



VOLUME 1, ISSUE 4 / NISSAN 5776

Pappouschado: Hametz or Matza?

THE CONTROVERSY BEHIND THE LEGENDARY WINE-AND-FLOUR PESSAH COOKIE

By Rabbi Mordechai Lebhar, Rosh Kollel Link Los Angeles
and Author of Magen Avot

Some of the most memorable *Pessah* staples in many homes include the legendary Pappouschado cookies (named after their
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From the Editor

We are pleased to present our readers with the *Nissan* edition of the D'var Hashem – the Sephardic Halacha Journal. For this issue we've culled together articles dealing with timely topics such as the controversy surrounding the Pappouschado cookies, various questions and answers relating to *Birkat Ha'llanot*, koshering utensils for *Pessah* and *Hametz* in various household items. We also included an article about overworking employees and drew inspiration from the life of the saintly Rav Shalom Messas, the late chief rabbi of Yerushalayim, who passed away on *Shabbat HaGadol*. We would like to thank our contributing authors, Rabbi Mordechai Lebhar, Rabbi Moshe Pinhasi, Rabbi David Ani and Rabbi Yehonatan Hool.

If you haven't done so yet, I would strongly recommend joining our E-Journal list, which in the past few months has engaged our readers with the same high-level articles you've grown accustomed to in this publication. We recently featured comprehensive articles on *Bedikat Hametz*, *Hametz* in the business, thick *Matzot*, leftover *Tzeddaka* funds and much more. You can view these articles on our website: www.theshc.org.

As always, we must thank our readers for the tremendous support we've received thus far. Our greatest pleasure and hope is that this journal enhances our readers' understanding and commitment to *Torah* study and *Halacha*, and that we continue to have the *Si'atta DiShmaya* to serve the Sephardic community nation-wide with excellence.

B'Virkat Pessah Kasher V'Sameah,
Rabbi Ariel Ovdia
The Sephardic Halacha Center

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makers' surname), which taste – almost – like the real thing, as they are made from actual wheat flour mixed with wine. In this article we would like to discuss the Halachic issues surrounding these cookies.

Egg Matzah in Halacha

Hachamim assert in *Masechet Pessahim* [1] that: *מי פירות אינן מוחמיצין* – fruit juices do not leaven. Whereas a mixture of flour of the five grains and water will leaven over time, a mixture of flour and a liquid other than water, such as wine, oil or eggs will not leaven. This is referred to by the Poskim as “*Matza Ashira*” – lit. “luxurious” *Matza* – connoting that it surely cannot be used to fulfill one’s obligation to eat *Matzah* at the *Seder*, which must be a “*Lehem Oni*” – a poor man’s bread.

There is, however, a dispute between *Rashi* and *Tosafot* [2] as to the application of this rule. According to *Tosafot* this means that any mixture of flour that does not have any water in it is permitted, whereas according to *Rashi* such a mixture would still be considered to be *Hametz Nokshe* – lit. “hard” *Hametz* – which is not as strict as real *Hametz*, but is forbidden nonetheless.

This dispute divides the *Sefaradim* and *Ashkenazim* as well, as the *Shulhan Aruch* [3] follows the opinion of *Tosafot*, permitting *Matza Ashira*, while the *Rama* [4] is stringent to follow *Rashi*’s opinion. That is why many companies who make egg *Matzah* issue a disclaimer on the package that, according to the *Ashkenazi* opinion, only children, or an elderly or sick person may eat egg *Matzah* on *Pessah*, while according to *Maran* there is no issue with egg *Matzah* whatsoever. [5]

Substituting Wine for Water

In the year 1970, Hacham Ovadia Yosef זצ”ל was asked by the Pappouschado brothers to give them the approval to make cookies for *Pessah* using wine instead of water. They were previously denied

by Rabbi Unterman זצ”ל, who was then Chief Rabbi of Tel Aviv (and subsequently Chief Rabbi of Israel), as he claimed it would be extremely difficult to ensure that not one droplet of water would get mixed in to this mass-baked product. The factory did try to remedy this issue by shutting access to any running water in the premises where the cookies were baked, and Hacham Ovadia issued them his approval.

