

Survey of Recent Halakhic Periodical Literature

I. IS THE GIRAFFE A KOSHER ANIMAL?

The status of the giraffe has been the subject of a number of discussions in rabbinic literature over the course of the past one hundred and fifty years. The earliest analysis of the question was published by H. Hanak in a periodical edited by R. Mendel Stern called *Kokhavei Yizhak*, no. 16, (Vienna, 5612), pp. 41-43.¹ A later discussion by R. Shlomoh Zevi Schuck was published in his *Teshuvot Rashban, Even ha-Ezer* (Satmar, 5665), no. 64. The issue was raised anew in an inquiry by R. Yeshayah Aryeh Dvorkes, *Ha-Ma'or*, Tishrei 5721, and responded to by R. Zevi Hirsch Cohen, *She'elot u-Teshuvot ha-Ma'or ve-Zikaron ba-Sefer*, I (New York, 5727), pp. 247-250. The matter has now been reexamined by R. Abraham Hamami in a contribution to *Tehumin*, vol. 20 (5760).²

The earliest rabbinic reference to a giraffe occurs in R. Saadia Ga'on's commentary on Deuteronomy 14:5. Scripture declares, "These are the animals you may eat" and proceeds to enumerate a list of permitted species. Among those animals is the "zemer" which is rendered in standard English translations as "mountain-sheep." R. Saadia Ga'on, perhaps following the Septuagint, identifies the *zemer* as the animal known in Arabic as *al-zarafah*, i.e., the giraffe. That translation is accepted by R. David ibn Kimchi (Redak) in his *Sefer ha-Shorashim* in the entry for the term "zemer," by R. Estori ha-Farhi, *Kaftor va-Ferah*, chap. 58, and by R. Simon ben Zemah Duran (Rashbaz), *Yavin Shemu'ah, Hilkhot Treifot*, p. 5b.³ Rashbaz further identifies *al-zarafah* as an animal with "a long neck . . . so that when [the giraffe] is within the wall it extends [its neck] outside of the wall."⁴ Rabbi Hamami adduces an impressive list of sources, albeit mostly obscure in nature, that either identify the giraffe as the *zemer* of Scripture or otherwise refer to the giraffe as a kosher animal. Indeed, the giraffe, since it has split hoofs and chews its cud, appears to be readily identified as a kosher animal.⁵

The author of the article published in *Kokhavei Yizhak* similarly regards the giraffe as a kosher species but, rather than identifying it with the *zemer*, he somewhat fancifully identifies it as the *tahash*, the animal whose skin was used in the construction of the tabernacle as described in Exodus 25:5. The Gemara, *Shabbat* 28b, depicts the *tahash* as a

species that existed “in the days of Moses,” that was made available to Moses for the specific purpose of use in construction of the tabernacle and that was subsequently concealed. Identification of the *tahash* with the giraffe is based upon *Targum Onkelos*’ translation of *tahash* as “*sas-gavna*”, i.e. a creature that delights in its colors,” and the Arabic meaning of the term *zerafah*, i.e., “beautiful,” as well as the putative derivation of the Hebrew *tahash* from the verb “*hashoh*” meaning to be silent, reflecting the erroneous belief that the giraffe is mute.

R. Shlomoh Schuck suggests that the *tahash* was a distinct kosher species but, as a result of crossbreeding with some other species, the giraffe appeared. Oddly, Rabbi Schuck believes that some giraffes are ruminants with split hoofs, some have only incompletely split hoofs, some resemble cows in part and camels in part, while others resemble deer. He also maintains that scientists regard the giraffe as a species of camel. The camel, of course, chews its cud but does not possess cloven hoofs. He explains the existence of giraffes having such diverse physical characteristics on the basis of his contention that the giraffe is the product of crossbreeding.

Rabbi Schuck bolsters this thesis by pointing to the enumeration in Genesis 32:15-16 of the various species of animals sent by Jacob as a gift to his brother Esau. Scripture first mentions goats and sheep, then camels, followed by cattle and, finally, donkeys. The order is puzzling in that the enumeration of clean species is interrupted by mention of camels, an unclean species, while the other unclean species, *viz.*, donkeys, is mentioned last. Rabbi Schuck suggests that the “camel” to which reference is made is none other than the *tahash*. He contends that at a later period the *tahash* was bred with a non-kosher species, i.e., a non-kosher camel, and that the giraffe was the product of that union. Rabbi Schuck seems to believe that the common species of the present-day giraffe, produced as a result of crossbreeding, possesses hoofs that are incompletely split and hence is obviously non-kosher, but that the original giraffe was a ruminant with completely split hoofs. In any event, if Rabbi Schuck were to be correct in describing its origin, the present-day giraffe, since it would be descended from a non-kosher ancestor, could not be regarded as a kosher species.

In developing their theses these two authors fail to take note of a highly significant halakhic presumption. The Gemara, *Bekhorot* 7a, declares that members of kosher and non-kosher species cannot cross-breed. Thus, if a questionably kosher animal successfully mates with a member of a kosher species and produces offspring, the animal in

question must be deemed to be a member of a kosher species. Accordingly, the giraffe could not be the hybridized progeny of a kosher species and a non-kosher camel. It is rather odd that these writers do not address this issue. Far-fetched as it may seem, they may have postulated that the Gemara is reporting the empirical realia of its time as well as of the present-day world but that in antiquity such cross-breeding may have occurred.

