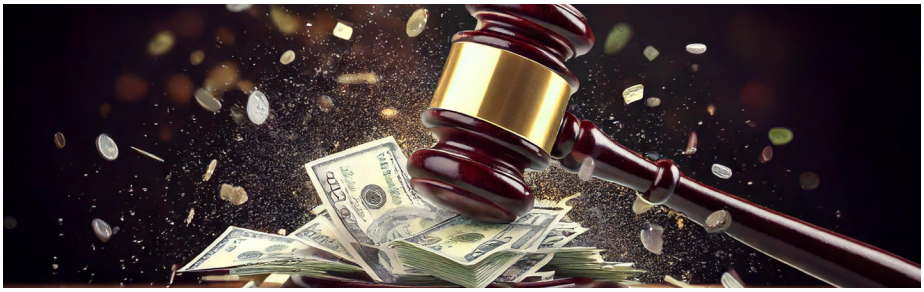
A PUBLICATION OF **Chicago Rabbinical Council** בס"ד

CHICAGO RABBINICAL CURRENTS

NOVEMBER 2025 | Volume II Issue 7 | כסלו תשפ"ו



EQUITY, FAIRNESS, AND MISHPAT

by Rabbi Aaron Kraft

Rabbi Aaron Kraft is a cRc Dayan Kavua and serves as Rosh Bais Midrash at Bais Chaim Dovid.

In addition to matters of monetary dispute and conversion, the *beis din* also assists couples going through the difficult process of divorce. Of course the *beis din* presides over the ritual ceremony known as a *siddur haget*, to end the halakhic marriage bond between husband and wife. But the *beis din* can also help the couple reach an agreement about custodial and financial arrangements. In fact, resolving these matters in *beis din* has both practical and halakhic benefits. Practically, the process (either through mediation or arbitration) is often significantly faster and exponentially more affordable. Halakhically, utilizing the *beis din* to adjudicate these matters avoids the prohibition of litigating in secular court known as *arkaos shel goyim*.[1] However, attorneys and community members alike sometimes perceive the *beis din* process as shrouded in mystery, and unpredictable whereas they believe they better understand the contours of a civil court decision and know what to anticipate. Hopefully this article will provide a glimpse into the way *beis din* handles the division of marital assets in the dissolution of marriage, which can in turn quell people's concerns about submitting to *beis din* for this process.[2]

THE BASICS – THE HALAKHA AND THE SECULAR LAW

According to halakha, when a woman marries, her property rights become somewhat limited. While the details are beyond the scope of this article, it is worth noting that she retains varying degrees of ownership of some property (*nichsei tzon barzel* and *nichsei melog*), with the profits from the said assets accruing to her husband.[3] Her earnings typically belong to her

(continued on page 5)

1. See *Gittin* 88b and *Shulchan Aruch* (*CM* 26). 2. For a discussion of how *beis din* handles custodial arrangements, see article by Av Beth Din, Rabbi Yona Reiss, in a previous issue of *Currents* (Volume 1 Issue 8). 3. See *Shulchan Aruch* (*EH* 85).

CIVET CAT COFFEE KOSHER OR NOT?

A Kosher Analysis of the World's Strangest Brew

by Rabbi Elozor Willner

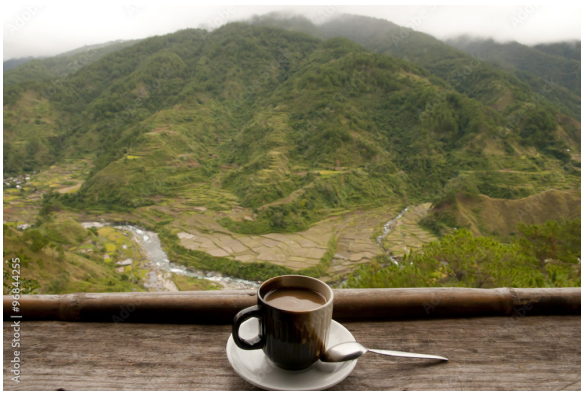
Rabbi Willner is a Rabbinic Coordinator Specializing in the Candy and Nut Industry

In the jungles of Southeast Asia, a peculiar animal has taken center stage in the luxury coffee world: the Asian palm civet. This cat-like creature doesn't roast or brew coffee, but what it does is eat ripe coffee cherries, digest the fruity outer layers, and leave behind the coffee beans in its droppings (yes, you heard that right). These excreted beans are collected, cleaned, roasted, and sold as "Kopi Luwak," a high-end novelty coffee often retailing for hundreds of dollars per pound.