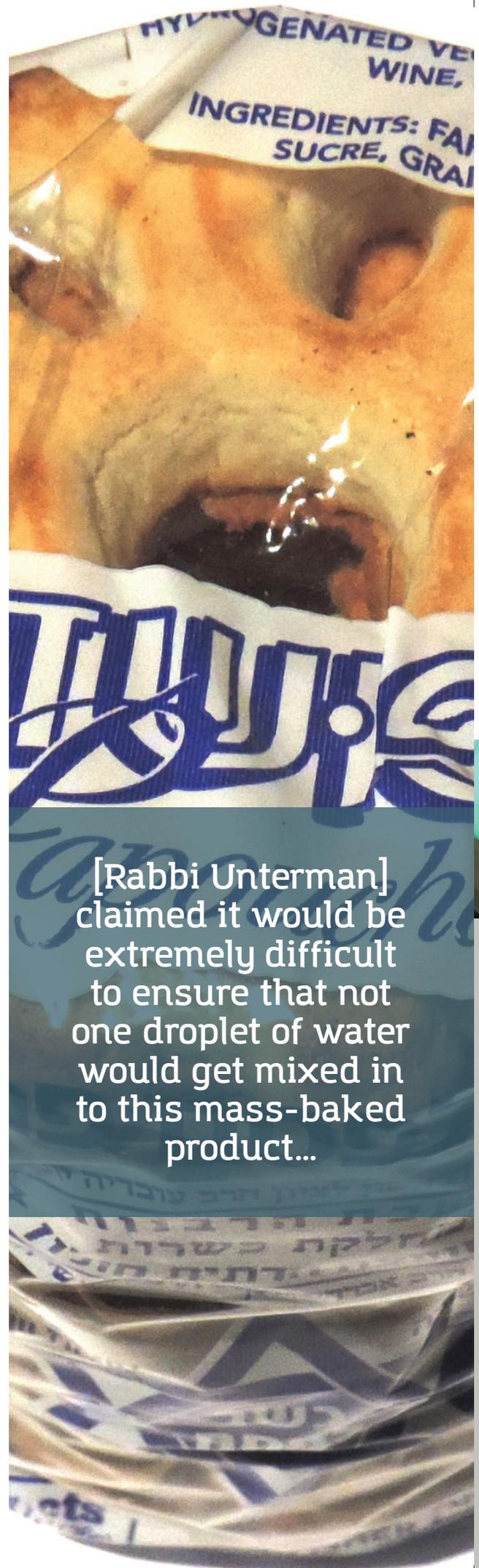
Additives

Years later, Hacham Bakshi-Doron שליט”א, who also served as *Rishon L’Tziyon*, took issue with these cookies in his *Teshuvot Binyan Av* [6], claiming that some of the additives that the company uses, such as sodium bicarbonate help the dough expand, and therefore are not included in the leniency of *Matza Ashira*.

He proves this point from the opinion of the *Hagahot Asheri* [7] – quoted in the *Hok Ya’akov* [8] – that although fruit juices do not leaven, this does not include wine dregs (שכרים) which evidently do have some sort of leavening effect on the dough. This also seems to be explicitly stated in the *Tosafot* in *Pessahim* [9]. This was also the stance of Hacham Mordechai Eliyahu זצ”ל, also one of the *Rishonim L’Tziyon*, who would often quip that the *Gabba’im* in the synagogues have to be vigilant to eradicate all of the Pappouschado cookies from the shuls before *Pessah*.

Nevertheless, Hacham Ovadia Yosef, in *Teshuvot Yabia Omer* [10], rebuts this claim, citing the *Ohr Sameah* [11] who understands that the *Tosafot* never meant to prohibit a mixture of flour and wine dregs, and only prohibited a case in which there is some water in the mixture as well (although this explanation seems a bit difficult to fit into the words of *Tosafot*). It is also the conclusion of the *Hok Ya’akov* mentioned earlier, that the rule that fruit juices do not cause fermentation is an absolute rule and includes wine dregs as well.

