

REVIEW OF RECENT HALAKHIC PERIODICAL LITERATURE

Cheating

An eloquent and refreshing statement on the issue of dishonesty in the taking of examinations appears in a short essay in the Tammuz 5736 issue of *Shma'atin*, an Israeli journal devoted to the discussion of topical issues in the field of education. This item was authored by Tziporah Wieder, then a ninth grade student of the Ulpana school in Kfar Pines. This school is the only educational institution in Israel which operates on the honor system. Even the all-important *bagrut* or baccalaureate examinations, upon which university admission hinges, are administered in this school by the Ministry of Education in accordance with the honor system.

Writing in the middle of her ninth year of school, her first in Ulpana, Miss Wieder reflects upon the difficulties encountered by herself and her peers in making the transition from an elementary school in which an entirely different atmosphere prevailed. In retrospect, wonders Miss Wieder, how was it possible for the students in a religious school to engage in copying and falsification? How did the students rationalize and justify their conduct to themselves? This student quite cogently points out that cheating involves not simply a breach of academic discipline but transgressions of halakhah as well.

The concerns expressed by this young student are, to this writer's knowledge, reflected in only one formal rabbinic responsum. The question of the permissibility of engaging in various forms of intellectual chicanery, including the copying of answers to examina-

tion questions and plagiarism, is examined by Rabbi Menachem Klein, *Mishneh Halakhot*, VII, no. 275. [Rabbi Klein carefully prefaces his answer with a caveat indicating that his reply to the question of cheating should not be construed as endorsement of secular studies.]

Rabbi Klein observes that cheating involves two specific infractions of Jewish law. Such conduct, it may be argued, is akin to *genevat da'at*, a term which connotes "theft of mind" but which is more accurately rendered as "misrepresentation." *Shulhan Arukh, Hoshen Mishpat* 228:6-7, presents a description of specific activities which are deemed to be "theft" of this nature even though no one suffers a pecuniary loss as a result of such actions. Secondly, this type of misrepresentation may readily result in fraud in the fundamental sense of the term. Grades earned in courses serve to indicate proficiency in the subject matter and to determine eligibility for scholarships. Moreover, it is assumed that an academic record reflects a level of competence which may be relied upon in determining whether the graduate is qualified to hold a position for which remuneration is received. Frequently, the scholastic record may serve to establish the level of compensation as well. An employer who, on the basis of grades earned, assumes that an employee has attained a level of competence which the employee has, in fact, not attained has been defrauded. An employer who pays a premium for the services of an employee on the basis of academic honors which, in turn, are based on grades, has been cheated if the employee has not in-

deed reached the level of proficiency associated with such honors. In such cases, argues Rabbi Klein, not only has the student who has engaged in cheating committed a moral offense, but the employer, or the grantor of a scholarship, has an actionable claim for recovery of funds obtained by means of fraud.

Miss Wieder raises an additional problem not mentioned by Rabbi Klein. This student points out that teachers are employed to serve as proctors during examinations. A teacher who is not vigilant in assuring honesty on the part of the examinees—or worse, one who tacitly condones dishonest conduct—accepts payment for services which have not been rendered. This, too, is a form of theft.

To these arguments there should be added an additional consideration of paramount significance. When students or graduates of religious institutions engage in academic dishonesty of whatever form their actions entail the gravest of all transgressions, namely, *hillul ha-Shem*, or profanation of the Divine Name. Rambam, *Hilkhos De'ot*, chapter 6, clearly indicates that any form of conduct which reflects negatively upon students of Torah constitutes an act of *hillul ha-Shem*. Bringing disrepute upon Torah scholars is tantamount to bringing disrepute upon the Torah itself. Certainly, with regard to this provision of Jewish law, all students are to be considered “scholars” regardless of their level of erudition. The unethical actions of any Torah student redound to the discredit of the entire Torah community and hence each and every student must be held to exemplary standards of conduct.

Teachers' Unions

A decision of the Rabbinical Administrative Board of Torah Umesorah, The National Association of Yeshivot and Day Schools, prohibiting teachers

from joining national labor unions has been disseminated widely. The statement, which is entirely declarative in nature and contains neither an analysis of halakhic issues nor citation of precedents, has evoked much comment. This pronouncement, dated 2 Kislev 5741, is particularly noteworthy since R. Moshe Feinstein, honorary chairman of the Rabbinical Administrative Board, in his *Iggerot Mosheh, Hoshen Mishpat*, no. 59, has sanctioned strike action by Yeshivah and Day School teachers, at least under certain limited circumstances.