But if you think that's extreme, consider this: the award for the most expensive coffee in the world goes to Black Ivory Coffee, which is made from Thai Arabica beans that have been eaten and digested by elephants. Once the beans pass through the elephant's system, they're harvested from the dung, cleaned, and sold at prices ranging from $1,000 to $2,000 per pound (!).

For the kosher consumer, this unique processing

(continued on page 2)



CIVET CAT COF

(continued from cover)

method raises an immediate red flag: if the beans spent time inside a non-kosher animal's digestive system, can the coffee possibly be kosher? Indeed, as the go-to resource for kosher consumer questions worldwide, the cRc occasionally receives inquiries from consumers who encounter this product.

HA'YOTZEI MIN HATAMEI - TAMEI

The question is rooted in a fundamental *halachic* rule: It's not only the meat of a non-kosher animal that is forbidden, but even certain byproducts as well. The Torah principle of *ha'yotzei min hatamei – tamei*, which means that that which comes from a non-kosher source is also non-kosher, is applied to substances like milk, eggs, bodily fluids, and more. If a product is considered to have been produced by, or derived from, a non-kosher animal, it may inherit the non-kosher status of the animal itself.

This brings us to our question. Are these coffee beans considered to have "come from" the civet cat? Or did they merely pass through it in an unaffected way?

To answer that, we'll need to visit a *sugya* (talmudic discussion) in *Bechoros* and an important comment by *Tosafos*.

URINE FROM A DONKEY

The *Gemara* in *Bechoros* (7a) addresses a curious question that was posed to *Rav Sheshes*: Is urine from a donkey permitted? After all, it was originally water that the animal drank. Should we say therefore that it is not truly an excretion of an animal, rather the "water" that comes out is the same water that came in from a *halachic* standpoint? The *Gemara* refers to this approach as "מיא עייל מיא נפיק" (water went in, water came out), meaning it is not changed enough to be considered a "product" of the animal.

Rav Sheshes responded with a resounding no. We do not say that the urine retains the status of the original water that the animal drank. It is *assur* (prohibited) and considered a *yotzei min hatamei*.

(Before we continue it is worthwhile to note that the *Gemara* there mentions that donkey urine was used for medicinal purposes, which might sound archaic today, but it turns out to be surprisingly relevant. Even in modern medicine, certain treatments involve the use of animal urine. One notable example is "Premarin," a widely prescribed medication for hormone replacement therapy. The name stands for "Pregnant Mares' Urine," from which the drug's active estrogens are extracted. The key compounds in the drug are literally derived from the urine of pregnant horses, which contains high levels of conjugated estrogens.

Thus, the question posed to *Rav Sheshes* remains as relevant today as it was then. Of course, *halachic* rulings regarding the permissibility of medications involve other factors, such as the form in which it is ingested as well as other factors, which are beyond the scope of this article.)

KOSHER FISH INGESTED BY A NON-KOSHER FISH

However, a *Mishnah* later in the same *sugya* presents a seemingly contradictory *halacha*. The *Mishna* states that if a kosher fish is found inside the stomach of a non-kosher fish, the inner fish is permitted.

Tosafos (*Bechoros* 7b) is puzzled, as this halacha would appear to contradict the ruling of *Rav Sheshes*. Shouldn't the kosher fish in this case also be considered *yotzei min hatamei*? It spent time inside the body of a non-kosher animal, just like the water in the donkey!

The answer *Tosafos* gives is crucial:

מים שהבהמה שותה לחלוחית הגוף מתערב עמהם.

When an animal drinks water, that water becomes mixed with the animal's internal

FFEE KOSHER OR NOT?

moisture (*lahluchis haguf*). That mixture transforms it into a bodily product and renders it forbidden. But a whole fish, says *Tosafos*, is not absorbed or altered. It does not mix with the host animal's internal fluids. It remains a distinct, solid entity, unchanged and unmixed. Therefore, we say: "דג עייל, דג נפיק" (a fish went in, and a fish came out). It retains its original identity and is therefore permitted.