Hacham Ovadia claimed further



[Rabbi Unterman] claimed it would be extremely difficult to ensure that not one droplet of water would get mixed in to this mass-baked product...

that we should not consider these additives as fermenting agents whatsoever. Whereas the wine dregs discussed by the *Tosafot* may bring the dough to fermentation – an internal biochemical process – the additives in these cookies only release gas into the mixture. It would be no different than blowing air into a dough. This is also the opinion of Hacham Shlomo Amar שליט"א.

In conclusion, although *Matza Ashira* is permitted according to Sefaradim, the wine-cookies present other issues such as the possibility of water in the mixture as well as the additives that are in the mixture. If one wants to rely on this leniency *L'Halacha* they must ensure that it is from a factory which is supervised properly.

Sources:

[1] ל"ה ע"ב [2] שם [3] או"ח סי' תסב, סעיפים א-ד [4] שם ס"ד [5] ובברכ"י שם כתב החיד"א שיש להמנע מלאכול מצה עשירה, מיהו זקנו מהר"א אולואי כתב להתיר, וכן המנהג [6] ח"ה סי' לב [7] פ' אין מועמידין בשם רבינו אפרים [8] סי' תסב סק"ה [9] כ"ח ע"ב ד"ה מחמת ד"א [10] ח"ט סי' מב [11] פ"ה מחו"מ ה"ב

Slaving Away: Modern Issues of Slavery in Halacha

Business Halacha / דבר המשפט

By Dayan Yehonatan D. Hool, Yerushalayim

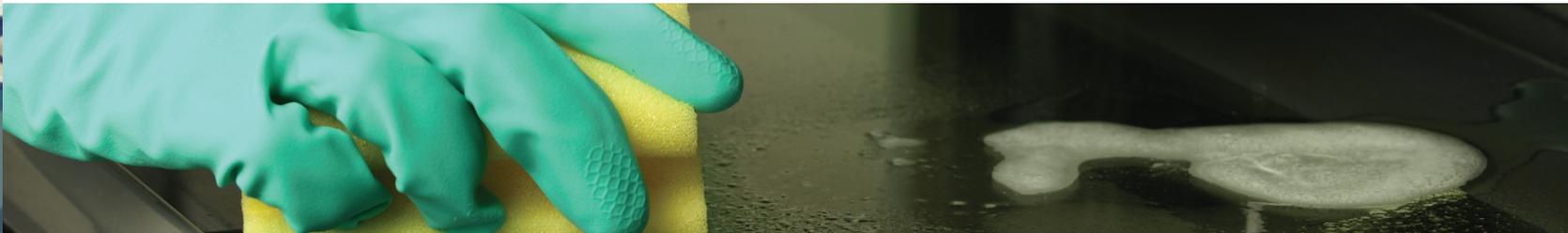
"For the Children of Israel are servants unto me, they are my servants, whom I took out of Egypt" [1].

Our miraculous liberation from the bondage of Egypt by the Almighty, was for the purpose of serving *Hashem* alone. The *Gemara* [2] derives from this verse, that we are commanded not to enslave ourselves ever again, even to a fellow Jew, so that we should always remain absolutely free to serve *Hashem*. There are several *Halachic* issues relating to this directive, which we will explore in this article.

Demeaning and Unnecessary Tasks

In the Torah, there are two specific negative commandments that limit what one may order an *Eved Ivri* – a Jewish slave (sold either by himself or to repay a theft) – to do. The first

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Ask the Rabbi / דברי חכמים

FEATURED QUESTION ASKED TO THE SHC:

Koshering Utensils for Pessah

Answered by Rabbi Moshe Pinhasi

Q: How can I *kosher* my oven for *Pessah*? May I use the hot-plate on *Pessah*?

