

Bitul: Nullifying the “What-If” Mentality of Modern Kashrut

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Unintentionally, our *Shiviti* Learning Forum has turned into one of the most sought-after Pesah resources online, to the point that we have a dedicated *Pesah Kashrut Forum* just to handle the influx of questions we receive.

What do I mean by unintentionally? It means that if you would have asked me, at the beginning of my Rabbinic career, if I ever intended to enter the arena of *Kashrut* – I would have unequivocally said “no.” So how did it all begin?

The story that inspired it all happened when I first moved back to the United States after living in Israel. I found myself in the Kosher¹ section of the local grocery store, shopping for Pesah products for my *Bet Knesset*. Past the Kosher-certified soaps and paper goods, beyond the potato-starch based cookies and cereals, and just beside the snacks laced with cottonseed and palm oils – I walked past the olive oil. Knowing that I had a bottle of olive oil at home, it wasn’t the oil that caught my eye, it was the price tag underneath it! Forty-six dollars (roughly thirty-four pounds) for one litre of olive oil! Certainly, there must have been a mistake. I inquired further only to be told that there was no mistake – this was special, *Kosher-for-Passover* certified olive oil!

What happened to the Rabbinic dictum of “the Torah is sparing with the money of Jewish people”?²

What makes olive oil specially *Kosher-for-Pesah*? Or even better yet, what makes the uncertified olive oil, sold at a fraction of the cost, not *Kosher-for-Pesah*? Are foods able to be purchased

¹ Though the proper Hebrew word is “*kasher*,” I have interchangeably used the more familiar Ashkenazi English variation of the word: “kosher.”

² See *Menaḥot* 76b and *Hullin* 49b, only two of the dozens of examples in Rabbinic literature.

for Pesah without a special Pesah certification?

Indeed, in our forum, we clearly permit the consumption of *non-ḥameš* foods on Pesah without any special certification. Some of the more common questions we receive are whether we are concerned with trace amounts of non-*kasher* ingredients, or *ḥameš* ingredients, or residue found in commercial food production machinery?

To answer questions in order would be in accordance with proper etiquette,³ but in this case, I feel the need to begin with a brief introduction.

An Introduction

My Rabbi and Teacher, HaRab Yaakov Peretz *shlit”a* writes:⁴

I wish to express here [the] feelings of pain and distress [experienced by] straightforward Torah scholars, who are perplexed by the improper and incorrect paths on which those of our generation walk – these are the excessive opinions, doubts and suspicions which surpass the boundaries of proper justice and truth. There are those who are afraid to follow the *Halakha* as stated in the *Shulḥan Arukh* which has been accepted by the Jewish people from generation to generation, for they take into consideration an opinion opposite that of the *Shulḥan Arukh*. This leads them to be stringent and add one stringency upon another stringency, resulting in a[n improper] leniency or leniencies which stem from their [improper] stringency. Exactly what Ḥazal saw in their *Ruah HaQodesh* has come true in our days, as they said: “The Torah is destined to be forgotten from Israel”...Rabbi Shimon bar Yoḥai explains: “They wander to ask the

³ See *Mishna Abot* 5:7, and as practiced by Ribkah Immenu (see RaSH”I to *Genesis* 24:24).

⁴ *Emet L’Yaaqob: Orḥot HaRab VeKehillato*, chapter 2, section 2:13

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word of Hashem but they will not find it – they will not find clear Halakha and clear Mishnah in one place.”⁵

Pesaḥ Products

When most people think of differences between Ashkenazim and Sephardim on Pesaḥ, what usually comes to mind is the Ashkenazi⁶ custom⁷ of refraining from eating *qitniyot* (legumes) on Pesaḥ. Very few know that one of thirteen differences which exist between Ashkenazim and Sephardim in *Hilkhot Pesaḥ*, includes the act of buying products for Pesaḥ without special care being taken to make them *kasher* for Pesaḥ. This far more fundamental difference is found explicitly in the *Shulḥan Arukh*.