In the modern period, a related issue was raised in 1950 by the *Va'ad ha-Rabbanim ha-Haredim* of Paris, with regard to a different species. The Parisian rabbis sought to establish kosher slaughter in Madagascar in order to export meat to Israel. The breed of cattle slaughtered in Madagascar originated in India and is referred to as the "Indian ox." The animal is identified as the zebu, a type of humped cow that originally came from India but is now found in many other countries. The animal differs in physical appearance from European cattle. In addition to being somewhat bigger and having somewhat larger horns than other cattle, its mane has a distinctive appearance with hair that stands upright in the area of the neck. The rabbinical association sought the guidance of the then Chief Rabbi of Israel, Rabbi Isaac ha-Levi Herzog, with regard to whether or not the animal, which has split hoofs and is a ruminant, might be considered to be kosher. Rabbi Herzog's response has now been published in his *Pesakim u-Ketavim*, vol. IV (Jerusalem, 5750), no. 20. Unfortunately, the concluding section of the responsum is missing. The issue was also addressed at the time by R. Meshullam Roth, *Teshuvot Kol Mevasser*, I, no. 9.

The concern of the Parisian rabbis was based upon the opinion of *Teshuvot Bet Ya'akov*, no. 41, cited by *Pitkei Teshuvah*, *Yoreh De'ah* 80:1. *Shulhan Arukh*, *Yoreh De'ah* 80:1, records a number of variations of particular characteristics of animal horns that can be relied upon to distinguish between the biblical categories of *behemah* (animal) and *hayyah* (generally translated as "wild beast"). A portion of the blood of a *hayyah* must be covered with earth after slaughter and its *helev* (the fat of certain parts of the animal that in a sacrificial *behemah* was burned upon the altar) is permitted as food whereas a *behemah* does not require covering of its blood but its *helev* is prohibited.

Bet Ya'akov goes beyond the position of the *Shulhan Arukh* in asserting that, in addition to having split hoofs and chewing its cud, a *hayyah*, in order to be considered kosher, must have the distinctive horn characteristics of a kosher species. The *Va'ad ha-Rabbanim* of Paris was concerned that the "Indian ox" may be a *hayyah* rather than a *behemah*.

(as are other cattle) and hence, according to *Bet Ya'akov*, could be considered kosher only if it possesses the idiosyncratic characteristics of a kosher *hayyah*. Both Rabbi Roth and Rabbi Herzog dismiss the concern voiced by the *Va'ad ha-Rabbanim* by advancing halakhic evidence contradicting the position of *Bet Ya'akov* and also by citing earlier authorities, including the compiler of *Pitkei Teshuvah*, who rejected *Bet Ya'akov's* novel view.⁶

The consideration raised with regard to the "Indian ox" is also germane with regard to the giraffe, i.e., according to *Bet Ya'akov*, if the giraffe is a *hayyah* rather than a *behemah* it can be accepted as a kosher animal only if it possesses the idiosyncratic horns of a kosher *hayyah*.

However, a second and even more crucial issue was raised by the *Va'ad ha-Rabbanim* that is directly relevant to the case of the giraffe as well. The rabbis of Paris reported that an unnamed person had objected to the slaughter of the zebu because we are not in possession of a tradition identifying it as a kosher animal. In support of his objection that scholar drew attention to a statement of *Hokhmat Adam* 36:1 who declares that not only birds but also animals cannot be eaten on the basis of reliance upon the codified criteria of kosher species; rather, they may be consumed only if there exists a received tradition regarding the permissible status of the animal in question.

This significant issue is not addressed either in *Kol Mevasser* or in the published version of Rabbi Herzog's responsum. However, *Hazon Ish*, *Iggerot Hazon Ish*, I, no. 99 and *Hazon Ish*, *Yoreh De'ah* 11:4, reprinted in *Pesakim u-Ketavim*, IV, no. 21, unequivocally agrees that the "Indian ox" cannot be permitted for precisely that reason. That view was forcefully reiterated by *Hazon Ish* in a subsequent letter published in *Iggerot Hazon Ish*, II, no. 83 and *Hazon Ish*, *Yoreh De'ah*, 11:5 and in yet a third letter published in *Iggerot Hazon Ish*, III, no. 113, reprinted in *Pesakim u-Ketavim*, IV, no. 22. However, as *Hazon Ish* himself notes, his ruling is predicated upon the assumption that the physical appearance of the "Indian ox" is sufficiently different from that of cattle for it to be regarded as a separate species for purposes of Halakhah.

The rule requiring a received tradition with regard to identification of a species as kosher is recorded by *Rema*, *Yoreh De'ah* 82:3, with regard to birds. The rationale underlying the rule with regard to birds is readily understandable. Leviticus 11:13-14 and Deuteronomy 14:12-18 identify a series of non-kosher avian species and declare all other birds to be permissible. Although each of these species is named in Scripture, we are not able to identify all of the enumerated species with certainty.

