

ARTICLE 75 WHICH THE DECISIONS (ISSUES)

(Continued on page 14)

Secular Law As A Component Of The Jewish Religious Mandate and Alternative Dispute Resolution

By Stephen J. Siegel*

As an American and as a Jew, I am proud to be subject to the three greatest existing systems of jurisprudence. They are the laws of the United States, the laws of this great state of New York and halacha,¹ which is defined as the complete compendium of Jewish law encompassing every facet of living from birth to death.

An integral component of the geopolitical explanation of Jew-

ish survival without a homeland for most of their existence is built into the halacha. Jewish law mandates that a Jew follow the duly constituted civil laws of the country in which they live. What if there are differing obligations set forth by Jewish law as opposed to either the laws of the United States or the State of New York?

As a function of the mandate to follow civil law built into the overall framework of halacha this is not a big problem. It is fair-

(Continued on page 14)

Secular Law As A Component Of The Jewish Religious Mandate (continued from page 1)

ly easy in secular American society to exercise complete freedom (but not license) of religion in terms of being an observant Jew or member of any other minority religion.

To the observant Jew, Halacha is the juridical manifestation of God's will on earth. Implicit in the ten commandments are the axioms that the laws enunciated by the Almighty on Mount Sinai are perfect, immutable and as applicable today as when given thousands of years ago. The clear corollary is imitatio dei and its logical inferences.

Halacha rarely conflicts with secular law. Sometimes, however, there are occasions where there can be conflicts between the two systems.

Initially, the only legal obligation of primordial man (Adam) was to not eat from the fruit of the tree of good and evil.² When Adam ate from it, he caused himself to be expelled from the garden of Eden. Thereafter, he flourished in a society without form or structure until the great flood.

After the flood, Noah and his progeny were given seven commandments. Perhaps the most important of these commandments was the societal obligation to enact fair laws, statutes and ordinances to govern life and societal communal living. While the concept of laws is a divine mandate, the specific content of the laws is left to the individual society.

The observant Jew has a different standard. The Jewish people are told that they must not turn aside from the words that God tells us this day either to the right or left. All Jewish laws were given directly by God to Moses and this implies a mandate to follow all of the specifics of Jewish law in accordance with the law as given on Mount Sinai. Within this context, one must acknowledge the principal of dina demachshu dina, that the law of the land is the law.³ Within the framework of Jewish law is the mandate to adhere scrupulously to the secular laws of society.

There is no doubt that the fundamental fairness of the American systems qualifies those laws as established by our governments to be the type of law envisioned by the rule.

Viva-vis the halachic Jew, it is a categorical imperative to adhere to those laws that relate to

dealing with any governmental entity or with respect to those citizens who are not bound by halacha. To my knowledge, there are no laws enacted in this country that directly conflict with Jewish law.

Conversely, with respect to civil disputes, Jews are legally empowered to follow halacha according to secular law.⁴ American and Jewish law coexist in juxtaposition upon one another. For adherents of halacha, it is a viable option to elect to arbitrate according to the rules of halacha. Any judgment entered therein is enforceable subject to Article 75 of the Civil Practice Laws and Rules, which accepts Jewish courts as a valid form of arbitration. Therefore, as between Jews, Halacha is civilly binding and legally enforceable.

The Law Journal fairly frequently publishes civil decisions that endorse the decisions of Jewish courts (bais din in the singular, batei din in the plural) in virtually every area of civil litigation from landlord/tenant law, commercial and contract disputes to matrimonial litigation.

Bais din as an alternative dispute resolution forum is similarly available to anybody who wishes to avail herself of a bais din as an alternative form of dispute resolution. According to friends in the diamond business, any person who wishes to be a member of the Diamond Club on 47th Street in Manhattan must agree to submit himself to the rules of the club's bais din in case of disputes. To go elsewhere for dispute resolution is to ostracize oneself from the community of diamond dealers. The Diamond Club is largely Jewish and orthodox. However, its rules are accepted without rancor by all members, without regard to actual religion or religiosity.⁴

What if a halachic Jew has a controversy with a non-religious Jew? While a resolution according to the Shulchan Aruch is preferable, if the other side refuses to accept Jewish law and a bais din, the observant Jew is basically free to utilize the secular system. In my practice, I have frequently suggested the use of a bais din as a fast, fair and inexpensive alternative to suits in the Supreme Court. Our legal system has vindicated this practice with the proliferation of A.D.R. groups with Article 75

enforcement of rulings of the bais din.

