

HALOCHOSCOPE



This week's question:

Chameitz was bought after *Pesach* from a store owned by a non-Jewish corporation. Some branches of this corporation purchase a Jewish supplier. This particular branch is not forthcoming about their suppliers. Accordingly, some *chameitz* delivered to this store during or following *Pesach* might have belonged to a Jew during *Pesach*. Some *chameitz* was used in other foods, including *cholent* for *Shabbos*. What is its status?

The issues:

- A) *Chameitz she'avar alav haPesach*, owned by a Jew on *Pesach*
- B) *Safek*, when there is a doubt about the status of such *chameitz*
- C) Mixtures of such *chameitz*

A) *Chameitz she'avar alav haPesach*

Keeping *chameitz* over *Pesach* is a violation of two Scriptural prohibitions. *Bal yaira'eh* forbids having *chameitz* in one's possession where it can be seen. *Bal yimatzei* forbids concealing it on one's property or owning it and having it stored off the premises. Having *chameitz* of a gentile on one's property is not included, unless the Jew is liable for the *chameitz* in his possession. Actually, due to the prohibition forbidding benefit from *chameitz*, it really is not in his jurisdiction. The Torah forbids one to make use of it. Yet, at the same time, the Torah considers the person holding it liable in these two *mitzvos*.

There are various levels of *chameitz*. Pure *chameitz* is made from one of the five cereal grains that leavened as a result of water. This includes bread and other dough items, or other things made directly from the grains, such as beer or vinegar. Mixtures of *chameitz* have a part that is considered *halachically* significant of *chameitz*. If there is an eighth part *chameitz*, it is Scripturally forbidden to eat. If it is less than this proportion, but more than one sixtieth, the poskim debate the severity of its prohibition. Some consider it only Rabbinically forbidden to eat. Nonetheless, if the entire mixture in one location contains an olive sized part of *chameitz*, one violates Scriptural *bal yaira'eh*.

If the *chameitz* part is less than one sixtieth, no Scriptural violation applies. If it was mixed on *Pesach*, it is forbidden Rabbinically, even in minute proportions. If it was made by mixing *chameitz* that was in the possession of a Jew, it must be destroyed. If a mixture of non-*chameitz* was cooked together with *chameitz* that was later removed, the non-*chameitz* is also forbidden to eat. However, since no actual *chameitz* is present in the mixture, some say that this is not included in *bal yaira'eh*. Others rule stringently, since the mixture is forbidden to eat.

If the non-*chameitz* was not cooked with actual *chameitz*, but absorbed *chameitz* flavor from a pot that had *chameitz* cooked in it earlier that day, the mixture is forbidden to eat on *Pesach*. However, in this case, all are in agreement that one does not violate *bal*

yaira'eh for keeping it. This would be the case with many commercial products that are not certified kosher for passover, but contain no *chameitz*. Nonetheless, in this case, too, if the cooking was done on *Pesach* the food must be destroyed. In that case, since one may not keep it in his possession, one violates *bal yaira'eh* with it. This would only apply to a *chameitz* ingredient belonging to a Jew. If a gentile manufacturer used *chameitz* utensils to make a product on *Pesach*, a Jewish purchaser would not be in violation.

Pure *chameitz*-type foods that do not fully leaven or were never fully edible, are called *nukshe*. While one does not violate Scriptural *bal yaira'eh* for his, it must be destroyed Rabbinically. If it is totally inedible before *Pesach*, it may be kept. For example, flour might be used as an ingredient in the production of hides. If it started out fit to be eaten and then went a little bad, it is still considered regular *chameitz*. If it becomes totally inedible before *Pesach* it loses its *chameitz* status. If regular *chameitz* food becomes inedible it does not lose its *chameitz* status unless it is unfit for consumption by a dog before *Pesach*. If it turned bad on *Pesach*, such as when mixed into a potion as a medicine, it must be destroyed. The poskim debate whether this is a Scriptural obligation. Thus, if it was not in the Jew's possession before being mixed, there would be a debate on whether *bal yaira'eh* is violated. [If it is fit for a dog's consumption, it could still be used in certain food-grade *chameitz* applications. Therefore, it does not lose its *chameitz* status.]