It is a well-established principle of Jewish law that the residents of any town may promulgate rules and regulations for the common benefit of the townspeople. *Rosh, Baba Batra* 1:33, states that members of a particular profession or craft may establish regulations which are binding upon all such professionals or artisans. The members of such professions or crafts are deemed to be “townspeople” entitled to exercise coercive power upon members of their own “society” for the common benefit. This principle is recorded by Rambam, *Hilkhos Mekhirah* 14:10 and *Shulhan Arukh, Hoshen Mishpat* 231:28. Hence, persons engaged in a common trade or profession are entitled to unionize and to impose organizational discipline upon one another. Moreover, when acting in a representative manner on behalf of all persons engaged in a given occupation, not only is a union entitled to engage in strike action but it may also legitimately forbid both its own members and outsiders from acting as strikebreakers.

Persons earning a livelihood from the teaching of Torah, argues Rabbi Feinstein, are in a somewhat different position. The compensation of such persons is not in the form of a fee for services rendered but payment in lieu of not engaging in some other remunerative activity (*sekhar batalah*). Teachers who are underpaid might well seek other employment, but in the event of their not being otherwise gainfully occupied, the obliga-

tion of teaching Torah falls upon their shoulders even during a strike period. Since teachers must teach even when on strike, the net result, according to Rabbi Feinstein, is to nullify the very concept of a strike. Although it is clear that when not engaged in earning a livelihood every person is obligated both to study and to teach Torah, Rabbi Feinstein does not address the question of whether teachers might not "strike" and spend the time as volunteers teaching Torah in other institutions or in faculty seminars teaching one another. Nor does he raise the question of whether striking teachers might not be permitted to offer to conduct classes in their own homes since it is not clear that the obligation to teach Torah obliges the teacher to spend either the time or the carfare required for him to travel to his students.

Rabbi Feinstein does advance one further significant consideration. Society has an obligation to provide for the Torah education of children. Although, intrinsically, the teacher has no greater obligation in this regard than does any other member of the community, nevertheless, in accepting employment, he has accepted delegation of this responsibility. Therefore, opines Rabbi Feinstein, the teacher may not withdraw, even for purposes of earning a livelihood in some other fashion, unless he provides a suitable replacement.

Despite these considerations, Rabbi Feinstein maintains that strike action is warranted under certain conditions, namely, when the level of compensation is so low that the teachers are not able to fulfill their responsibilities properly. Under such circumstances, if a strike will succeed in producing the necessary remedy, teachers are justified in suspending instruction temporarily in order that ultimately Torah study be maximized and enhanced. Such a determination, Rabbi Feinstein cautions, can be made only upon careful assessment of all factors and should be considered only as a last resort.

The propriety of strike action by Yeshivah teachers is also discussed in the course of a wide-ranging decision of a Tel Aviv Rabbinical Court, *Piskei Din shel Batei ha-Din ha-Rabbaniyim*, VIII, 160-161. In its decision, the *Bet Din* cites the above mentioned responsum of Rabbi Feinstein, but places even heavier emphasis upon the consideration that work stoppage on the part of Yeshivah teachers must inevitably lead to *bittul Torah*, i.e., disruption of Torah study, which, in and of itself, is a serious transgression.

When strike action is warranted, Rabbi Feinstein rules that teachers are entitled to payment for the period during which they performed no teaching services. Although he does not explicitly state the basis for such a claim on the part of striking teachers, it must be remembered that, essentially, they are paid, not for teaching, but for refraining from pursuing other means of earning a livelihood. Teachers who strike solely in order to make it possible for them to be able to discharge their duties adequately are indeed fulfilling their duty and, it may be argued, if not otherwise gainfully employed during the strike period, are entitled to compensation. Rabbi Feinstein further advises that striking teachers be paid for time missed even when the strike cannot be justified in accordance with halakhah. It may be presumed, says Rabbi Feinstein, that teachers who strike are driven to such action by "pain and poverty." Since their intentions are unexceptionable, it is only equitable that they not be penalized financially.

In light of this published responsum it is clear that the Torah Umesorah proclamation is not directed against unionization *per se* but against membership in national unions whose actions and policies are not governed by halakhic considerations and constraints. Indeed, the text of the document bans affiliation solely with "secular" labor unions. Moreover, the same document calls for

the formation of an "*Irgun ha-Morim*" (Teachers' Organization) under the aegis of Torah Umesorah for the purpose of "advancing the status of Yeshivah teachers materially and professionally." Such a body would undoubtedly enjoy the prerogatives which Jewish law conveys upon craft guilds and, to all intents and purposes, would function as a union without affiliation with any secular group.