Undoubtedly, many of those species are indigenous to particular locales and hence would not be recognized by persons living in other areas. Moreover, the names themselves, as given in the Pentateuch, are unfamiliar to us and we have no authoritative translation into languages with which we are familiar. Nevertheless, as recorded by *Shulhan Arukh, Yoreh De'ah* 82:2, the Sages enumerated a number of physical characteristics that are manifested only by kosher species. However, the presence of those characteristics is dispositive only if, in addition, it is known that the bird is not "*dores*," i.e., it does not seize and kill its prey before consuming its flesh. *Shulhan Arukh, Yoreh De'ah* 82:3, then proceeds to list additional criteria that establish that the bird is not *dores*. Rema disagrees and rules that those characteristics cannot be relied upon to establish with certainty that the bird is not *dores* and hence Rema rules that, unless there is a received tradition with regard to the permissibility of the particular species, it may not be eaten. The concern is quite simple. It is obvious that if a bird is *dores* it is *ipso facto* known to be non-kosher. However, failure to observe the bird performing such an act does not conclusively establish that it never does so. Failure to observe an event does not establish that the event has not occurred or that it will not occur in the future.⁷ Accordingly, only a tradition going back century after century to the time when the identity of the enumerated non-kosher birds was known with certainty can establish that the species in question, since it was eaten at that time, was known not to have been one of the forbidden species.

Shulhan Arukh, Yoreh De'ah 80:1, records the rule that, unlike with regard to a *behemah*, the *helev* of a *hayyah* may be eaten and then proceeds to list the physical characteristics that serve to distinguish a *hayyah* from a *behemah*. *Shakh, Yoreh De'ah* 80:2, offers a terse comment: "Since, at present, we know only what we have received by way of tradition [as is the case] . . . with regard to the characteristics of birds, I have abbreviated [my commentary]." *Pri Megadim, Siftey Da'at* 80:1, observes that since the criteria of kosher species, i.e., split hoofs and chewing of the cud, are explicitly spelled out in Scripture there is no need for a tradition with regard to the *kashrut* of any particular animal species. Hence, he understands *Shakh's* comment as limited to the acceptance of a particular species as a *hayyah* rather than as a *behemah*. According to *Pri Megadim's* understanding of *Shakh*, *Shakh* declares that in the absence of a tradition, we cannot accept a species as a *hayyah* on the basis of the enumerated physical characteristics in order to permit the *helev* of a particular species nor can we rely upon the

absence of those characteristics in order to exempt the animal from covering a portion of its blood with earth following slaughter. *Pri Megadim*'s position is endorsed by *Kaf ha-Hayyim*, *Yoreh De'ah* 80:5 and by *Darkei Teshuvah* 80:3.⁸

However, *Hokhmat Adam* 36:1, *Arukh ha-Shulhan*, *Yoreh De'ah* 80:10, and *Hazon Ish*, as well as *Erekh ha-Shulhan*, *Yoreh De'ah* 80:10 and 82:29, understand *Shakh* as declaring that all animals are similar to birds in that no species may be accepted as kosher in the absence of a tradition confirming its status.⁹ *Hazon Ish* professes that "it is not incumbent upon us to seek reasons" for this stringency but that it probably arose in order to prevent error with regard to identification of an unfamiliar species as a *hayyah* or as a *bekemah* and consequent inadvertent transgression with regard to *helev* or covering the blood. *Hazon Ish* also asserts that it serves to prevent transgression with regard to the prohibition of *treifot* that is attendant upon certain anatomical anomalies.¹⁰ Those anomalies, he claims, particularly with regard to certain structures of the lung, are difficult to recognize in unfamiliar species.¹¹ It may also be suggested that the consideration reflected in this practice is a fear that an unknown species may, in reality, be the product of genetic mutation of a progenitor that itself was a member of a non-kosher species. Progeny of non-kosher animals are non-kosher even if such progeny manifest all the indicia of kosher species.¹²

In any event it is clear that, since we lack a tradition with regard to the identity of the present-day giraffe,¹³ consumption of its meat, although permitted by *Pri Megadim* and those who accept his interpretation of *Shakh*, would be forbidden by *Hokhmat Adam*, *Arukh ha-Shulhan* and *Hazon Ish*,¹⁴ as well as by *Erekh ha-Shulhan*.¹⁵

II. BURIAL OF A NON-JEW IN A JEWISH CEMETERY

The influx of Russian immigrants to the State of Israel during recent years has given rise to a spate of heretofore rare halakhic problems. It is now conceded even by Israeli government officials that a significant proportion of those immigrants are not Jews and have no credible claim to be recognized as Jews. It is also beyond dispute that those immigrants are loyal citizens of the State of Israel, that they wish to identify themselves with the Jewish people and that many of them have served with distinction in the Israeli armed forces. Some have perished in the

course of fulfilling military duties or as a result of terrorist activity. There have been reports of a number of instances in which family members have quite understandably sought to have such an individual buried in a Jewish cemetery, only to be rebuffed on the grounds that the departed relative was not a Jew. In one well-publicized case, the deceased was denied burial in a Jewish cemetery because he was not a Jew and denied burial in a Russian Orthodox cemetery because he was not a Christian.

This vexing problem becomes even more exacerbated when the deceased is a soldier killed in the course of military duty and the family seeks burial in a military cemetery. The argument that a person who sacrifices his life for the security of the State of Israel deserves to be buried in one of the military cemeteries strikes a resonant emotional chord. The halakhic aspects of that dilemma are surveyed by Rabbi Abraham Avidan, a former Rosh Yeshivah of Yeshivat Sha'alvim who presently serves as assistant to the Chief Chaplain of the Israeli Armed Forces. That discussion is presented in a contribution to the first volume of *Oz* (Sha'alvim, 5754), a publication devoted to halakhic issues pertaining to the "armed forces, society, and security."