If a Jew had *chameitz* in his possession over *Pesach*, it may not be benefited from after *Pesach*. The Talmud debates whether this is a Scriptural prohibition. We follow the view that it is forbidden Rabbinically. It is a penalty against the person who violated *bal yaira'eh*. It is an incentive to destroy it, rather than keep it in violation of *bal yaira'eh*.

Oness, where one is unable to control the circumstances of a violation, is usually exempt from liability. *Shogaig*, where one could have controlled it, but was unaware of the issues or circumstances, is liable but to a lesser degree. One would expect a penalty to be restricted to *maizid*, an intentional violator. In our case, this matter is debated. We follow the opinion that even if *chameitz* was in one's possession beyond his control, the penalty of *chameitz she'avar alav haPesach* applies. If *shogaig* or *oness* were exempt, one might intentionally keep the *chameitz*, claiming he was a *shogaig* or *oness*. The exact situations of *shogaig* and *oness* where the penalty applies are debated. If the Jew was aware that he had the *chameitz*, but did not realize that he had to destroy it, or he had no time to destroy it, the penalty applies. A debatable case is where a Jew was unaware that a gentile employee had caused his grain to leaven. Or, a Jew might be unaware that an item belongs to him, rather than to a gentile supplier or purchaser.

Forbidden benefit would include eating it, using it to feed animals or any other personal use, selling it, or even giving it away such that the donor receives a benefit. This benefit need not be material. If the donor wins favor in the eyes of the recipient, he will benefit in the long term. In cases of major loss, or desperate need, leniencies are applied. This would be based on the factors involved in the individual case. If there is a question about the circumstances, or if there is debate on the particulars, a lenient view might be accepted. The leniencies might include selling the *chameitz* to a gentile. This way, no Jew will consume the *chameitz*, but a poor man will benefit from its value.

If the issue arises on *Erev Shabbos* after the food was already prepared for *Shabbos*,

even a minor loss is considered major. This affects our case. If *chameitz* was cooked in a utensil on *Pesach*, the utensil may not be used, due to the flavor that could be present even in minute proportions. However, as we shall see, *chameitz sheavar alav haPesach* does not necessarily forbid benefit when mixed with other food. Certainly the flavor absorbed by a utensil does not contribute material benefit to food cooked with the same utensil later on. Therefore, the pots may be benefited from. [See Psachim 5b, 12b 27b-29a 42a-46a, Poskim. Tur, B.Y. Sh. Ar. OC 442, 448, commentaries.]

B) Safeik

The poskim discuss many situations of *safeik chameitz she'avar alav haPesach*. In essence, the ban on benefit is considered Rabbinical. In cases of *safek*, doubt applying Scriptural law, one tends to stringency. In Rabbinical law, such as our case, one tends to leniency. The classic case would be where one was aware of the item but it is not clear whether it can be classified as the type that is included in *bal yaira'eh*. Other cases could include where it is unclear whether he owned it. Though the leniency is not always applied, there is more basis for leniency here. Some exempt *oness* anyhow. An *oness* like this would be even more likely to be exempted. The 'owner' never realized that he owned the *chameitz*. The poskim discuss cases where a Jew is unaware that a gentile did not take possession of his *chameitz*, or where a Jew was sent *chameitz*, but never received it before *Pesach*. In these and similar cases many do not apply the penalty. If the ownership itself is in question, there is all the more reason to permit such *chameitz* after *Pesach*.

In our case, the Jewish purchaser has a *safek* about the status of the *chameitz*. The gentile store-owners might have had deliveries on or immediately following *Pesach* from a Jewish supplier, who had not transferred ownership of his *chameitz* to a gentile for the duration of *Pesach*. If this did happen, any *chameitz* in the store is in doubt. It could be from old stock, or from new stock. Further doubt arises in determining the ownership of the wholesale stock. This would depend on the arrangement between the supplier and the retail store. It can also depend on the way the supplies are transferred from the manufacturer to the retailer, using the supplier as the intermediary. It is possible that some of the supplies were never considered owned by the Jewish supplier in *halachic* terms. Sometimes the local commercial practices are applied *halachically* as well. A distributor might never take possession of an item, but might assume liability. We have explained that this could affect whether a Jew is in violation of *bal yaira'eh* or *bal yimat'ai*.

