussed

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The prohibition of *arlah* includes all parts of the **fruit**, including the peels and pits (but not the leaves, sap, or other parts of the **tree**) (*Shulchan Aruch* 294:1-2*)*. Therefore, at first glance one would assume that even though papain is extracted from the peel, it is subject to this *issur (*assuming that the papaya fruit would be *assur)*.

However, *Tzlach* (*Berachos* 36b) suggests this detail of *arlah* – that peels are also forbidden – only applies to fruits which grow in *Eretz Yisroel* and not to *arlah* in *chutz la'aretz*. *Derech Emunah* (*Be'or HaHalacha*), *Hil. Ma'aser Sheini* 9:13 suggests, based on an understanding proposed by Rav Chaim Soloveitchik (*Hil. Ma'acholos Assuros* 10:15), that this is grounded in the approach of *Rambam*, that *arlah* in *Eretz Yisroel* and *arlah* in *chutz la'aretz* are two separate *halachos*. Those details which the *Torah* specifies for *arlah* in *Eretz Yisroel* do not necessarily apply in *chutz la'aretz*. One example of this principle is the *chumrah* that inedible peels are forbidden, which does not apply in *chutz la'aretz*. If so, even if a given papaya is *arlah*, the papain extracted from its peel is not forbidden.

While this detail presents a basis for leniency, not all *Poskim* agree with this approach, as follows: Rav Chaim bases his concept on *Rambam*, who rules that *netah revai* (a *ma'aser sheini*-like status of fruit grown the year after *arlah* finishes) does not apply in *chutz la'aretz*. Rav Chaim understands that this is because the *Torah* only speaks about the *netah revai* "extension" of *arlah* as relates to *arlah* of *Eretz Yisroel*, and there is no reason to apply it to the "separate" type of *arlah* in *chutz la'aretz*. *Rambam* himself notes that some *Geonim* partially disagree with this application (*netah revai*) since they hold that *kerem revai* (*albeit* not *netah revai*) – a *ma'aser sheini*-like status of fourth year grapes – applies in *chutz l'aretz*, and Rav Chaim says that this is because they disagree with *Rambam's* approach that *arlah* in *chutz la'aretz* is a separate *halacha* from *arlah* in *Eretz Yisroel*.

If we look at *Shulchan Aruch* (294:7), the primary opinion cited is that *netah revai* applies **fully** in *chutz la'aretz*, with *Rambam* only listed as an alternate opinion, and *Rema* cites the aforementioned *Geonim* (see also *Gr"a* 294:28 and *Shach* 294:17). Thus, *Shulchan Aruch* and *Rema* appear to take the position that *arlah* in *chutz la'aretz* is merely a variation of *arlah* in *Eretz Yisroel* (rather than a separate halacha). It therefore follows that peels of *arlah* fruit in *chutz la'aretz* should also be forbidden, just as they are in *Eretz Yisroel*. This is borne out in *Shulchan Aruch* who rules (294:1-2) that peels are included in the *issur* of *arlah*, and in subsequent *halachos* (294:3, 7-10 &17) he discusses *arlah* in *chutz la'aretz* and how it differs from *Eretz Yisroel* and does **not** say that peels are treated any differently in *chutz la'aretz*. Thus, we can conclude that *Shulchan Aruch* holds that the peel of an *arlah* fruit – or the papain extracted from an *arlah* papaya – is also included in the prohibition of *arlah*, even in *chutz la'aretz*.

Although *Shulchan Aruch* and *Rema* are strict on this matter, it might still be appropriate to be lenient, based on the principle (*Berachos* 36a) that as relates to *arlah* in *chutz la'aretz*, one can always follow a legitimate lenient opinion (בל המיקל בארץ הלבה במותו בחוץ לארץ). If so, although we cannot permit papain in *chutz la'aretz* based on the idea that *safek arlah* is always permitted in *chutz la'aretz*, we potentially can do so based on this other lenient principle that applies to *arlah* in *chutz la'aretz*.