A: With regards to an oven, the *Ohr L'Tziyon* [1] takes a strict position, asserting that it is virtually impossible to *kosher* an oven, even if it is not electric [2]. However, Hacham Ovadia Yosef, Rav Shlomo Zalman Auerbach זצ"ל and others [3] allow for *koshering* an oven according to the following procedure: not using it for 24 hours prior to its *koshering*, cleaning it thoroughly and putting it on the highest setting for an hour or more. The baking sheets cannot be *koshered*.

With regards to a hot plate (*plata*), according to the *Ohr L'Tziyon* and others one must clean it properly and cover it with foil [4]. However, according to *Hacham Ovadia* and others, one may clean it properly and pour hot water over it, and use it without foil [5].

Sources:

[1] ח"ג פ"י ס"ב [2] דלא מבעיא בתנור חשמלי בלא אש שיש בו בליעות מויעת החמץ, ולא נכשר אלא בליבון חמור עד שיהיו ניצוצות ניתזין ממנו, וא"א ללבנו כך, אלא אף בתנור שיש בו אש גלויה, שהויעה נשרפת ואינה נבלעת בדפנות, מ"מ יש לחוש לממושות החמץ שנבלעה בדפנות, וכיון שחמץ מיקרי איסורא בלע [וכמו שפסק מרן בשו"ע (סי' תנא ס"ד) כדברי הראשונים שחמץ שמו עליו וכאילו איסורא בלע, וז"א כבולעו כך פולטו] צריך ליבון חמור כדי להכשירו וזה ל"ש בני"ל. [3] שו"ת יח"ד (ח"ב סי' סג) ובהזו"ע (פסח, עמ' קלב) שו"ת מנחת שלמה (אויערבך, מהדו"ת סי' נא) קובץ מבית לוי (לגר"ש וואזנר, ח"א עמ' ל) ועוד. ואף דעת מרן היא דחמץ מיקרי איסורא בלע בני"ל, מ"מ בתנור שא"א לעשות בו ליבון חמור, יש לסמוך על ש"י הראשונים שחמץ מיקרי היתרא בלע. [4] ח"ג פ"י ס"ד, דמאחר שנהגו להחמיר בפסח כדברי הרמ"א (סי' תנא ס"ד) שחצובה צריכה ליבון, א"כ בפלטה חשמלית שפעמים נשפך עליה חמץ, ועוד שפעמים מחמם עליה חלות וכדו', וא"א ללבנה שהרי היא תתקלקל, לפיכך אין דרך להכשירה, אלא ינקה אותה כו' כמש"כ. [5] חזו"ע (פסח, עמ' קלח) ועוד שהעיקר כקושיית המאמר (שם ס"ק יא) ע"ד הרמ"א (הני"ל, ואנ"פ שלמעשה לא פליג לדינא על הרמ"א) וכו' שהחמץ נשרף והלך לו, כיון שהוא על האש, ואפי' יש בליעות של חמץ, הרי הוא רק מניח סיר ע"ג הפלטה, ואין הבלוע יוצא מדופן לדופן (יו"ד סי' צב ס"ח).

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Month of Nissan Q&A

By Rabbi Moshe Pinhasi, Lakewood
and Rabbi David Ani, Brooklyn

Q: May one recite *Birkat Ha'Ilanot* on *Shabbat*?

A: Some say [1] that one should not recite this *Beracha* on *Shabbat* because – according to *Kabbala* – by reciting this *Beracha* one is sorting out particles of *Keddusha* from the trees, which is akin to sorting [בִּוּרָר] on *Shabbat*. They are also concerned that one may come to detach a flower or branch from the tree. Others maintain [2] that the prohibition of sorting does not apply to spiritual concepts, and that we must not devise new decrees in our days [3]. It is nevertheless advisable to try and make this *Beracha* on a weekday. [RMP]

Q: Do women recite *Birkat Ha'Ilanot*? Can one recite *Birkat Ha'Ilanot* after *Nissan*?