Maran and RaM”A

We often find that Maran R. Yosef Qaro (1488–1575) permits something and writes so in the *Shulḥan Arukh*. More often than not, RaM”A (1530–1572) – while agreeing with Maran on a technical level – is typically more stringent and adds that “in our countries we are strict in this regard.”

This perhaps stems from a difference in halakhic philosophy between the two. Maran, and the giants of Sepharad, saw greatness in deciding⁸ between two halakhic opinions, often

⁵ *Shabbat* 138b

⁶ Some Sephardic communities were also accustomed to refrain from eating *qitniyot*.

⁷ On the foundational difference between the seemingly identical Ashkenazi “prohibition” and minority Sephardic “custom” regarding the consumption of *qitniyot*, see my video *Kaleidoscopic Kitniyot* on our *Shiviti* YouTube channel.

⁸ Rabbi Yehuda Leon Ashkenazi (“Manitou”) once lamented that contemporary rabbis who offer “*safeq*” in place of “*pesaq*,” contrary to the *Mishnah* (*Abot* 1:16): “Rabban Gamaliel used to say: appoint for yourself a teacher and avoid doubt (*safeq*).”

deciding according to the permissive one whenever possible. In Ashkenaz, however, it appears that RaM”A and other giants of those countries worked very hard to satisfy both opinions⁹ – or even several¹⁰ – which led them to make the decision to be stringent¹¹ whenever possible.

It is also noteworthy to mention that we often find that when RaM”A argues with Maran, he is only stringent *lekhat’hila*, on an ideal level. When it comes to cases of *bedi’abad*, after the fact, or of *b’hefsed merubeh*, great monetary loss, RaM”A agrees that the basic *halakha* is in accordance with Maran.

***Ḥames* Reawakening**

There is a dispute among the Rishonim as to whether or not *ḥames* “reawakens” on Pesah. The concept of reawakening greatly affects the outcome of what Sephardim and Ashkenazim can eat on Pesah. Before Pesah, *ḥames* is like any other permitted food, and if it falls into *Kosher-for-Pesah* food, it would be nullified as long as the *Kosher-for Pesah* food is sixty times greater than the *ḥames* which fell into it. If the same scenario would occur on Pesah, even if only a crumb of *ḥames* would fall in, it would make the food absolutely not

⁹ See *Nefesh HaRab*, in which Rabbi Herschel Shachter explains that his rabbi, Rabbi Joseph Solovetchik, understood this as the *Ḥasidut* of the early “*Ḥasidei Ashkenaz*.”

¹⁰ It is our opinion that when attempting to follow two opinions, one essentially is creating a third. Consider for example the Ashkenazi custom (see RaM”A to the end of *Yoreh De’ah* 289:6) of affixing the Mezuzah slanted, in such a way that it fulfills neither halakhic opinion, yet considered a practice of those who are “scrupulous.”

¹¹ Contrary to popular opinion, “stringent” is not “better”. For further conversation on this topic, please see the chapter on stringencies in my book, *Yehi Shalom*.

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Kosher-for-Pesaḥ. The reason being that *ḥameš* is now considered a prohibited food which cannot be nullified, even if the *Kosher-for-Pesaḥ* food amounted to a thousand times more than the *ḥameš*.

Some Rishonim were of the opinion that *ḥameš* nullified before Pesaḥ can actually “reawaken” on Pesaḥ and cause the food to become completely *ḥameš*, while others disagreed. According to Maran,¹² once the *ḥameš* is nullified in the food before Pesaḥ, it is no longer able to “reawaken” and make the *Kosher-for-Pesaḥ* food *ḥameš*. RaM”A though is of the opinion that *ḥameš* is able to be reawakened.¹³