The Gemara, *Gittin* 61a, posits an obligation, at least under some conditions, to support the gentile poor, to assist the gentile sick and to inter the gentile dead in order to foster amicable and neighborly relations. That obligation does not, however, entail burial in a Jewish cemetery. Indeed, Rashi, in his commentary *ad locum*, emphasizes that the Gemara does not refer to burial in a Jewish cemetery. Ruth, in declaring her desire to join Naomi as a member of the Jewish faith declares, "...where you shall die, I shall die, and there will I be buried." (Ruth 1:17). This statement reflects Ruth's awareness that burial in Jewish cemeteries is reserved to Jews.¹⁶

The prohibition against burial of a non-Jew in a Jewish cemetery is based upon a more general prohibition against burial of individuals of disparate degrees of religiosity in close proximity one to another.¹⁷ Thus, *Shulhan Arukh, Yoreh De'ah* 362:5, rules that, not only is it prohibited to bury a wicked person next to a righteous individual, but it is also forbidden to inter a merely "righteous" individual next to a person of "extraordinary piety." *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 341, cites Rashi, *Sanhedrin* 46a, in establishing that this stricture has the status of a biblical commandment in the nature of a *halakhah le-Mosheh mi-Sinai*, a law transmitted orally to Moses at Sinai.

Rabbi Abraham I. Kook, *Da'at Kohen*, no. 201, explains that it is

not proper to bury non-Jews in a Jewish cemetery for two reasons: 1) Individuals of disparate spiritual attainments, e.g., a righteous person and a wicked individual, may not be buried together. 2) *Shiltei Gibborim*, in his commentary on the sixth chapter of *Sanhedrin*, asserts that cemeteries are imbued with the sanctity of synagogues and hence may be used solely for their designated purpose, viz., burial of Jewish bodies.¹⁸ No other benefit may be derived from consecrated ground.¹⁹ There is, however, considerable controversy with regard to whether the sanctity of a synagogue is biblical or rabbinic in nature.²⁰ If the latter is the case, it follows that the second prohibition against interring a non-Jew in a Jewish cemetery is rabbinic rather than biblical.

The distinction in the severity of these two prohibitions opens the door to a possible amelioration of the problem earlier described. *Bah*, *Yoreh De'ah* 151, s.v. *asur*, remarks that "Although there is no doubt that a gentile may not be buried next to a Jew, nevertheless, if gentiles are found murdered together with a Jew, they may be buried in a Jewish burial ground together with the dead of Israel in a single courtyard because of the paths of peace (*darkei shalom*).” R. David Zevi Hoffman, *Teshuvot, Melamed le-Ho'il, Yoreh De'ah*, no. 129, draws the obvious implication from the words of *Bah*, namely, that a Jew or a non-Jew may not be buried side by side but that, at least in the circumstances described by *Bah*, they may be buried in the same general area.

The problem that remains is two-fold in nature: 1) Why is it ordinarily not permissible to bury a Jew with a non-Jew in a common courtyard? 2) If such interment is ordinarily forbidden, why is the prohibition suspended for purposes of promoting good relations?

Rabbi Avidan explains that the matter is readily understood on the basis of the two separate prohibitions posited by Rabbi Kook. The biblical prohibition is limited to burial of a Jew and a gentile in close proximity to one another. That prohibition is not suspended even to promote the "paths of peace." Burial in the same courtyard, i.e. in the same cemetery, but at some distance from one another, is prohibited by virtue of the fact that the cemetery is consecrated ground. That prohibition, however, declares *Da'at Kohen*, is rabbinic in nature and is suspended in the interests of *darkei shalom*. This explanation is, of course, predicated on the assumption that *Bah* maintains that the sanctity associated with cemetery grounds is rabbinic in nature.

Gilyon Maharsha, *Yoreh De'ah* 345:4, rules that the distance separating the grave of a righteous person from the grave of a wicked individual must be eight ells. However, Rabbi Shlomoh Kluger, *Teshuvot*

Tuv Ta'am va-Da'at, mahadura telitai'i, II, no. 253, requires that a fence be erected to separate the graves. In support of that position, *Tuv Ta'am va-Da'at* observes that the Gemara, *Sanhedrin* 47a, reports that separate cemeteries were established for different categories of persons executed for capital trespasses. Apparently, then, mere separation does not suffice to separate a person guilty of a more serious misdeed from one guilty of a less serious infraction; rather, the separation must be in the form of a physical barrier. *Tuv Ta'am va-Da'at* also cites the verse "and the curtain shall separate unto you between the holy and the holy of holies" (Exodus 27:33) as indicating that, when "separation" is required, mere physical separation is not sufficient but that the separation must be in the form of a physical barrier. Accordingly, if a physical barrier is required between the "holy" and the "holy of holies," *a fortiori*, a physical barrier must be required in separating the wicked from the righteous. *Da'at Kohen* similarly requires that a fence be erected between Jewish graves and non-Jewish graves. *Da'at Kohen*, however, advances a far more prosaic reason for erection of a fence, *viz.*, in the absence of a fence clearly demarcating the non-Jewish section, it is possible that, with the passage of time, a non-Jew will be buried within the prohibited distance of eight ells from a Jewish grave.

On the basis of the ruling of *Bah*, there are grounds for permitting non-Jews to be buried within the confines of Jewish cemeteries despite the fact that the entire cemetery, including areas in which no body has yet been buried, is consecrated ground. However, since the entire cemetery is consecrated ground such interment may be permitted only when necessary to avoid enmity or ill-feeling. In light of the rulings of *Tuv Ta'am va-Da'at* and *Da'at Kohen*, the non-Jewish graves should be distanced eight ells from the area of Jewish graves and should be separated from Jewish graves by a fence ten cubits in height.