Expulsion of Students

The Heshvan 5736 issue of *Shma'atin* contains a discussion by Rabbi Zevi Sloucz regarding the circumstances which warrant expulsion of a student or refusal on the part of a school to accept a potential student. Principals of Yeshivot and Day Schools often experience a dilemma when confronted by students or applicants who are of questionable moral character or who are non-observant. Outside of the educational framework of such schools there is little hope that character or behavior patterns will change in a material way. On the other hand, such students may well serve as a negative influence within the school with disastrous consequences for other pupils.

Rambam, *Hilkhot Talmud Torah* 4:1, rules that one may teach Torah only to a student of good moral character who comports himself in a decorous manner or to a "simple" student. At the same time, Rambam rules that a student who is found lacking in this regard is not to be rejected out of hand. On the contrary, Rambam emphasizes that such a student should be corrected and given moral training; but only subsequently may he be taught Torah. This ruling is based upon a discussion in *Berakhot* 28a. While serving as head of the academy, Rabban Gamaliel posted a doorkeeper at the entrance whose task it was to deny admission to students whose moral or religious credentials were subject to question. Upon the appointment

of R. Eleazar ben Azariah as successor to Rabban Gamaliel, the doorkeeper was removed. The result was an immediate and vast increase in enrollment. According to one opinion recorded in the Gemara, 400 seats had to be added to the House of Study; according to another opinion, 700 seats had to be added.

Commentaries on the *Mishneh Torah* explain that both Rabban Gamaliel and R. Eleazar ben Azariah agreed that a student of ill repute should not be accepted. They disagreed only with regard to acceptance of a student of unknown character. Rabban Gamaliel demanded evidence of probity, while R. Eleazar was amenable to accepting any student as long as there was no negative information regarding his character. According to these commentaries, Rambam rules in accordance with the opinion of R. Eleazar ben Azariah and hence permits the teaching of Torah to a "simple" student. These commentators understand the word "simple" (*tam*), employed by Rambam in this context, as denoting a person of unknown moral character. Other authorities understand the term as referring to a person of neutral moral character, that is, a person lacking exemplary character traits, but one who has not developed negative traits.

Rabbi Sloucz points to the apparently contradictory dictum of *Bet Hillel* recorded in *Avot de-Rabbi Nathan* 9:9: "One should teach everyone for there were many transgressors among Israel who were brought close to the study of Torah and righteous, pious and worthy [individuals] emerged from among them." *Bet Hillel*, in apparent contradiction to the position of R. Eleazar ben Azariah, quite obviously favored instruction for all. *Midrash Shmuel*, *Avot* 1:1, endeavors to resolve the discrepancy between the position of *Bet Hillel* and that of R. Eleazar ben Azariah by explaining that *Bet Hillel* did not advocate admission of transgressors to the academy. On the contrary, they advocated

instruction for such individuals only outside of the basic educational system. In the words of the Mishnah, *Bet Hillel* "established many students" but they also "made a fence for the Torah." *Midrash Shmuel* explains the latter phrase as meaning that, although *Bet Hillel* were willing to teach everyone, they insisted upon a "fence" between various groups of students, that is, they insisted upon separate instruction for unworthy students. [Cf., *Magen Avot* and *Petah Einayim*, *ad loc.*] The words of *Bet Hillel*, observes Rabbi Sloucz, are the source of Rambam's concluding statement which advises that students of less than exemplary character be given remedial moral and religious training.

In an earlier article on the same subject which appeared in the 5730 issue of *Niv ha-Midrashiyah*, Rabbi David Werner similarly concludes that all are in agreement that a student of degenerate character may be expelled. Rabbi Werner, however, cites *Maharasha*, *Berakhot* 28a, who maintains that Rabban Gamaliel demanded evidence of "fear of Heaven" or, in the words of the Gemara, that the student be of unimpeachable sincerity, "his interior as his exterior" (*tokho ke-baro*). It was only with regard to a student lacking "fear of Heaven," or sincerity of commitment, that R. Eleazar ben Azariah disagreed and was willing to grant admission. R. Eleazar ben Azariah, according to this analysis, maintained that a student might be excluded only on the basis of negative conduct, but not because of lack of commitment. Use of the term "simple" by Rambam, declares Rabbi Werner, indicates that the student's internal motivation and commitment need not be examined; as long as his conduct and deportment is moral and beyond reproach he may be instructed in Torah.

Noteworthy are the comments of *Shulhan Arukh ha-Rav*, *Hilkhos Talmud Torah*, *kuntres aharon*. Noting Rambam's ruling that a student of poor character should not be taught Torah

but should first be corrected, *Shulhan Arukh ha-Rav* adds the comment that this principle applies only if exclusion from Torah study will aid in effecting a transformation of character. If, however, exclusion will not effect a transformation of character, even though the student is unworthy, he may be taught Torah.