A: Women may also recite *Birkat Ha'Ilanot* [4] as many *Poskim* maintain that one may recite the *Beracha* even after *Nissan* if there are still blossoming trees [5], thus, it would not be considered a time-bound *Mitzva*. Even according to the opinions that one may only recite *Birkat Ha'Ilanot* during the month of *Nissan* [6], nevertheless, this time limitation does not define the *Mitzva* as a “time-bound” *Mitzva*, because the time of the *Mitzva* is due to the natural circumstances [7]. [RMP]

Q: Must one check their books for crumbs of *Hametz*?

A: While some *Poskim* [8] worry about finding crumbs in one's books, especially books that are placed on the table with food from time to time, however, it has never been the *Sephardic* custom to be concerned about this [9]. [RDA]

Q: Does one have to turn off the lights for *Bedikat Hametz*?

A: No [10]. [RDA]

Q: Can one use a flashlight for *Bedikat Hametz*?

A: It is advisable to use a candle for a few minutes following the *Beracha*, after which one can then put it out and use a small flashlight for the rest to the search [11]. [RDA]

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one is not to order him to do *Avodat Aved* [3] – not to work him as a slave. *Rashi*, quoting *Hazal*, explains this is a prohibition to ask an *Eved* to perform demeaning tasks that are traditionally relegated to slaves (such as carrying the master's clothes behind him to the bathhouse).

The second prohibition is not to subjugate a slave to *Avodat Parech* – “do not subjugate him harshly” [4], which *Rashi* explains to mean that one may not order him to perform tasks that the master has no need for.

The Definition of “*Avodat Parech*”

Rashi, citing the *Sifra*, brings two examples of *Avodat Parech*. One may not command his slave “warm me this cup”, if he has no need for it, not may he order him to “hoe under this vine until I come”.

The *Rambam* [5] however, understands that there are two separate issues here that are prohibited under the classification of *Avodat Parech*. Firstly, as *Rashi* says, it is forbidden to ask the *Eved* to do unnecessary tasks, and secondly, it is forbidden to set him a task that has no defined end point, such as asking him to hoe the vines indefinitely. Thus the master may not instruct him to work “until the master returns,” for example, but must give the *Eved* a defined endpoint for the task, such as to work for a specific amount of time, or until a specified set of results is achieved.

Ordering a Free Man to Perform Demeaning or Worthless Tasks

It is important to note, that these prohibitions apply only to the owner of an *Eved Ivri* (a system which is not applicable in *Halacha* since the destruction of the first *Bet HaMikdash*). However, the *Sifra* rules that it is permitted to instruct a free, non-*Eved* to do demeaning or unnecessary work.

The *Rambam* [6] explains the reason for this distinction is that a slave's spirit is despondent as a result of being sold, whereas one who is free is only doing any work out of his own free will, and may thus be ordered to do any task, as he still retains the right not to do it.

Is an Employee like an *Eved Ivri* or a Free Man?

It would appear from the words of the *Rambam* that in the case of an employee, who has not been sold into slavery, and therefore does not share the same low spirits as the *Eved Ivri*, it would be permitted to order him to do worthless tasks. Accordingly, a boss who sees an employee with spare time on his hands, may ask him to type up documents which he has no need for or other such unnecessary work.

However, it appears that the *Ra'avad* [7] disagrees on the opinion of the *Rambam*, as is evident from the *Ra'avad's* comment on the *Rambam's* interpretation of the second example of the *Sifra*. The *Rambam* understood that the *Sifra* was referring to a case in which the master instructs the *Eved* to perform a particular task without defining an endpoint. The *Ra'avad* disputes this claiming that surely if one hires an employee, one may set him tasks that have no defined endpoint, and as such why should it be any different in the case of the *Eved*?

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Aside from what is technically permitted from a purely Halachic point of view, there is a general attitude that the Torah expects us to employ with regards to these matters...