However, as *Da'at Kohen* himself states, the optimum solution would be, at the time of consecration of any new cemetery, to designate an area to be used for the burial of non-Jews and to surround that area with a fence.²¹ Since the non-Jewish area is *ab initio* not consecrated for Jewish burial, it will never be endowed with the sanctity of a synagogue and hence, with proper separation, non-Jews may be interred in such an area without qualm.

III. SHE-HEHEYANU UPON PURCHASE OF A HOUSE

As recorded in *Shulhan Aruch, Orach Hayyim* 223:3, acquisition of a house or of a valued object²² occasions the pronouncement of the *she-heheyanu* blessing (“who has kept us alive and preserved us until this day”) or, if the object is acquired jointly by more than one person, the blessing *ha-tov ve-ha-metiv* (“who is good and bestows goodness”).²³ An interesting question pertaining to recitation of those blessings is discussed in one volume of a recently published series of collected responsa and halakhic essays.²⁴ In the fifth volume of *Zohar* (Jerusalem, 5759), edited by R. Ekyakum Dvorkes, R. Yitzchak Zilberstein assembles earlier sources that address the problem of whether or not the appropriate blessing should be pronounced upon the purchase of real estate that is financed by a mortgage.

The issue was first raised by R. Chaim Pelaggi in his *Teshuvot Lev Hayyim*, III, no. 52. *Lev Hayyim* observes that the blessing was ordained as an expression of joy experienced upon acquiring an object from which a person derives pleasure. *Lev Hayyim* notes that incurring debt in conjunction with a purchase substantially mars the pleasure of acquisition since the purchaser is in a state of unease because of his need to satisfy the debt. *Lev Hayyim*’s ruling is cited and endorsed by the author of the popular Sephardic compendium *Kaf ha-Hayyim* 223:10.

R. Eliezer Waldenberg, *Ziz Eli’ezer*, XII, no. 19, takes issue with *Lev Hayyim*’s ruling. *Ziz Eli’ezer* concedes that a person experiences apprehension and even distress in incurring debt. The purchaser, however, experiences mixed emotions, viz., happiness at acquiring the property and distress at incurring the debt. Similarly, although common practice is to the contrary,²⁵ as recorded in *Shulhan Arukh, Orach Hayyim* 223:2, a son who inherits his father’s estate grieves at the loss of his father but is nevertheless required to pronounce the appropriate blessing occasioned by the inheritance that devolves upon him. The son experiences mixed emotions, and indeed would happily surrender his inheritance rather than experience the death of his father, but, for purposes of blessings, each emotion is recognized separately. Thus the son is required to pronounce two separate—and disparate—blessings: *dayyan ha-emet* (the true judge) in acceptance of the loss and grief occasioned by the death of his father and *she-heheyanu* in acknowledging the beneficence represented by the estate to which he has succeeded.

R. Moshe Stern, the *Debreciner Rav*, *Teshuvot Be’er Mosheh*, V, no. 68, rebuts *Ziz Eli’ezer*’s argument by pointing out that death and inher-

itance are two entirely distinct matters, each of which gives rise to a different emotion. Although a person in such circumstances may simultaneously experience both profound sorrow and satisfaction, each of those reactions is prompted by a separate phenomenon. However, in purchasing real estate with a mortgage or a loan, it is but a single phenomenon, the acquisition of property, that gives rise to conflicting emotions. Thus, *Tosafot, Sukkah* 46a, rule that *she-heheyannu* is not recited at the time of circumcision because, although fulfillment of the *mitzvah* gives rise to joy, the selfsame act also causes pain to the infant. Hence, concludes *Be'er Mosheh*, it cannot be said that the purchase of property encumbered by a mortgage gives rise to pleasure mandating a blessing. *Be'er Mosheh*, of course, accepts the premise, as did *Lev Hayyim*, that the *she-heheyannu* blessing pronounced upon acquisition of property reflects pleasure experienced in the acquisition. *Ziz Eli'ezer*, however, vigorously dismisses *Lev Hayyim*'s observation that "this blessing is ordained solely because of joy of the heart" and declares that the blessing "is not contingent upon joy but rather upon . . . benefit." Thus, for *Ziz Eli'ezer*, the fact that the joy of acquisition is vitiated by sadness or distress presents no problem whatsoever. According to *Ziz Eli'ezer*, the *she-heheyannu* blessing is an acknowledgment of an objective benefit and the attendant emotional state is irrelevant.

R. Joseph Shalom Eliashiv is quoted as espousing an intermediate position. Rabbi Eliashiv notes that no purchase represents an unmitigated pleasure since expenditure of funds to finance the purchase perforce represents an unwelcome diminution of liquid resources. Nevertheless, on balance, the purchase brings pleasure. Assumption of a mortgage is unwelcome in the same sense that expenditure of funds is unwelcome. Indeed, it is unwelcome precisely for the sole reason that it constitutes incurrence of an obligation for future expenditure of funds. Expenditure of funds, either present or future, does not negate the pleasure experienced in the purchase. However, rules Rabbi Eliashiv, if the purchaser has reason to suspect that he will not be able to make mortgage payments in a timely manner, which in turn will lead to loss of the property upon resultant foreclosure, the blessing should not be recited. Under such circumstances, contends Rabbi Eliashiv, the stress and anxiety engendered by the prospect of possible loss of the property mitigates the pleasure to such an extent that the blessing is not warranted.