In yet another article dealing with this subject published in *Niv ha-Midrashiyah*, 5730, Rabbi Chaim Nafatalin relates that *Hazon Ish* declared in an oral ruling that the restrictions against teaching Torah to unworthy students do not apply in our day. In earlier times, declared *Hazon Ish*, expulsion from the House of Study was itself a corrective measure. Such ostracism would prompt a student to mend his ways. In our day, counseled *Hazon Ish*, such a policy is likely to confirm the student in his evil ways and cause him to stray even further.

Rabbi Werner advances a similar explanation in resolving the earlier noted discrepancy between the dictum of *Bet Hillel* and the view of R. Eleazar ben Azariah. Rabbi Werner maintains that the counsel of *Bet Hillel*, who advocated teaching Torah even to transgressors, was formulated for historical epochs in which other methods are of no avail. At such times the only way to influence students is directly through the teaching of Torah. Under such conditions the restrictions posited by Rabban Gamaliel and R. Eleazar ben Azariah do not apply.

A student may legitimately be expelled, not only because of moral infractions, but also because of a breach of school discipline, since such conduct is likely to have a negative pedagogic effect upon other students. As is reported in *Horiyot* 13b, R. Meir and R. Nathan were expelled from the House of Study precisely because of such considerations. According to the explanation of Rabbenu Gershom, *Baba Batra* 23a, R. Jeremiah was expelled for like cause. *Sefer Hasidim*, no. 187, states explicitly that a

student whose presence is disruptive should be expelled lest he "do harm to others."

Although he fails to adduce compelling evidence in support of his view, Rabbi Werner makes a distinction between young students and students of a mature age. In his view, young children should be accepted as students even if their conduct is unseemly, provided that they do not exercise a negative influence over other students. According to Rabbi Werner, the qualifications posited for receiving Torah instruction and the dispute between Rabban Gamaliel and R. Eleazar ben Azariah with regard to such qualifications are limited to mature students. On the basis of Rambam, *Hilkhot Talmud Torah* 2:2, Rabbi Werner defines a "young" student as a student below the age of twenty-four or "perhaps" as below the age of sixteen.

Rabbi Kasriel Tchursh, *Keter Efrayim*, no. 51, reaches a conclusion essentially identical to that of Rabbi Werner. Rabbi Tchursh advises that non-observant children be accepted as students providing that they do not manifest a disdainful and disparaging attitude.

Damages to School Property

The Tammuz 5736 issue of *Shma' atin* contains a short item by Rabbi Shlomo Man Ha-Har dealing with liability for damage to school property caused by students. Although there is nothing novel in this discussion it merits note simply by virtue of the fact that the issue is one which is raised with some frequency.

Baba Kamma 87a establishes quite clearly that children below the age of halakhic maturity (thirteen in the case of boys, twelve in the case of girls) cannot be held liable for tort damages. A minor does not incur liability for his actions. Therefore, individuals who have caused personal or property damage while yet minors cannot be held responsible for

compensation even after they have reached the age of legal capacity. This is true not only with regard to damage caused inadvertently but also with respect to acts of vandalism. However, the liability of children who have reached the age of halakhic maturity is exactly the same as that of adults committing the same acts, although adolescents may well not have independent financial resources which may be used to satisfy a claim. Halakhah recognizes no responsibility on the part of parents to compensate for damages caused by children of any age.

Rambam, in his *Commentary on the Mishnah*, *Baba Kamma* 8:4, does, however, declare that the courts are empowered to punish and chastise minors in order to prevent future acts of an anti-social nature. As Rabbi Man Ha-Har points out, this authority is derived from the power to preserve the social order which is vested in the *Bet Din*. Teachers and school authorities do not exercise such power. They are, however, charged with the education of their students. It is incumbent upon them to instill moral values no less than to impart academic knowledge. In order to achieve these objectives they are empowered to utilize appropriate disciplinary measures. They are, therefore, entitled to impose non-monetary punishment if, in their opinion, there exists a pedagogic reason for doing so.

Study of Anatomy I: Dissection

Anatomical studies which involve dissection of human cadavers are beset with a number of halakhic problems. These questions have been the subject of ongoing halakhic analysis and discussion over a period of centuries. A cursory survey of some aspects of this topic and of the different positions taken by various prominent halakhic authorities is presented by Rabbi Shlomoh Goren in the Iyar 5739 issue of *Shevilinear*. This article is reprinted in the Spring 5740 issue

of *Me'orot*, the second edition of a new journal sponsored by the Office of the Chief Rabbinate of Israel. A comprehensive bibliography listing the vast majority of responsa and articles on the topic of anatomical dissection and autopsy was prepared by Rabbi Kalman Kahana and published in the Tevet 5727 issue of *Ha-Ma'ayan* with a supplement in the Nisan 5727 issue of that periodical. This material together with additional references was reprinted in the Av 5734 issue of *Torah u-Mada*.