SO WHAT ABOUT CIVET CAT COFFEE?

This distinction between fish and urine is the crux of the *halachic* analysis of Kopi Luwak. Are the coffee beans more like water that becomes donkey urine—or like a fish that passes through a stomach but emerges the same?

The key *halachic* question is this: Is the prohibition of *yotzei min hatamei* that emerges from the *Gemara* in *Bechoros* in regard to urine based on the transformations that happened to the water, or, alternatively, is it based on the fact that the animal's bodily fluids physically mix into the water?

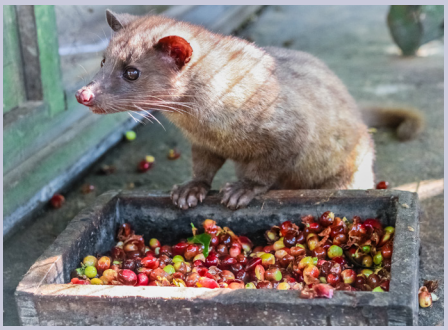
On one hand, the Kopi Luwak coffee beans are solid and impermeable. They are not digested, they are not absorbed, and they do not mix with any internal fluids. The civet cat consumes the outer cherry, but the beans pass through whole, just like the kosher fish. Therefore, it would appear appropriate to say "קפה עייל, קפה נפיק" (coffee went in and coffee came out).

However, on the other hand, what happens inside the civet's digestive tract is fundamentally altering the coffee bean in a way that is incomparable to the case of fish.

THE COFFEE FERMENTATION PROCESS

In truth, to properly understand the effects of the animal on the coffee bean, we need to examine the key role fermentation plays in the making of coffee.

Coffee beans, unlike fish, are not edible or



A civet cat with ripe coffee cherries

usable in their raw form. After harvesting, the fruity outer layer must be removed, and the beans must undergo a crucial fermentation process to break down sugars, proteins, and mucilage that affect flavor and texture. This process is essential, because without it, the beans cannot be dried, roasted, or brewed into drinkable coffee.

In most conventional coffee production, fermentation is carried out by exposing the beans to water, air, or controlled heat, allowing natural yeasts and bacteria to perform the transformation. In the case of Kopi Luwak, this fermentation happens inside the animal's digestive system. The civet's enzymes and gut microbes do the job. They break down bitter compounds, reduce proteins that produce harsh flavors, and begin a slow, controlled biological process that fundamentally alters the chemical structure of the bean.

This is not merely a case of flavor enhancement. The bean's identity as "coffee" depends on fermentation; without this transformation, it wouldn't be coffee. The transformation here is not merely an improved flavor profile. It's essential to the "creation" of the coffee bean. Without it, the bean could not become what it's ultimately meant to be. That gives the civet's contribution a more central, potentially *halachically* significant role.

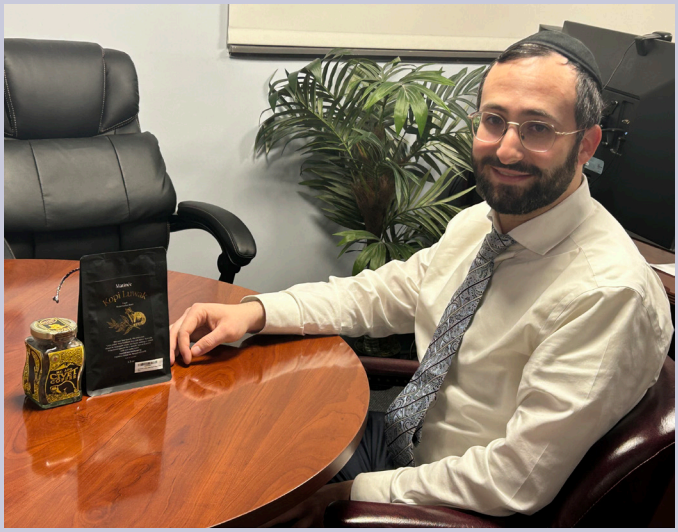
It would seem based on the above, that a good argument can be made that Kopi Luwak coffee is not just "קפה עייל, קפה נפיק" rather, it's a fundamentally reprocessed item, created through the body of a non-kosher animal. If the prohibition of *yotzei min hatamei* is based solely on the fact that a substance was transformed inside the animal, our coffee sure seems like a good candidate for the *issur*.