Rabbi Eliashiv's reported ruling against recitation of the blessing in instances of fear of foreclosure appears to this writer to be somewhat problematic. On the basis of a discussion of the Gemara, *Berakhot* 54a,

Shulhan Arukh, *Orah Hayyim* 224:4, rules that a person who finds abandoned property must recite the *she-heheyanu* blessing even in the circumstances in which the monarch, should he hear of the incident, will seize the property. The fear of seizure of the property by the king seems to be no less cogent than the fear of foreclosure by the creditor that is described by Rabbi Eliashiv. As explained by Rabbeinu Yonah in his comments on the Rif, *Berakhot* 54a, and by Rambam in his *Commentary on the Mishnah*, *loc. cit.*, the underlying principle is that the joy at acquiring the abandoned property necessitates a blessing and that obligation is not nullified because of fear of some future reversal of the cause of joy or benefit.

There is yet another consideration that should be noted. The *she-heheyanu* blessing is recited at the time of acquisition only in circumstances in which benefit from the object can be derived immediately. Thus, the blessing upon purchase of a garment requiring alterations is not recited at the time of acquisition but is delayed until the first time the garment is worn. Accordingly, R. Akiva Eger, *Orah Hayyim* 223:3, questions whether the blessing should be recited at the time of purchase of a house or whether it should be delayed until the *mezuzot* have been affixed since the purchaser is not permitted to live in or otherwise make use of the property until the *mezuzot* have been attached to the doorposts of the house. R. Akiva Eger's comment is cited by *Mishnah Berurah*, *Sha'ar ha-Ziyun* 223:21. The effect of R. Akiva Eger's observation is that, even when no debt is incurred, the appropriate blessing should not be recited at the time of the closing and transfer of title but delayed until the *mezuzot* are affixed.

NOTES

1. *Kokhavei Yizhak* was published in Vienna between 5605 and 5630.
2. Rabbi Ari Z. Zivotofsky, "What's the Truth About . . . Giraffe Meat!" *Jewish Action* (Fall, 2000), p. 37, dispels a popular misconception regarding slaughter of the giraffe but does not address the complex issue of the permissibility of the consumption of giraffe meat.
3. See also R. Amati Ben-David, *Sihat Hullin* (Jerusalem, 5755), pp. 412f., and cf., R. David Zevi Feldman, *Talkut Kol Hai* (5757), p. 639, note 10.
4. Cf., however, Rabbi Y.M. Levinger and M. David, "Sheva ha-Hayyot ha-Tehorot," *Torah u-Madda*, vol. 4, no. 2 (Elul 5735), p. 3 and p. 48. Those authors object to identification of the *zemer* as the giraffe on the grounds that the *zemer* is enumerated together with other *hayyot* (as distinct from *behemot*, as will later be explained) whereas the giraffe does not have the distinctive horns of a *hayyah* and hence is presumably a *behemah*.

5. Yehudah Felix, *Hai ve-Zomeah ba-Torah* (Jerusalem, 5744), p. 93, reports that the giraffe, although it is a ruminant, is a three-stomached (rather than four-stomached) animal. This is also true of the mouse-deer which is presumably a kosher animal.
6. *Kol Mevasser* further argues that the "Indian ox" must be considered kosher even according to *Bet Ya'akov*. His argument is that, if the animal in question does not exhibit the characteristics of a *hayyah*, it must be regarded as a *behemah*; however, if it is indeed a *behemah*, since it is a ruminant and has split hoofs, it should be deemed to be a kosher *behemah*. However, *Kol Mevasser* seems to have misread the cited statement of *Bet Ya'akov*. *Bet Ya'akov* maintains that a *hayyah* lacking the idiosyncratic horns of a kosher *hayyah* is not a *behemah* but a non-kosher *hayyah*.
7. Cf., *Arukh ha-Shulhan*, *Yoreh De'ah* 83:16-29.
8. See also *Pri To'ar*, *Yoreh De'ah* 80:30.
9. Rabbi Ari Z. Zivotofsky, "Kashrut of Exotic Animals: The Buffalo," *Journal of Halacha and Contemporary Society*, no. 38 (Fall, 1999), cogently draws attention to the fact that the status of the buffalo is also problematic. This may appear odd to students of *Yoreh De'ah* since, basing himself on much earlier authority, *Shulhan Arukh*, *Yoreh De'ah* 28:4, identifies the buffalo as a kosher species. Rema agrees but, unlike *Shulhan Arukh* who classifies the animal as a *behemah*, Rema declares that it is doubtful whether its status is that of a *behemah* or of a *hayyah*. That reference, however, is not to the American buffalo but to a different animal, probably the Asian water buffalo which was introduced to Europe at an early date, but possibly the European bison or, less likely, the African buffalo. The animal referred to in this country as a "buffalo" is not really a buffalo but a unique species of bison. The American bison is indigenous to North America and hence was unknown to the author of *Shulhan Arukh* and certainly could not have been known to the much earlier authors upon whom *Shulhan Arukh* relies. Since the animal is indigenous to the New World it is obvious that there exists no tradition with regard to its status as a kosher animal. The fact that sale of the meat of the American bison was sanctioned some years ago by a number of *kashrut* supervising agencies does not necessarily indicate reliance upon the position of *Pri Megadim*. It may signify nothing more than the understandable, albeit erroneous, assumption that the animal is identical to the "buffalo" expressly sanctioned by *Shulhan Arukh*. Moreover, even *Hazon Ish* didn't unequivocally brand the "Indian ox" or zebu as unacceptable but indicated that the ultimate determination must rest upon the extent of its similarity to more common cattle. Although halakhic categories and scientific classifications are by no means coextensive or even overlapping, the American buffalo is scientifically classified either as a member of the same genus as true cattle or together with the European bison. The matter can be resolved only by a comparison of the physical characteristics of the American bison with those of the cow or, assuming there is a tradition with regard to its status as a kosher animal, the European bison.