The primary question, of course, centers upon the prohibition of *nivul ha-met*, or desecration of the dead. According to the position accepted by most rabbinic decisors, this prohibition is suspended in face of *pikuah nefesh*, that is, danger to life. However, as R. Ezekiel Landau, *Noda bi-Yehudah*, *Yoreh De'ah*, II, no. 210, declares, halakhic prescriptions are suspended for purposes of *pikuah nefesh* only in face of imminent danger. Thus, an autopsy would be warranted in order to secure information useful in treating another patient afflicted by the same disease, but not simply for the purpose of advancement of scientific knowledge even though new information gained as a result of the autopsy might, at some future time, contribute to the cure of gravely ill patients. Both *Noda bi-Yehudah* and R. Moshe Sofer, *Teshuvot Hatam Sofer*, *Yoreh De'ah*, no. 236, apply this principle to the question of the propriety of anatomical studies which medical students are required to undertake. On the basis of the principle formulated by *Noda bi-Yehudah*, both he and *Hatam Sofer* reject the contention that the study of medicine may be deemed to be encompassed within the category of *pikuah nefesh*. *Hatam Sofer* applies a *reductio ad absurdum* in declaring that, if violation of a corpse is permissible for purposes of the study of medicine, Sabbath restrictions must also be suspended for the same purpose. Equating the two, *Hatam Sofer* concludes that a medical

student may not dissect a cadaver, just as he may not violate the Sabbath for the purpose of pursuing his studies.

The question of whether or not the strictures against *nivul ha-met* apply in the case of a person who in his lifetime has willed his body to science or has granted consent for a post-mortem examination was discussed in this column in the Winter-Spring 1972 (Volume 12, No. 3-4) issue of *Tradition*.

Rabbi Goren omits any discussion of what is, in terms of practical application, the most significant possible exception to this prohibition, namely, the question of whether the prohibition is limited to Jewish corpses or whether it encompasses non-Jewish cadavers as well. In reality, virtually all bodies made available to medical schools are those of non-Jews. Barring evidence to the contrary, application of the principle of *rov* (majority) establishes a halakhic determination that the body of unknown origin and religious identity is a member of the class to which the majority of all bodies belong. When the majority of all persons in the area from which the bodies are procured are non-Jews, any individual corpse is deemed to be that of a non-Jew.

The Jewish *yishuv* faced this problem on a communal level for the first time with the establishment of the first medical school in what was then Palestine. The halakhic issue was submitted to the late Rabbi Abraham Isaac Kook for adjudication. In a brief responsum authored in 1931, *Da'at Kohen*, no. 199, Rabbi Kook sanctions use of non-Jewish cadavers without reservation. The primary issue which he addresses is the possibility of anti-Semitic repercussions as a result of adoption of such a policy. In order to obviate this objection he formulates the philosophical basis of the prohibition of *nivul ha-met* as a manifestation of the *kedushah* or sanctity which is unique to the Jew. Jews are forbidden to partake of various foods, not because they are deleterious to health,

but by virtue of the unique holiness of the community of Israel. The duty to preserve inviolate the sanctity of the body, explains Rabbi Kook, is an obligation imposed solely upon Jews. He ventures the opinion that fair-minded gentiles will recognize that a people who have been subjected to unspeakable persecution because of their tenacity in adhering to the religious obligations imposed upon them are entitled to respect for their claim to the "privilege of sanctity" as well. Moreover, he adds, inveterate anti-Semites are not likely to undergo a change in attitude even if dissection of Jewish corpses were to be sanctioned.

An opposing view is attributed to Rabbi Joseph Soloveitchik in an article written by Rabbi Immanuel Jakobovits, *Torah she-be'al Peh*, VI (5724), 64. Rabbi Soloveitchik is quoted as stating that insofar as the prohibition concerning *nivul ha-met* is concerned, no distinction may be made between Jew and gentile. The prohibition is derived from the commandment not to allow the corpse of an executed transgressor to remain hanging overnight "for he that is hanged is a reproach unto God" (Deuteronomy 21:23). The prohibition, it is argued, applies equally to the bodies of both Jews and non-Jews because all men are created in the "image of God."