Preserved Food Items

Maran¹⁴ is of the opinion that if dried meat, cheese or fish were salted before Pesaḥ, they are permitted to be eaten on Pesaḥ, even if no special care was taken to make them *Kosher-for-Pesaḥ*. RaM”A notes that there are those who disagree, and that the custom in Ashkenaz is not to eat such food on Pesaḥ.¹⁵

Conclusion

As is seen from the above sources, it is clear why Sephardim and those who adhere to the rulings of Maran do not need to

¹² *Shulḥan Arukh, Oraḥ Ḥayim, 447:4*

¹³ In his review of my book, *Yehi Shalom*, Rabbi Yehoshua Gerstein added that RaM”A does agree that *ḥameš* does not reawaken in certain situations, such as *lah b'lah*.

¹⁴ *Shulḥan Arukh, Oraḥ Ḥayim, 447:5*

¹⁵ In his review of my book, *Yehi Shalom*, Rabbi Yehoshua Gerstein noted that if one would wash this meat three times, RaM”A would allow one to eat it.

concern themselves with the stringencies of others on Pesah. We respect those who have a custom to do so, but ask that they respect our Ḥakhamim and refrain from imposing their customs on us.

A Second Look

Truthfully, what I wrote above should suffice to show that it is entirely permissible for Sephardim to purchase *non-ḥameš* food products that were not prepared in any special way for Pesah. Additionally, it is the way of Mori HaRav Yaakov Peretz *shlit”a*, not to bring excess proofs to halakhic opinions, for then it seems that there is a need to prove something.¹⁶ But, since we mentioned buying food products that perhaps may have a problem of traces of *non-kasher* ingredients, it is important for me to briefly discuss the laws of *biṭul* and purchasing food from non-Jews.

A Warning

Before I do so, I must declare that I do not advise any of my *talmidim* to purchase foods that certainly have *ḥameš* in them, regardless of the amount! It pains me that those who look for leniencies revel in the words of Halakha when it suits them, but ignore it when it does not appeal to them. We are not looking to make lenient Jews – we are looking to educate wholesome Jews, armed with the knowledge of Torah and

¹⁶ Mori HaRab once shared that if Rabbi Ovadia Yosef would have answered his *Teshubot* as curtly and cryptically as Rabbi Moshe Feinstein, for example, his words would have been treated with more authority.

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who overcome laxity with subservience to *HaQadosh Barukh Hu!*

I am coming instead to elucidate the reason why we do not busy ourselves with endless doubts and concerns, even though that should be understood from Maran above. In doing so, I will include Ashkenazi sources so that it cannot be argued – as it often is – that this is permissible only for Sephardim.

Historical Precedent

RaShB”A¹⁷ (1235–1310) writes regarding a food product which used miniscule amounts of *non-kasher* vinegar in its production. RaShB”A ruled that this product would indeed be forbidden, since *Biṭul* only applies when the occurrence is accidental. If it were done intentionally, it is prohibited, whether or not the person doing it is Jewish.

HaRav Yeḥezkel Landau (1713–1793), in *Responsa Nodaḇ BiYehuda*¹⁸ has a similar *teshuba* regarding an alcoholic drink which incorporated animal meat which wasn’t *kasher* in its production process. He ruled that the ingredient was considered nullified and that the final product was permissible for consumption. It is noted that his ruling is in agreement with RaMBa”M (1138–1204) and R”I MiGA”SH,¹⁹ (1077–1141) but contrary to that of RaShB”A. Landau explains that since the *Biṭul* was performed by a non-Jew it is permissible,

¹⁷ *Teshubot HaRaShB”A*, III, *siman* 214, quoted by Maran in *Bet Yosef (Yoreh De’ah, siman 144)*.

¹⁸ *Mahadura Tanina, teshuba* 56.