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It is clear from the *Ra'avad's* argument, that an *Eved* and an employee are equal in this regard, and whatever is prohibited for a master to demand of his *Eved* would be forbidden for an employer to demand of his employee as well.

However, Ribbi Avraham Di Botton, in his commentary *Lehem Mishne*, disputes this assumption of the *Ra'avad*. The *Torah* prohibits a master from instructing his slave to do useless or demeaning work, he says, but this does not apply to a free person, as noted above, and thus an employee, who is not an *Eved Ivri*, may be ordered to do such tasks. Therefore, claims the *Lehem Mishne*, we cannot prove anything from an employee to the laws of an *Eved Ivri*.

The Basis of the Dispute

We must now understand the rationale behind this fundamental disagreement as to how an employee is regarded in *Halacha*. The *Bet Yitzhak* [8] explains that the *Ra'avad*, who is of the opinion that an employee is similar to a slave, sees an employee as being essentially “owned” to an extent by the employer, and thus with regards to the laws prohibiting worthless labor he has the same status as an *Eved Ivri*. The *Mahane Efrayim* [9] elaborates on the nature of this “*Kinyan*” – ownership – that the employer has over his employee, and brings many other authorities who concur with the *Ra'avad* on this point.

The *Rambam* on the other hand, regards an employee as simply being obliged to the employer but not at all owned by him, and thus rules that the labor limitations placed on a master do not apply to an employee whatsoever.

Domestic Servants

Many authorities, aside from the *Lehem Mishne*, side with the *Rambam* who does not view an employee as a free man. These include the *Magen Avraham* [10], who notes that it was customary to request Jewish domestic servants to do demeaning tasks, despite the prohibition of asking an *Eved Ivri* to perform such tasks.

He suggests two reasons for this: firstly, it is agreed upon at the time of employment and thus the servant knows and agrees in advance, and secondly, the aforementioned *Sifra* does not consider employees as “slaves” but rather as free individuals. This appears to be the conclusion of the *Magen Avraham*. According to the *Ra'avad* and the *Rishonim* that side with his opinion such type of labor should be prohibited. It is important to note, that according to the *Magen Avraham's* first reason, only labor that was assumed at the time that the employee was hired would not fall under the prohibition of *Avodat Parech*.

The Ethical Imperative

It is worth noting, that aside from what is technically permitted from a purely *Halachic* point of view, there is a general attitude that the *Torah* expects us to employ with regards to these matters, above and beyond the letter of the law.

In this context, *Rabbenu Yona* [11] writes that one should refrain from requesting any tasks, even from a “free” person, if there is a concern that they will carry out your wishes not out of genuine desire but because they are either too afraid or embarrassed to refuse.

Similarly, Ribbi Yehuda HaHassid outlines a few general instructions with regards to employees in his classic work, *Sefer Hassidim* [12]:

“If one hires an employee to do some work, or to teach his children, or other such matters, he should not trouble him excessively, or more than he agreed with him to do at the outset. One should not ask anyone to do something that one knows he cannot do; for example, if you know that the employee is incapable of travelling more than a certain distance, do not ask him to travel further, even if he agrees to do so”.

Sources

[1] ויקרא כה, נה [2] קידושין כב ע"ב [3] ויקרא כה, לט [4] שם מג [5] הל' עבדים פ"א ה"ו-ה"ח [6] שם ה"ז [7] שם [8] או"ח סי' לב [9] הל' שכירות פועלים סי' א' [10] סי' קסט ס"א [11] שערי תשובה ש"ג אות ס' [12] סי' תתריע"ד

Q: Can one use toothpaste, lipstick, or medicines which may have a Hametz ingredient on Pessah?