However, *Tosafot Yom Tov*, Avot 3:14, declares that while all men are created in the "image," (*be-tselem*), i.e., with divine potential, non-Jews who do not fulfill God's commandments are not described as created "in the image of God" (*be-tselem Elokim*). Thus R. Akiva, in the Mishnah, speaks of man, meaning all mankind, as created "in the image," but does not speak of mankind as created "in the image of God." *Tosafot Yom Tov*'s comments may perhaps best be understood in light of the statement found in *Baba Kamma* 38a concerning the diminished status of Noachides as a result of their renunciation of the Noachide Code.

It may readily be inferred that *Hatam*

Sofer also regards the prohibition concerning *nivul ha-met* as being limited to Jewish corpses. *Hatam Sofer* points to the difficulty posed by the narrative recorded in the Gemara, *Bekhorot* 45a. The Gemara relates that the disciples of Rabbi Ishmael, desiring to determine the number of organs in the human body, obtained the corpse of a harlot who had been executed by the civil authorities and boiled it in order to examine and count the organs. The conduct of these students seems to have been in violation of Jewish law. *Hatam Sofer* declares that no transgression was committed because the woman in question was a gentile. In the context of his discussion *Hatam Sofer* explicitly deduces only that there is no prohibition against deriving benefit from the corpse of a non-Jew. However, it must logically be inferred that the prohibition against *nivul ha-met* is also not operative, else the action of these students would have been prohibited on that account alone. Moreover, it is evident from the context of *Hatam Sofer*'s conclusion that he was of the opinion that the corpse of a non-Jew is excluded from the prohibition against *nivul ha-met* since, as any reader who checks the reference will observe, that prohibition is clearly mentioned in the sentence immediately preceding this conclusion.

However, the Sephardic authority *Ben Ish Hai*, in his commentary on *Bekhorot*, *Ben Yehuda*, explains the incident concerning the students of Rabbi Ishmael in a way which negates the inference drawn by *Hatam Sofer*. *Ben Ish Hai* explains that, as part of her punishment, the civil authorities had ordered the boiling of the body of the executed woman. Hence, this narrative provides no basis for the inference that dissection of the corpse of a non-Jew is not forbidden.

A detailed analysis of the question of whether or not the prohibition regarding *nivul ha-met* extends to gentile corpses is presented by Rabbi Meir Sha-

piro in his *Teshuvot Or ha-Me'ir*, no. 34. R. Meir Shapiro maintains that the issue is the subject of dispute between Rashi and Ramban in their respective commentaries on Deuteronomy 21:23.

Rashi, commenting on the phrase "a reproach unto God" explains that the proscribed conduct is "a degradation of [the Divine] King for man is made in His image and Israel are His children." Ramban takes issue with Rashi, declaring him to be incorrect in limiting the reference "to Israel who are called children unto God." Ramban understands the verse, and hence the prohibition concerning *nivul ha-met*, as extending to all human corpses.

Or ha-Me'ir seeks to adduce support for Rashi's position from a statement in the Palestinian Talmud, *Nazir* 7:1. There the focal point of discussion is whether or not it is incumbent upon a high priest to defile himself by attending to the interment of a *met mitsvah* (a corpse which would otherwise remain unburied). On the basis of application of hermeneutical principles, the Palestinian Talmud seeks to demonstrate that all persons bound by the prohibition against blasphemy are also bound by the positive commandment concerning burial of a *met mitsvah*. In the talmudic discussion a counter argument is presented, namely, that blasphemy is prohibited under the Noachide Code, yet burial of a *met mitsvah* is not incumbent upon non-Jews. The talmudic discussion continues with a response to this objection. It is noted that the scriptural passage speaks of one who is hanged as being "a reproach unto God." The "reproach unto God" is understood by the Palestinian Talmud as constituting a form of blasphemy. It is then argued that inferences based upon the commonality between the commandments concerning blasphemy and burial are limited to provisions of Jewish law which apply to Jews. The verse in question is considered as referring only to Jews who may be executed by means of hanging but not to gentiles

governed by the Noachide Code which provides only for execution "by the sword." The inference, argues *Or ha-Me'ir*, is that the bodies of non-Jews are excluded from the prohibition concerning *nivul ha-met*.

In defense of Ramban's position it may be argued that the Palestinian Talmud does not necessarily exclude gentile corpses from this prohibition. The discussion in the Palestinian Talmud does not view the verse in question as concerning itself with the identity of the corpses which may not be defiled but rather with the persons who may not engage in acts of defilement. Understood this way, the verse is limited to those subject to execution by hanging, that is, Jews, and demands of them, and of them alone, that they refrain from *nivul ha-met* whereas non-Jews are not forbidden to perform such acts. Indeed, there is no indication whatsoever that a non-Jew is forbidden to defile even the corpse of a Jew. It is a Jew who is forbidden to defile, or to permit the defilement of, a corpse. The prohibition directed to Jews forbidding them to defile a corpse may thus be seen as encompassing the desecration of a non-Jewish corpse as well.

