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Between Legislation and Adjudication: The Halakhic Validity of Rulings of Secular Courts

This article discusses the question of the halakhic validity of the rulings issued by secular courts in the opinion of halakhic decisors from the time of the *Rishonim* until the present time, while specifically focusing on the Rabbinical judges (*Dayyanim*) in the State of Israel.

Most *Dayyanim* rule that secular court rulings do not have halakhic validity by virtue of the rule "*dina de-malkhuta dina*" (the law of the state is the law), but may be valid by virtue of "*minhag*" (custom) or "*umdena*" (assessment of the parties' wishes). This is because such a ruling usually becomes a custom, and it is on that basis that parties to an agreement engage one another. However, there are also two minority positions. Some *Dayyanim* grant halakhic validity to at least some of the rulings of the Supreme Court by virtue of "*dina de-malkhuta*", while a smaller number of *Dayyanim* state that the rulings of the courts have no validity at all, even by virtue of "custom." Within each of these two minority positions there are different approaches as well. The different positions of the *Dayyanim* have significant implications that affect their rulings.

This study examines the halakhic "filtering mechanisms" that *Dayyanim* use in order to determine whether to accept the rulings of secular courts, and especially the rulings of the Supreme Court, by virtue of "*dina de-malkhuta*" or "custom". For the purpose of deciding this issue, judges use, *inter alia*, some filtering mechanisms to determine whether to accept secular laws by virtue of "*dina de-malkhuta*" or "custom." The halakhic mechanisms are: Is the secular ruling intended for the benefit of the public, in halakhic terminology: "*le-takkanat benei ha-medina*"; is it contrary to a "Torah worldview"; and is it compatible with honesty and justice according to the Torah.