Parenthetically, the Gemara, *Bekhorot* 7a, states that a *hayyah* and a *behemah* cannot mate and produce progeny. Accordingly, the phenomenon of the "beefalo," a cross between a buffalo and a cow whose meat is commercially available, should demonstrate that the American buffalo is a

- behemah* rather than a *hayyah*. There appears to be no available information with regard to whether any of the other species of buffalo to which Rema may have referred can be crossbred with cattle.
10. Thus, on the basis of the reasons for the prohibition spelled out by *Hazon Ish*, the fact that the zebu can hybridize with cattle is entirely irrelevant. Rabbi Zivotofsky, "*Kashrut* of Exotic Animals," pp. 126-127, seems to have missed this point.
 11. Refraining from an act because of fear of actual transgression, even if such fear is unwarranted, or as a *seyag* or "fence" designed to prevent transgression in other instances does not involve transgression of "You shall not add thereto" (Deuteronomy 13:1). The statement to the effect that Rabbi Herzog suggested that those who require a tradition confirming the *kashrut* of an animal species are in violation of this commandment is misleading. See Rabbi Zivotofsky, "*Kashrut* of Exotic Animals," p. 126. Rabbi Herzog expresses doubt with regard to whether a "rebellious elder" (*zaken mamre*) who, contra a formal ruling of the Great Sanhedrin, forbids the meat of such an animal is in violation of the prohibition. Such an individual does not incur capital punishment for a ruling of that nature since the matter cannot result in a transgression involving the penalty of excision (*karet*) on the part of any person who obeys his ruling. Rabbi Herzog expresses doubt with regard to whether, despite the absence of capital punishment, a person ruling in such a manner nevertheless violates the commandment "You shall not add thereto."
 12. For a fuller elucidation of this point see this writer's "The Babirusa: A Kosher Pig?" *Contemporary Halakhic Problems*, III (New York: 1989), 66-67.
 13. In an addendum to R. Yitzchak Yosef's *Yalkut Yosef*, vol. 10 (Jerusalem, 5759), pp. 553ff., R. Abraham Hamami argues that the identification of the *zemer* as the giraffe by R. Saadia Ga'on, Redak and others serves to establish a tradition with regard to its status as a kosher animal. That argument cannot be accepted for two reasons: 1) The identification of the *zemer* as the giraffe is hardly uncontested. Indeed, it would appear from the discussion of the Gemara, *Hullin* 80a, that the *zemer* is a wild goat. 2) None of the scholars who make the identification necessarily do so on the basis of a received tradition. Indeed, their translation of the term "*zemer*" may have simply been based upon the Septuagint. It is significant that Rabbi Hamami does not repeat this contention in his later contribution to *Tehumin*; on the contrary, he explicitly concludes that, according to *Hokhmat Adam* and *Arukh ha-Shulhan*, the giraffe cannot be permitted.
 14. *Hazon Ish*, *Yorah De'ah* 11:4, asserts that, even if *Hokhmat Adam* erred in his understanding of *Shakh*, *Hokhmat Adam*'s codification of that view served to establish the normative rule. The practice of not eating the meat of an animal for which we have no received tradition is clearly in the nature of a popularly established *seyag* or "fence" designed to prevent transgression and has the status of a normative prohibition. The particular historical age in which that practice arose is not material. Thus, argues *Hazon Ish*, even if *Hokhmat Adam* incorrectly interpreted the comment of *Shakh*, the inclusion of that view in *Hokhmat Adam*'s published compendium served to enshrine the practice in Eastern Europe. Accordingly, he asserts that, following publication of *Hokhmat Adam*, even *Pri Megadim* would concede