Study of Anatomy II: Observation

It has been suggested that students unable to participate in anatomical dissection for religious reasons may be able to satisfy educational requirements by observing the dissection as it is performed by others.

Hatam Sofer, in the earlier quoted responsum, observes that, quite apart from the prohibition concerning *nivul ha-met*, dissection of a corpse for purposes of tangible benefit is prohibited by virtue of the fact that the corpse is in the category of *issurei hana'ah*, that is, objects from which no benefit may be derived, as indicated in *Avodah Zarah* 29b and Rambam, *Hilkhot Avel* 14:1. The earliest discussion of this point occurs in

a responsum by R. Jacob Emden, *She'ilat Ya'avets*, I, no. 41, addressed to a student at the University of Gottingen who inquired whether he might dissect a dog on *Shabbat*. *Inter alia* R. Jacob Emden declares that dissection of both Jewish and non-Jewish cadavers is prohibited because it is forbidden to derive benefit from a corpse. *Hatam Sofer*, as noted earlier, disagrees and maintains that the prohibition against deriving benefit from a corpse is limited to benefit derived from the corpse of a Jew.

In point of fact, the permissibility of deriving benefit from a non-Jewish cadaver is the subject of disagreement among early authorities. *Teshuvot Radbaz*, no. 741 and no. 979, declares that there is no prohibition against deriving benefit from the corpse of a non-Jew. This also appears to be the position of *Tosafot*, *Baba Kamma* 10a. [See, however, *Teshuvah me-Ahavah*, I, no. 47.] *Teshuvot ha-Rashba*, I, no. 365, followed by *Shulhan Arukh*, *Yoreh De'ah* 349:1, maintains that the prohibition applies equally to the corpses of Jews and non-Jews.

However, this position is contradicted by Rashba himself in his commentary on the Talmud in three different places: *Baba Kamma* 9b; *Baba Kamma* 53b; and *Shabbat* 94b. *Sedei Hemed*, vol. IX, s.v. *Divrei Hakhamim*, no. 52, opines that the commentary reflects Rashba's own opinion whereas the dicta in the responsum are intended only as an elucidation of the view espoused by the interlocutor. It is noteworthy that *Bi'ur ha-Gra*, *Yoreh De'ah* 349:1, is among the authorities who maintain that the prohibition does not encompass benefit derived from the corpse of a non-Jew.

This question has been the subject of ongoing debate. There are numerous responsa authored by latter-day scholars which reflect conflicting opinions with regard to whether or not benefit may be derived from the corpse of a non-Jew. These authorities are cited in detail by

Dr. Abraham S. Abraham in a contribution to *Ha-Ma'ayan*, Tishri 5741.

It is clear that if anatomical dissection is forbidden by virtue of the fact that a corpse is *assur be-hana'ah*, the prohibition remains in effect even if a person were to give permission for such use prior to his demise. Prohibitions associated with *issurei hana'ah* are in the nature of commandments "between man and God" rather than "between man and his fellow." Hence, the prohibition against deriving benefit from a corpse cannot be waived by man.

The argument that a corpse is *assur be-hana'ah* and that this consideration, in and of itself, constitutes sufficient grounds for banning anatomical dissection was first advanced by *Hatam Sofer*. The earlier responsa of *Nodabi-Yehudah* and *She'ilat Ya'avets* fail to take notice of this consideration. In an attempt to explain this omission, Rabbi Goren argues that the prohibition against deriving benefit from a corpse does not apply to benefit in the form of perfecting medical skills. In support of this contention he cites the ruling in *Nedarim* 35b stating that a person who has vowed not to be of benefit to his fellow may, nevertheless, teach him the Oral Law. The Gemara explains that since, normatively, compensation may not be demanded for teaching the Oral Law the benefit derived from the lesson is of no monetary value and hence is not forbidden. Similarly, *Shulhan Arukh*, *Yoreh De'ah* 336:2, rules that since ministering to the sick is a *mitsvah*, a physician may receive compensation from a patient only for time and effort expended but not for his "knowledge." Rabbi Goren declares that, by the same token, a physician is forbidden to accept fees for imparting medical knowledge to a student. Since payment need not be made for medical knowledge, argues Rabbi Goren, it is not forbidden to derive such knowledge from a corpse.