A: Anything that is unsuitable for the consumption of a dog prior to Pessah, may be kept in one's possession but is nevertheless forbidden to eat *Mid'Rabbanan* [12]. With regards to toothpaste, lipstick and the like, since one does not intend on swallowing them it is permitted, even if one may inadvertently swallow. Soaps, makeup and the like are surely not an issue [13]. Pills, which are generally not "edible" would also be permitted if one is sick, even if it is not a life-threatening condition. Pills taken for general aches by a healthy person should be kosher for Pessah [14]. [RMP]

Q: When Pessah night falls out on Shabbat – as it does this year – do we recite the Beracha Me'en Sheva in the synagogue?

A: Most *Poskim* [15] are of the opinion that this blessing, which is recited for extra protection on *Lel Shabbat*, should be omitted on Pessah night which is in itself a *Lel Shimurim* – a night of protection. This, despite the opinion of great *Mekubalim* [16] that it should be recited. If one has a specific *Minhag* to say it, the *Ohr L'Tziyon* [17] allows one to continue with their *Minhag*, whereas Hacham Ovadia Yosef זצ"ל maintains that this *Minhag* must be changed [18]. [RMP]

Sources:

[1] הגר"ח ב"ר מקבציאל (הנד"מ, ש"א פ"ו צ"ו ס"ו), כה"ח (סי' רכז סק"ד), שו"ת ישכיל עבדי (ח"ח בהשמטות סי' זי אות ב), אול"צ (ח"ג פ"ו ס"ה), ועוד [2] שו"ת לב חיים (פלאגי, ח"ב סי' מד), שו"ת יחוד (ח"א ס"ב), הליכות שלמה ועוד [3] ול"ד לאיסור להריח הדס בשבת (או"ח סי' שלו ס"ו), שהוא מתקרב כדי להריח יותר טוב וחיישין שמא יתלוש, אבל כאן אינו מברך אלא על הראיה [4] חזו"ע (הל' פסח עמ' י), אול"צ (ח"ג פ"ו ס"א), ועוד [5] כ"כ הרבה ראשונים, האשכול (ח"א סי' כט עמ' סח) הריטב"א (ר"ה דף יא), וכ"מ ברוקח (סי' שמב) ועוד, וכ"פ המשנ"ב (סי' רכז סק"א) בשם האחרונים, ובשו"ת יחוד (ח"א ס"א) ובהז"ע (עמ' כה) ועוד [6] שו"ת הלק"ט (ח"ב סי' כח), ובברכ"י (סי' רכז סק"ב) כ"כ ע"פ הסוד (ועי' מה שהק' ע"ד בס' מנחת יהודה למוה"ר פתייה פ"ר עקב ד"ה באופן), ובשד"ח (אס"ד מע' ברכות סי' ב אות א) כ"כ מכת סב"ל, וכ"מ מדברי הגר"ח בלשון חכמים (ח"א סי' מב), וכ"פ הנה"ח (שם סק"א) והאול"צ (ח"ג פ"ו ס"ב) ועוד [7] כ"כ לחלק הטו"א במגילה (דף כ: ד"ה וכת' לגבי דין הבאת ביכורים [8] הגר"א במעשה רב אות קעה, וכן מובא בשעשו החזו"א והסטייפלער [9] בחזו"ע (הערה ב') הביא שמקילים בפירוים בספרים וסומכים בזה על הביטול, וז"ל: "ולא חזינו לדרבנן קשיאי המתחסדים עם קונם שיחושו לזה כלל וכל, ופוק חזי מאי עמא דבר", ע"כ. וכ"כ באול"צ (ח"א סי' לב) להקל, והוסיף שלא ראה רבנים שחששו לזה [10] חזו"ע (הל' פסח עמ' מ) אול"צ (ח"ג פ"ו ס"ז) ועוד, ומה שאמרו (חולין ס:), שאור הנר אינו מועיל ביום, היינו משום דעכ"פ הנר מאיר בחורים וסדקים, אבל במקומות הגלויים אור החשמל יפה ממנו, דלא גרע ממי שלא בדק בליילה שבדוק ביתו ביום לאור הנר, ואפי' שיש בבית הרבה אור, וכן