However, as we mentioned there is another way to understand how the prohibition of *yotzei* operates. It may be that in order to be a problem the animal's bodily fluids need to physically *mix into* the item, and mere change to the chemical makeup, even in a significant way, would not matter.

The logic to this line of thinking is, that in order for an object to be considered a *yotzei* (a product of the animal), there needs to be a *hisbatlus* (subsumption) of some sort to the body of the animal. That happens when an item gets absorbed into the body of the animal and becomes mixed with its internal bodily fluids. In other words, the animal's internal systems must claim ownership of the item and convert it into something produced by the animal.

This approach is clearly outlined in the *Chazon Ish*, who, in his explanation of the question that

Rabbi Willner's full Hebrew *teshuva* on this subject can be accessed by scanning the QR code:



Rabbi Willner with packaged civet coffee

was posed to *Rav Sheshes* in regard to urine, says that the reason it would be prohibited is because of its absorption into the very bloodstream of the animal, which triggers a nullification of the water to the body of the animal. Accordingly, the differentiation between urine and fish can be understood in this vein as well. When a fish is swallowed by another, it simply becomes digested. Its texture may soften, and its flavor may start to shift. Yet none of that matters, because the fish remained whole and did not mix with the body of its host.

If this approach is correct, the same can be said about Kopi Luwak. The beans, which are solid and naturally encased, are not absorbed or broken down. Fermentation may be biologically significant but halachically irrelevant, because the animal's bodily fluid never merged into the bean to enable a *hisbatlus* to the animal.

According to this view, *yotzei min hatamei* is not triggered by internal transformation, but by being suffused with or created from the animal's body. No such thing happens here in the process of creating Kopi Luwak.

CONCLUSION

While, as noted, there are strong grounds to be lenient and permit Kopi Luwak based on the approach of the *Chazon Ish* (בכורות, סימן ט"ז אות י"ד), there are some *poskim* who disagree and view the transformation the beans undergo as sufficient to prohibit them. The goal of this article is not to present a definitive ruling on this *halachic* debate, but rather to deepen our understanding of the different viewpoints that surround this fascinating question.

Whether or not this exotic brew belongs on a kosher shelf, one thing is certain: the *sugya* it brews up is far richer than the coffee itself!

EQUITY, FAIRNESS, AND MISHPAT

(continued from cover)

husband (in return he provides her with support).[4] Upon divorce, she would receive back any property that remained under her ownership as well as a sum of money stipulated in the *kesubah* (the value of which currently ranges from $5,000 to $55,000 depending on which position in the *poskim* you adopt).[5] In many circumstances, this does not amount to all that much. Acquisitions made and income earned during marriage, on the other hand, often accrue solely to the husband according to the technical halakha.

For a divorcée in a contemporary American setting,[6] the basic financial arrangement described by halakha often pales in comparison to the financial package awarded by the civil courts in accordance with the legal principle of equitable distribution. Equitable distribution refers to "the distribution of marital assets by a court in a divorce action in accordance with statutory guidelines designed to produce fair but not necessarily equal division of property and assets."[7] To achieve fair allocation of property, courts consider many factors such as duration of marriage, circumstances of dissolution of marriage, economic fault of one spouse, earning power of the various parties, responsibility for providing for the children, etc. This results in a financial arrangement meant to situate both parties with appropriate economic stability moving forward.

PRACTICAL DIFFERENCES BETWEEN THE HALAKHA AND SECULAR LAW

As a theoretical illustration of how equitable distribution may affect a given scenario, consider the responsibility for a divorced couple to pay off debt incurred during the marriage. Since halakha typically views the primary financial responsibility as falling on the husband, one could argue that he pay off all outstanding marital debt. However, when employing a standard of equitable distribution, when both parents have an income and in consideration of the overall financial picture, fairness may dictate that the parents share the responsibility for this debt in proportion to what each of them earn. Or consider the common scenario where a couple purchases a property during their marriage (and the property is registered only in the husband's name). The straightforward halakhic conclusion would be that the property belongs solely to the husband. However, following principles of equitable distribution, other factors including the earning power and/or supportive role played by the wife may dictate that the marital property be considered jointly owned (again the exact percentage would depend on the details of the circumstance).