¹⁹ The acronym for Rabbenu Yosef Ibn Meir Ha-Levi Ibn Megas, teacher of RaMBa”M.

though if the exact same thing were to be done by a Jew, it would be prohibited.²⁰

Biṭul

RaMBa”M writes:

The Torah forbade only [the use of] a pot that was [cooked with the forbidden substance] on that day. For [in that time,] the flavour of the fat absorbed in the pot had not been impaired. According to Rabbinic Law, one should never cook in it again. For this reason, one should never purchase used earthenware utensils from Gentiles to use them for hot foods, e.g., pots and plates. This applies even when they are coated with lead. If one purchased such a utensil and cooked in it from the second day onward, the food is permitted.

Mishneh Torah, Ma’akhalot Assurot 17:2

Maran²¹ codifies this *halakha*:

Any pot which is not *Bat Yoma* is considered [that] its taste is detrimental, and it is does not make forbidden [food cooked in it]. And it is called “*Bat Yoma*” all the time that it has not sat from one moment to another moment that the forbidden thing was cooked in it, and once “from one moment to another moment that the forbidden thing was cooked in it” has passed [i.e. it has sat for twenty-four hours since the forbidden food was cooked in it] it is not called *Bat Yoma*. And if one cooked in it when it was not *Bat Yoma*, the cooked food is permissible for this will be a “giving a detrimental flavor” and this is [only] that [the pot] is rinsed such that there is not any residue on the inside, and if one

²⁰ The *Noda BiYehuda* deserves further study, and these few lines do not do justice to a brilliant *teshuvah*.

²¹ See similarly what Maran rules elsewhere in 122:7. See *Igrot Moshe (Yoreh De’ah 2:41)* who explains that when Maran uses the word “forbidden” there, it is only used to state that it is forbidden to tell the Jew to nullify the *issur* for us, but that the food itself certainly does not become prohibited.

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did not rinse it, it makes things [cooked in it] forbidden and this is like a piece of forbidden [food] that is not detrimental. And there are those who allow even [the food that] one cooked in it before rinsing it.²²

Yoreh De'ah 103:5

Rabbi Moshe Feinstein explains the above RaMBa”M and Maran in the context of permitting margarine that was produced by a non-Jewish company on *non-kasher* machinery:

Regarding the law of one who maliciously violated [the words of our Ḥakhamim] and cooked in a pot that was not “*Bat Yoma*”, we do not find in the Talmud or the *Poseqim* that [our Ḥakhamim] penalised him and prohibited him from eating the food...and from the RaMBa”M...and the *Shulḥan Arukh*...it is implied that even when done maliciously, the food is permitted...This is not like what the *Darkhe Teshuba* quotes in the name of the *Ḥamude Daniel* who prohibits the food, and it is a strange thing to invent a prohibition on his own which is not found in the Talmud and the *Poseqim*.

Igrot Moshe, Yoreh De'ah 2:41

Though this is not exactly the same as a non-Jew nullifying an actual *issur* for us, it is obvious that the similarities are striking, and one can learn that the *bedi'abad* action done by the non-Jew is actually permitted *lekhathila* for the Jew at the time of purchase.

Nullification by a Non-Jew

While there are those who prohibit *biṭul* done by a non-Jew, there are an overwhelming number of *Poseqim* who permit this

²² RaM”A adds: “and if there are sixty against that which was stuck to its inside, everyone [agrees that this is] permissible from when the pot is not *bat yoma*. And this is how one acts.”

entirely. For deeper insight, please see *Darkhe Teshuba*,²³ who deals with this issue at length.

*Be'er Heṭeb*²⁴ states that it is the custom to purchase things which are forbidden *lekhatḥila* but are permitted *bedi'abad*.

Seemingly, *Sha”Kh*²⁵ prohibits such a circumstance since he claims that the time of purchase is *lekhatḥila*. Though it may seem that way initially, *RaShBa”Sh*²⁶ explains that it is only prohibited when the non-Jew intentionally performs the action for the Jew, but if not, it is permitted.

MaHaRa”M of Lublin²⁷ agrees with this *halakha* and adds that even if the Jew were there at the time the prohibited action was being done by the non-Jew, it is still permitted since the Jew did not instruct him to do so.