The rules of doubt allow or a lenient ruling based on chances or possibilities. In our case, the doubt might not count. *Ika livrurei*, if one is able to investigate a doubt, but neglects to do so, it is not called a doubt. In our case, the gentile company has the information, but wishes to keep it confidential. There is no reason the Jewish customer has any right to that information. Is this is a truly unresolved doubt?

Sometimes, a situation may be assumed to be doubt-free unless there are grounds for suspicion. For example, if the majority of suppliers and distributors are known to be gentile-owned, it might not be necessary to suspect that *chameitz* came from a Jewish owned source. Thus, in our case, one might be permitted to presume that the *chameitz* is not forbidden until otherwise informed. The fact that certain other stores in the same chain use a Jewish distributor might not be sufficient grounds for suspicion. If it is sufficient, the

question might be considered a legitimate doubt, rather than a resolvable question.

A single *safek* is treated as an unresolved question. If the circumstances include two or more instances of *safek*, from different perspectives, it is called a *sfek sfaika*. This is considered a resolved doubt. By combining the doubts, one may assume that the chances of the presence of something forbidden are too low. In our case, there seem to be a number of *sfaikos*. First, was this *chametz* from old pre-Pesach stock? This might not even be possible to establish. If it was from fresh stock, was the supplier Jewish? This should be possible to verify, but does one need to suspect this in a market where most suppliers are gentile? If he was Jewish, was he in *halachic* possession or liable for the *chametz*? The entire prohibition is Rabbinical, though the original issue is Scriptural. Most poskim maintain that the Scriptural aspect does not transfer. [See refs to section A, Sh Ar OC 249, commentaries. Sdei Chemed, Chameitz 8:5 7 23 **30** 52 **54** 59 **63**.]

C) Mixtures

Forbidden food mixed in with permissible food causes the mixture to be forbidden, unless it is *batel*, overwhelmed and neutralized. This applies when the forbidden food was added inadvertently. If it is intentionally mixed in in order to neutralize it, the person who mixed it may not benefit from the act. Nor may anyone for whose benefit the act was done benefit from it. For most situations, *bitul* requires enough permissible food to mask the taste of the forbidden ingredient. However, in many cases, if the proportion of the permissible food is more than the forbidden food, the mixture may be consumed. In our case, the issue is twofold. Apart from the permissibility to be eaten, there is an issue of benefit from the increased volume or properties.

The Talmud debates the status of mixtures of *chameitz*. There are three periods in question, before, during and after *Pesach*. The *chameitz* might be mixed during one of these periods, but then used during a later period. There is one Talmudic view that mixtures are permitted after *Pesach*, partly in keeping with the view that it is forbidden Rabbinically as a penalty. This cannot refer to a majority *chameitz* component, but the poskim debate whether it refers to a simple minority component or only if it is less than a sixtieth. In practice, many poskim rely on the lenient view in cases of major loss or hardship. If more than a sixtieth is present in the mixture and there is no hardship, there is still a way to permit the mixture. This applies when the *chameitz* was mixed in after *Pesach*. One may dispose of the amount of the benefit, thus depriving himself and fulfilling the purpose of the penalty. The simple way to do this is to estimate the value of the *chameitz* component or of its presence in the mixture, and to throw away that amount of money. This method is acceptable to permit a mixture both for its benefit and to be eaten. [See Psachim 29b-30b, Poskim. Tur Sh Ar OC 447:11, commentaries.]

In conclusion, the mixtures may be eaten, especially for *Shabbos*. The unmixed *chameitz* seems to be permissible as well. Some of the doubts cannot be resolved. An unsuccessful attempt was made to resolve the others, leaving them in doubt. There is also no real reason to suspect Jewish ownership without grounds for it.

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