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eggplant is because it originated in the tropical climates of South Asia, where the weather is warm enough for the plant to last through the winter. From their perspective it appears to be a tree, but it never produces fruit for 3 years, thus raising the question that it seems to always be *arlah*. In addition to the two alternate criteria noted above, others suggest the following ways of identifying a tree:

C. Hollow Trunk Trees have solid trunks, and if the trunk is hollow (like a reed), that is a sign that this is not a tree.[7]

D. 4 Years The *Torah* does not forbid *arlah* unless the tree will produce fruit after the years of *arlah* end (when the fruit would be permitted).[8]

E. 5 Years The *Torah* says[9] that in the 5th year – after *arlah* and *revai* end – the produce will be available for consumption, and this teaches that if the plant will stop producing fruit before the 5th year, the restrictions of *arlah* and *revai* do not apply.[10]

All these ideas were proposed as extra ways of identifying trees and non-trees using features not mentioned in the *Gemara* or *Tosefta*. Each is suggested by one or more *Poskim*, and just about every one of them is also rejected by others (some of which are noted in the footnotes). Nonetheless, as noted earlier, since *safek arlah* is permitted in *chutz la'aretz*, we can be lenient if even one legitimate *Posek* accepts a given line of reasoning.

We have seen that these lines of reasoning can also potentially justify eating papaya (and papain), by positing that papaya is not a "fruit," just as eggplant is not. Similarly, these ideas are used to explain why one may eat raspberries and the type of pepper used to make tabasco sauce; those issues are beyond the scope of this article.

1. *Gemara*, *Berachos* 40a-b says that the defining criterion of a tree is that after harvesting the produce, new fruits will grow in the coming season without need for replanting. 2. *Tosefta*, *Kilayim* 3:15, cited in *Rambam*, *Hil. Kilayim* 5:20, and both are noted by *Radvaz* 3:531/966 as relates to *arlah*. *Tosefta* says the criterion is that the leaves of trees do not come from the trunk but rather from the branches, while the leaves of a non-tree will even come from the primary trunk. 3. *Radvaz* ibid. (end). *Chazon Ish*, *Arlah* 12:3, and *Shevet HaLevi* 6:165, reject this position. 4. *Birkei Yosef* to *Shulchan Aruch* YD 294:3. 5. These *Poskim* do not offer sources for the criteria they are suggesting. Rather, they are a blend of personal logic and a justification for the common practice in their time (including by eminent *Poskim*) to eat eggplant despite its apparent *arlah* concerns. 6. Rav Schwartz *zt"l* wrote a *teshuvah* permitting papaya (and his logic extends to papain). This appears to be the generally accepted ruling at the national *hashgachos*. [*Shevet HaLevi* 6:165 says that personally he rules that papaya is forbidden (although it is not clear if this is limited to *Eretz Yisroel*) but does not protest those who rely on the lenient opinions. *Yechaveh Da'as* 4:52 permits it even in *Eretz Yisroel*.] 7. *Responsa Halachos Ketanos* 1:83, cited and accepted by *Rav Pealim* OC 2:30. [*Halachos Ketanos* was a *Sephardic Gadol* who lived in the 1600s.] *Shevet HaLevi* 6:165 (discussing papaya) suggests proofs against this suggestion and therefore disagrees with it. 8. *Sha'arei Tzedek* (by the author of *Chochmas Adam*), *Sha'arei Mishpitei Ha'aretz* (*Chochmas Adam* 6:18 and *Binas Adam* 6:2), (noting that *Radvaz* rejected it). *Tzitz Eliezer* 2:15 argues that we are not authorized to derive halachos by interpreting *pesukim* in this manner. 9. *Vayikra* 19:25. 10. *Chazon Ish*, *Arlah* 12:3. He further suggests that when the *Gemara* says that a non-tree is identified by having a trunk that does not "last" (אין הגזע מתקיים), that does not mean that the trunk dies out during the winter (as most understand it), but rather that it does not last long enough to produce fruit which is free of all restrictions (i.e., to the 5th year). Thus, this opinion has the unique feature of claiming to be based on the *Gemara*, as opposed to the others which are independent logical ideas without significant sources.

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Rabbi Levi Mostofsky,
Executive Director

2701 W. Howard Street
Chicago, IL 60645

Questions? Comments? Feedback?
773.250.5499
office@crcweb.org
www.crcweb.org