*RaDba”Z*²⁸ disagrees with the above ruling when it comes to *biṭul*, and states that the *biṭul* happens at the time of purchase. His logic is that the Ḥakhamim permitted *biṭul* when it happens in a Jew’s home so that he will not lose money, but that they would not allow one to go out and purchase something that had nullified *issur* in it.²⁹

Though *Yad Abraham*³⁰ challenges RaDba”Z, based on *Yad HaMelekh*, who brings numerous refutations against the arguments of RaDba”Z, he did not feel that he should rule

²³ *Yoreh De’ah* 108, footnote 20

²⁴ Quoted in *Darkhe Teshuba*, *ibid.*

²⁵ *Yoreh De’ah* 60, footnote 5

²⁶ In his halakhic responsa

²⁷ *Siman* 104

²⁸ In his *Responsa*, III, *siman* 578

²⁹ This fits in well with the ruling of RaM”A in *Yoreh De’ah* 108. See the *Darkhe Teshuba* (*ibid.*) who shows from other rulings of RaM”A that there is room for leniency in this matter.

³⁰ *siman* 99

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against RaDBa”Z, since he only prohibited regarding *biṭul* and not other *issurim*.

HaTa”M Sofer³¹ has an interesting case in which he allows one to sell a product to a non-Jew and then purchase it back from him, therefore making the *biṭul* happen while it was in the hands of the non-Jew, relying on MaHaRa”M of Lublin mentioned above.

Regardless, one of our greatest Ḥakhamim, R. Yiṣḥaq Tayeb of Tunis,³² disagrees with HaRab Yehuda Assad who prohibits this case of *biṭul* in his book *Bet Yehudah*, and permits this for consumption. Most importantly, elsewhere in his writings he proves that RaDBa”Z changed his mind and agreed to be lenient even in the case of *biṭul*.

Though I wish to continue and share what Hashem has allowed me to capture in the net of my search, “what the heart desires the time denies” – and I will instead have to suffice with the names of a few more Ḥakhamim who agree with MaHaRa”M of Lublin and permit purchasing foods which were nullified by a non-Jew:

- *Shu”t Bet Shlomo (Orah Ḥayim 97)*
- *Shu”t Ketab Sofer (Orah Ḥayim 87)*
- *Shu”t Ḥomat Yesharim (Siman 30)*

³¹ *Yoreh De’ah* 82. R. Aryeh Leibush Bolichover in *Shem Aryeh (Orah Ḥayim, siman 8)* agrees.

³² *Ḥereḳ HaShulḥan, Yoreh De’ah* 115:7. *Mori HaRab* once shared with me that the *Ḥereḳ HaShulḥan* is always stringent, and therefore when he is lenient, that must be the truth – since he must have been unable to find a compelling reason to be stringent!

Conclusion

As *Mori HaRab* wrote above, the world of *Kashrut* today has become full of “excessive opinions, doubts and suspicions which surpass the boundaries of proper justice and truth.” It is our sincere hope to return *Kashrut* to the realm of justice, truth, and normalcy.

Those who wish to be stringent – we allow them to do so! We simply ask them to stay out of our way as we focus less on pots and pans, and more on true *ʿAbodat Hashem*. We strive to reach not just purity in our foods, but also in our hearts and minds, so that we may be in awe of Hashem, in order to ultimately reach that lofty level of true love of Hashem. Perhaps this year, instead of focusing on ingredients labels and Facebook posts, we may merit to experience the Divine Encounter that Rabbenu Abraham ben HaRaMBa”M³³ spoke of, when properly focusing on our service of the Creator.

To the beloved members of The Ḥabura, I wish you and your loved ones endless blessings – and may we always rejoice in the study of the Torah together.



³³ *Kitāb Kifāyah al-ʿĀbidīm (HaMaspiq L’Qbdei Hashem)*