This argument hinges upon the

premise that imparting medical information to a student is comparable to treating a patient and that, just as a fee may not be accepted for the latter (other than as compensation for time and physical effort), it may not be accepted for the former. However, the two are not necessarily to be equated. *Sefer Hasidim*, no. 810, states, "A person should not teach Torah to his fellow in return for a fee; nor should he provide medical attention for a fee." *Sefer Hasidim* fails to state that one should not teach Torah or medicine to students for a fee. Although treating a patient is a *mitsvah* for which one may not exact a fee, the *mitsvah* is limited to treating a patient suffering from an illness. Transmission of medical knowledge to students, while highly commendable, is not a fulfillment of the *mitsvah* associated with healing and hence there is no prohibition against exacting a fee for imparting such knowledge. [See R. Moshe Feinstein, *No'am*, VIII (5728), 9; R. Abraham Price, *Sefer Hasidim im Mishnat Avraham*, II, 132; and R. David Bleich, *Judaism and Healing*, pp. 11-17. Cf., also R. Eliezer Waldenberg, *Ramat Rahel*, no. 24.]

There are, however, authorities who disagree with *Hatam Sofer's* position on entirely different grounds. R. Chaim Sofer, *Teshuvot Mahaneh Hayyim*, *Yoreh De'ah*, II, no. 60, distinguished between benefits derived directly from a corpse, for example, use of tissue for medicinal purposes, and benefit which is derived from mere examination. Anatomical examination is, in itself, of no benefit whatsoever. For the trained student anatomical examination will serve as a catalyst enabling him to utilize his rational faculty in the development of knowledge. Such indirect benefit, argues *Mahaneh Hayyim*, is not forbidden. This argument is cited and accepted by R. Joseph ha-Levi Zweig, *Teshuvot Porat Yosef*, *Yoreh De'ah*, no. 17. A similar distinction between direct and indirect benefit is drawn by Rashba in his

commentary on *Sukkah* 31b and by *Sha'ar ha-Melekh*, *Hilkhot Lulav* 8:1. This position is also espoused by R. Zevi Pesach Frank, *Teshuvot Har Tsevi*, *Yoreh De'ah*, no. 278.

However, *Teshuvot Maharam Schick*, *Yoreh De'ah*, no. 344, finds support for the position espoused by *Hatam Sofer* in a ruling of the Mishnah, *Nedarim* 48a. The Mishnah rules that persons who mutually vow not to be of benefit to one another may not use books which are public property and owned in common by the townspeople. Books are used for purposes of acquiring knowledge by means of "observation." Nevertheless, such use constitutes a forbidden type of benefit. Similarly, argues *Maharam Schick*, study of medicine by means of anatomical dissection of a corpse also constitutes a forbidden benefit. This is also the conclusion reached by R. Jacob Breisch, *Teshuvot Helkat Ya'akov*, I, no. 84. [See also R. Mordecai Leib Winkler, *Teshuvot Levushei Mordekhai*, *Orah Hayyim*, III, no. 29, and R. Yitzchak Ariel, *Torah she-be'al Peh*, VI (5724), 49.]

Without taking note of *Maharam Schick's* argument, *Hazon Ish*, *Yoreh De'ah* 208:8, declares that "perhaps" mere observation (*re'iyah*) does not constitute a prohibited form of benefit. This, he argues, may be deduced from the previously cited narrative recorded in *Bekhorot* 45a. The students of Rabbi Ishmael, desiring to determine the number of organs in the human body examined the corpse of a woman executed by the civil authorities. In doing so they acquired knowledge which they previously lacked. Since many authorities rule that benefit may not be derived even from a non-Jewish corpse, *Hazon Ish* argues that it may be inferred from this source that acquisition of knowledge in this manner does not constitute a forbidden benefit. However, both Rabbi Goren and Dr. Abraham S. Abraham argue that determination of the number of or-

gans contained in the human body was necessary in order to establish a point of halakhah. Hence, the examination constituted an act of Torah study. As has been noted earlier, Torah study is not deemed to be a "benefit." Therefore, although it is forbidden to derive benefit from a corpse, Torah knowledge may be derived from it.

In a note appended to Dr. Abraham's article, Rabbi Shlomoh Zalman Auerbach points out that R. Ishmael and his students were among the contributors to the Mishnah. The question of whether fulfillment of a *mitsvah* constitutes a "benefit" is a matter of controversy among the Amara'im of a later period. The implication of this historical

point is that there is no clear evidence of an established tannaitic tradition with regard to this question of law. He is therefore constrained to advance an alternate explanation for the conduct of R. Ishmael's disciples. Rabbi Auerbach argues that, while it may be forbidden to receive "ordinary" benefit even from a non-Jewish cadaver, benefit which is "unusual" in nature is forbidden only with regard to Jewish bodies which require burial. The counting of organs (and arguably, the knowledge derived from anatomical dissection as well) is "unusual" in nature and hence, in the opinion of Rabbi Auerbach, it is entirely permissible to derive such knowledge from non-Jewish corpses.