Before a bais din can act, the litigants must accept as binding the standards set by halacha. Jewish law recognizes slightly different standards of evidence, procedure and substantive law than what is found in C.L.S. or McKinney's.

However, by accepting the jurisdiction of a bais din pursuant to Article 75, the litigants are bound to the halacha.

What if Reuven failed to pay his property taxes and the state exercises its authority and confiscates the property? I, Shimon, then buy the property at a tax foreclosure sale. According to Jewish law, might Reuven still own the property? In fact, while a system of taxation is set up by the Bible and the Gemara, there is no halachic authority for the imposition of real estate taxes as such. Nevertheless, since I am obliged to follow the civil laws of the land where I am living, I am subject to the real property tax no matter how much I don't like it.

Since Reuven did not pay his taxes when and where he was supposed to, the sale to me is valid and I can keep the property. In the line of taxation, the question has often arisen with respect to the obligation of a Jew to pay income or other taxes legally imposed. Can I be a good Jew and a tax evader at the same time? Absolutely not! Government edicts and tax codes are designed to support the common weal and as beneficiaries of the government, we are morally and halachically required to follow the laws.

Any law which a king (or in its stead, any legitimate government) has customarily imposed on its kingdom are absolutely binding. What then happens if we live in a tyranny? What if the government sets up special classifications allowing the confiscation of property without just cause?

If the king (or Uncle Sam) has arbitrarily confiscated Reuven's land, may I, Shimon, purchase the land at a tax sale? Additionally, is there any requirement for me to return the land to Reuven? On a more practical level, what if I purchased the land now knowing that it was confiscated from Reuven unjustly?

The Bible mandates that one must return lost property to its rightful owner. In the case of property wrongfully taken from Reuven, I have a halachic mandate to return the property. Therefore, according to Jewish law, I might very well be out of luck. In this case the halachic obligation does not recognize the bona fide purchaser in good faith.

While a Jew may have a halachic right to violate any civil/secular statute that mandates deviation from halacha with respect to religious observance, he also has an obligation to follow the civil/secular laws in toto.

The holiday of Chanukah celebrates the Jewish victory over Antiochus, who erected idols in the holy temple and tried to force Jews to bow down and worship these idols. Earlier this year, Jews celebrated the holiday of Purim. There, the evil Haman plotted to kill all the Jews when Mordechai, the leaders of the Jews



STEPHEN J. SIEGEL

in Persia, refused to bow down to him. Central to both holidays is the rule that a Jew must refuse to obey a law that clearly goes against the halacha with respect to religious observance. Thank God, every American is free to practice his faith freely in accordance with the religion's rules.

FOOTNOTES

1 Halacha constitutes all areas of Jewish law and is comprised of the religious/ritual component and the secular/civil component. In addition to setting parameters of Jewish religious life, it sets forth a comprehensive system of every facet of life, including commercial and contract law, criminal law, marital law, property and tort law.

2 Genesis 2, 17.

3 Dina demachshu dina is a halachic principle that one must follow the laws of any legitimate governmental system of jurisprudence in a property constituted form of government.

4 In fact, the systems work quite well. I have been involved in several disputes, and have had to spend very little time on cases that would have produced large fees and taken years. It is the rare dispute that takes more than a couple of months from the time the dispute arose to its resolution before the bais din. Additionally, there is very rarely an enforcement problem.

*Editor's Note: Stephen J. Siegel is in private practice in Forest Hills. An inspiration for this article was an article appearing in a publication entitled *Al Hadaf*, a pamphlet published by Yeshiva Kehillos Yaakov that is edited by Rabbi Zeev Dickstein. The pamphlet explains and collates insights of the great sages on the daily folios of the Talmud, which is the compendium of Jewish Law relating to all facets of the Jewish way of life. In addition to using his article, he wishes to thank Rabbi Dickstein for his comments. He also relied on the *Encyclopedia Talmudit*, an encyclopedia dealing with many of the topics discussed in the Talmud.

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