This results in a prevalent preference to adjudicate the financial terms of divorce in civil court where one or both parties believe they will receive a far favorable package in comparison to the outcome of a *beis din* hearing. Given the prohibition of adjudicating in secular courts, is it possible to arbitrate a divorce case in *beis din* with the *dayanim* deciding the case based on principles of equitable distribution? If so, perhaps attorneys and clients alike would feel more comfortable determining all aspects of their divorce in *beis din*.

THE PROHIBITION OF GOING TO A SECULAR COURT

A little context will help shed light on this question. The commentaries present two understandings of the nature of the prohibition against adjudicating in secular court: 1) it expresses a reverence towards the idol worshipers and their beliefs; 2) it represents an audacious rejection of the Divine system of law given to the Jewish people.[8] Does adjudication in front of Jewish judges who instead of employing the precepts of Torah law to decide the case, accept and apply the secular law of the land in all of their judgments constitute a violation of *arkaos*? According to the first understanding of the prohibition, namely that arbitration in secular court lends credence to idolators, appearing in front of Jewish judges, even if they adopt the corpus of secular law, does not honor idolators in any fashion. However, according to the second approach, any judicial body (even if comprised of Jewish judges) that dismisses Torah law in favor of secular law certainly constitutes a rejection of the Divine Torah law gifted to the Jewish people. The *poskim* accept both these understandings which means that even adjudicating before Jewish judges violates the halakha of *arkaos* if they employ a secular legal system (like in the Israeli secular courts which emerged from Turkish and British law as opposed to halakha).[9]

Although problematic for a group of Jewish *dayanim* to ubiquitously adopt the entire corpus of a secular law system, the *poskim* discuss whether two parties can bind themselves with a choice of law clause on an individual basis to have *beis din* decide a specific case based on the relevant civil law. The *Beis Yosef*'s (*CM* 26) quotation of the *Shut Rashba* (6:254) and the *Taz* (*CM* 26:3) forbid this even if both parties stipulated that the *beis din* should litigate a particular dispute in accordance with the secular law. However, the *Nesivos* (*CM* 61:9) seems to permit a *beis din* to use secular principles to determine the outcome of the case in such circumstances. Furthermore, careful analysis of the *Shut Rashba* (*ibid*.) indicates that the only problem with parties stipulating that *beis din* litigate a particular dispute according to secular legal principles is when they are doing so to copy the gentile judicial system, which implicitly recognizes it as superior to the Torah's judicial system. However, if the parties simply intend to structure the financial terms of a transaction and desire terms that happen to mimic the secular law (for example out of considerations of familiarity, expediency, efficiency or equanimity, etc.), then it is permitted.[10]

On this basis, the *cRc Rules and Procedures*[11] permits a choice of law clause, stating:

"In situations where the parties to a dispute explicitly adopt a "choice of law" clause, either in the initial contract or in the arbitration agreement,

(continued on page 6)

4. See *Shulchan Aruch* (*EH* 80). 5. See "The Value and Significance of the Ketubah" by Rabbi Michael Broyde and Rabbi Yona Reiss in *Journal of Halacha and Contemporary Society* (Volume 47, Fall 2002) for fuller discussion. 6. Similar considerations exist in Israel and other countries as well, but that is beyond the scope of this article. 7. Miriam Webster online legal dictionary. 8. For a discussion of the many ramifications of these two approaches in understanding the *issur arkaos*, see Rabbi Yaakov Feit's article, "The Prohibition Against Going to Secular Courts" in *The Journal of the Beth Din of America* (volume 1) as well as "Arkaos, Civil Litigation and Halacha" by Rabbi Ari Marburger and "Litigation and Arbitration Before Non-Jews" by Rabbi J.D. Bleich in *Tradition* (34:3). 9. See *Chazon Ish* (*Sanhedrin* 15:4), Rabbi Ovadia Yosef (*Yechaveh Daas*, 65 footnote **), Rabbi Ezra Bazri (*Dinei Mamonos*, volume 1, 10:5 note 5) and Rabbi Yona Reiss (*Kanfei Yona*, 1:3). 10. See Rabbi Yona Reiss (*Kanfei Yona*, 1:4) and Rabbi Mordechai Willig ("Equitable Distribution and the Enforceability of Choice of Law Clauses in Beit Din" in *The Journal of the Beth Din of America*, volume 3; *Am Mordechai*, Four Sections of *Shulchan Aruch*, 51). 11. Section 3(d).