- that no animal may be eaten in the absence of a received tradition establishing it as a kosher animal. *Hazon Ish's* point, although correct in theory, is based on the assumption that earlier unknown species were actually introduced into Eastern Europe subsequent to publication of *Hokhmat Adam*. Consequently, Jews then had the opportunity to establish the practice of rejecting consumption of the meat of those animals, thereby accepting the stringency of *Hokhmat Adam* and rendering it normative.
15. This is also the position of R. Amram Edrei, *Ha-Kashrut ve-Halakhah* (Jerusalem, 5157), p. 18 and pp. 20f.
 16. R. Shlomoh Kluger, *Teshuvot Tuv Ta'am va-Da'at, mahadura telitai'i*, II, no. 253, adds that, in declaring "if aught but death shall part you and me" (Ruth 1:17), Ruth was referring to her status should she not convert, i.e., that she would remain with Naomi in any event but, were she not to convert, they would be separated in death since a Jew and a gentile cannot be buried together.
 17. For a discussion of exhumation of a Jew buried in a non-Jewish cemetery, see R. Judah Asad, *Teshuvot Yehudah Ya'aleh, Yoreh De'ah*, no. 358, and R. Yechiel Ya'akov Weinberg, *Seridei Esh*, III, no. 101. See also *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 341, s.v. *ibra*, who rules that a wicked person who has been buried next to a righteous individual should not be disinterred since his transgressions may have been expiated. The inference to be drawn from that discussion is that a Jew buried in a non-Jewish cemetery should be exhumed.
 18. Cf., however, R. Malkiel Zevi Tennenbaum, *Teshuvot Divrei Malki'el*, II, no. 67, sec. 16, and R. Yechiel Michal Tucatzinsky, *Gesher ha-Hayyim* (Jerusalem 5720), II, chap. 4, sec. 2.
 19. R. Abraham I. Kook, *Da'at Kohen*, no. 201, asserts that subsequent to interment of the first body the entire area designated as a burial ground can be used for no other purpose.
 20. See *Sedei Hemed, Kellalim, ma'arekhet bet*, sec. 43 and *Encyclopedia Talmudit*, III, 194.
 21. American rabbis would be well advised to follow the same procedure in the consecration of new cemeteries by their synagogues. From time to time, rabbis are confronted with requests for the interment of individuals who have converted to Judaism under non-Orthodox auspices. Since such conversions are invalid, those persons may not be buried in a Jewish cemetery. Proper designation of a separate and separated section would enable the rabbi to offer an acceptable alternative.
 22. *Arukh ha-Shulhan* 223:5 remarks that some individuals refrain from pronouncing this blessing because of lack of certainty with regard to how greatly they value the object. R. Moshe Feinstein, *Iggerot Mosheh, Orach Hayyim*, III, nos. 80 and 81, takes it for granted that the blessing must be pronounced upon purchase of an automobile or of valuable furniture. Nevertheless, *Pri Megadim, Mishbezot Zahav* 223:4, reports that the prevailing custom is not to recite the blessing upon the purchase of utensils. That is also the opinion of R. Shneur Zalman of Liadi, "Seder Birkhot ha-Nehenin" 12:5, published in his *siddur, Torah Or*; and *Ben Ish Hai, Shanah Rishonah, Parashat Re'eh*, sec. 5. See also R. Joseph Isaac Lerner, *Sefer ha-Bayit* 21:4, 21:6 and 21:9.

23. Cf., however, *Hayyei Adam* 62:2, who rules that a man acquiring a family residence should recite *she-heheyannu* rather than *ha-tov ve-ha-metiv* even if title is held jointly with his wife because the husband is obligated to provide a domicile for his wife and children. This is also the opinion of R. Abraham Wolf Hamburg as published in R. Seligmann Ber Bamberger's *Teshuvot Yad ha-Levi, Orach Hayyim*, no. 38. Cf., however, *Bi'ur Halakhah* 223:3, s.v. *banah* and *Teshuvot Yad ha-Levi, loc. cit.*, who disagree with *Hayyei Adam* on the grounds that the husband may satisfy his obligation by leasing a home.
24. It should be noted that *Kaf ha-Hayyim, Orach Hayyim*, 2-3:17, citing *Ben Ish Hai* and *Teshuvot ha-Rashba* I, no. 245, reports that it has become customary not to recite the blessing upon purchase of a house but that it is the practice to celebrate the purchase with a festival meal and to don a new garment on that occasion and pronounce a single *she-heheyannu* upon the house and the new garment. R. Joel Teitelbaum, *Divrei Yo'el, Bereishit*, p. 29, on the basis of quasi-kabalistic reasons, opines that the *she-heheyannu* blessing should not be recited by ordinary mortals upon acquisition of a house or of new utensils.
 R. Elyakum Dvorkes, *Bi-Shevilei ha-Halakhah*, II (Jerusalem, 5752), 43-45, cites anonymous authors who, basing themselves upon *Teshuvot Hatam Sofer, Yoreh De'ah*, no. 138, rule that it is improper to recite *she-heheyannu* upon purchase of a house in the Diaspora and attribute that position to *Teshuvot ha-Rashba*, I, no. 245. Examination of *Teshuvot ha-Rashba* reveals that this was not at all Rashba's position. Moreover, *Hatam Sofer* expresses reservations with regard to construction of buildings in the Diaspora when such construction is "of no necessity" (*le-lo zorekh*). There is nothing in *Hatam Sofer's* comment to indicate that either construction or purchase of a needed dwelling is other than an occasion for joy and thanksgiving.
25. Cf., R. Chaim Elcazar Shapiro, *Nimukei Orach Hayyim* 223:2, who reports that "We have never heard of an individual reciting *she-heheyannu* or *ha-tov ve-ha-metiv* upon succeeding to an estate." He questions the propriety of the blessing when pronounced by an *onen* as recorded by *Shulhan Arukh* since an *onen* is exempt from all blessings save *dayyan ha-emet*. Nevertheless, he states that the practice of not reciting the appropriate blessing arose from the fact that, contrary to the comment of *Magen Avraham, Orach Hayyim* 223:3 and *Mishnah Berurah* 223:7, the *she-heheyannu* and *ha-tov ve-ha-metiv* blessings are discretionary rather than mandatory. See also, R. Sherira Ga'on, cited by *Tosafot, Sukkah* 46a, and a contradictory citation by *Tosafot, Menahot* 42b; *Teshuvot ha-Rashba*, I, no. 245, cited by *Bet Yosef, Orach Hayyim* 223; Rema, *Orach Hayyim* 223:1; *Mishnah Berurah* 225:9 and *Bi'ur Halakhah, loc. cit.*, as well as R. Naphtali Zevi Judah Berlin, *He'emek She'elah, She'iltot de-Rav Aha'i Ga'on, She'ilta* 171:10. See also the comments of *Arukh ha-Shulhan, Orach Hayyim* 223:2 and 225:1. Hence, since the blessing appears to be both unseemly and emotionally contraindicated, recitation of the blessing on such occasions has lapsed.