EQUITY, FAIRNESS, AND MISHPAT

(continued from page 5)

the Beth Din will accept such a choice of law clause as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish law."

In the context of divorce, a contractual stipulation to divide the marital assets by means of equitable distribution usually only exists in a prenuptial agreement. Indeed, Rabbi Zalman Nechemia Goldberg[12] citing the *Shut Rashba* (ibid.), ruled that a couple may sign a prenuptial agreement authorizing the *beis din* to divide their assets in accordance with the principles of equitable distribution in the event of divorce. The Beth Din of America and Chicago Rabbinical Council versions of the halakhic prenuptial agreement have adopted this position of Rabbi Zalman Nechemia Goldberg.

While all are encouraged to sign a halakhic prenuptial agreement, the *beis din* encounters many divorce cases where no prenuptial agreement exists. In such instances the *Rules and Procedures*[13] indicates:

"In situations where the parties to a dispute explicitly or implicitly accept the common commercial practices of any particular trade, profession, or community – whether it be by explicit incorporation of such standards into the initial contract or arbitration agreement, or through the implicit adoption of such common commercial practices in this transaction – the Beth Din will accept such common commercial practices as providing the rules of decision governing the decision of the panel to the fullest extent permitted by Jewish law."

In other words, the *beis din* can incorporate local standards and customs into its decision if they find it consistent with the parties' behaviors and practices. How do we determine whether a married couple has implicitly adopted the "common commercial practice" with respect to resolving their financial disputes in accordance with the principles of equitable distribution?

Rabbi Mordechai Willig[14] suggested that it can be instructive to observe the parties' communal practices. In many communities most dissolution of marriages involves significant court involvement or settlement agreements made "in the shadow of court decision."[15] Furthermore one can argue that halakha recognizes the concept of marital property when both spouse's names are listed as jointly owning the property, asset, accounts, etc. Even if the husband financed the purchase, listing his spouse's name on the deed makes them partners in the transaction and is generally viewed as a gift to the spouse.[16] Rav Hershel Schachter has even argued that women who work full-time may be entitled to the income they earn despite the default halakha being that a wife's wages belong to her husband. He bases this on the principle that a wife's earnings that she receives through considerable effort (as opposed to small scale work) accrue to her (see *Dagul Mervavah*, *EH* 80:1 and *Beit Shmuel EH* 80:2 citing the *Bach*).[17] Rabbi Reuven Feinstein also quotes his father, Rabbi Moshe Feinstein, as holding that women's wages earned from outside employment belong to her.[18]

CONCLUSION

These arguments further support settling the financial matters in divorce proceedings according to principles of equitable distribution. Therefore, the approach adopted by the Chicago Rabbinical Council (as well as other *batei din*) is to govern distribution of marital assets upon divorce by the tenets of equitable distribution when this is reflective of the customary practice of the parties. Hopefully understanding the underlying rationale and process of asset distribution in end-of-marriage disputes in *beis din*, will engender a stronger sense of comfort and preparedness in the event that one needs to adjudicate these matters in *beis din*.

12. See *Yeshurun* Torah Journal (volume 11). 13. Section 3(e). 14. "Equitable Distribution and the Enforceability of Choice of Law Clauses in Beit Din" in *The Journal of the Beth Din of America*, volume 3. 15. Ibid. 16. See article in *HaDarom* (70-71) by Rabbi Aryeh Yehuda Warburg. 17. See "*Bittul Chametz* and Contemporary Financial Arrangements – Part III" by Rabbi Chaim Jachter in *Kol Torah* Journal (volume 17). 18. See *Sefer Eitz Erez* (pg. 799).

Chicago Rabbinical Currents *is a monthly community newsletter of the Chicago Rabbinical Council (cRc), featuring articles by the staff of the cRc Beth Din and of cRc Kosher.*

We value proactive community engagement, education and partnership, and Chicago Rabbinical Currents articles address aspects of practical halacha that are applicable to all.

2701 W. Howard Street
Chicago, IL 60645

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