המנהג, [11] השול"ע (סי' תלג ס"ב) פסק שיש לבדוק דוקא לאור נר שעוה, ודעת גדולי הפוסקים [שו"ת יחוד (ח"א ס"ד) ובהז"ע (פסח, עמ' לח), אול"צ (ח"ג פ"ו ס"ח), ובסי' הל' פסח (איידער, פ"ז הע' פא) כ"כ בשם הגר"א גוטלר והגר"מ פיינשטיין זצ"ל, ועוד] דבידיעבד במקום שאין לו נר שעוה, או שאינו יכול לבדוק עם נר זה, יכול לבדוק אם פנס חשמלי וכדו' הנכנס לחורים וסדקים, ואף יכול לברך על בדיקה זו, אמנם י"א [אול"צ (שם)] שאין לו לברך על בדיקה זו. ועי' עדיף שיבדוק קצת עם הנר ואח"כ יחליף לפנס [12] דכיון שאוכלו הרי הוא מחשיבו (שו"ע סי' תמב ס"ט) [13] אול"צ (ח"ג פ"ו ס"ו) ועוד, ואף אין לומר בהם סיבה כשתיה לענין זה [14] שו"ת יחוד (ח"ב ס"ס) ובהז"ע (פסח, עמ' קכ), אול"צ (ח"ג פ"ו ס"ב) ועוד אחרונים רבים. אך יש להוזהר במיני ויטמינים, ותרופות הראויות לאכילה דאין להקל בזה אלא לחולה שבי"ס, ואמנם חולה שאי"ס יוכל לקחתם ע"י שיכרוך גייר סביבם ויבלעם, או ע"י שיערב בהם דבר מר שלא יהיו רואים יותר לאכילה. [15] טור (סי' תפז) בשם ס' המנהיג (פסח, סי' נב) בשם רבינו ניסים, וכ"כ ראשונים רבים ובכללם הריטב"א (ר"ה יא:), בשם תוס', המאירי (פסחים קט:), כל בו (ס"ג) ועוד וכ"פ השול"ע (סי' תפז ס"א), ואחרונים רבים ובכללם הכנה"ג (פסח מעובין סי' קלט), הלבוש, מג"א (סי' תפז), ההיד"א (שו"ת סי' תרמב) בשם הרמ"ע מפאנו, המשנ"ב (סי' תפז סק"ט) ועוד [16] מוהר"ש שרעבי זע"א (נהר שלום דף נה ע"ב) דכל החילוק שבי רבינו ניסים אינו אלא מסברא, מ"מ כ' האחרונים (ע"י מה שהאריך בזה בשו"ת יב"א (ח"ב סי' כה) ובהז"ע (פסח, עמ' רל-דלו) ובעוד אחרונים] דאין לזוז מפסק הראשונים והשו"ע, וכן יש לנהוג בכל מקום [17] שם [18] שו"ת יב"א שם, ועוד, ואף הסיק שמי שאומרו מכניס עצמו בחשש ברכה לבטלה, ואין לענות אחריו אמן.

Highlight on SHC Services

CORPORATE HAMETZ: WHAT BUSINESS OWNERS NEED TO KNOW

By Dayan Shmuel Hoenigwachs

There are numerous Pessah issues associated with businesses, some of which people may not even be aware of. To name just a few, one who sells food items through Amazon or on consignment, or owns a facility that serves Hametz, would be well advised to research the Halachic ramifications of these types of businesses.

Selling Hametz on Amazon

Buying and selling everything from shoes to cereals to electronics through Amazon has become a part of Western life. Though, as the world's biggest marketplace, Amazon has much to offer, selling Hametz items through Amazon even before Pessah is not without its complications.

When food items are ordered and scheduled for shipment to a non-Jewish buyer, they may still not be considered the property of the buyer according to Halacha. Yet, since the Jewish owner is obligated to sell this item, and it has already been set aside by Amazon for shipment, he has no control over the item and cannot recall it. This would render the item to be "Eno BiRshuto" – not in the possession of the seller – and would thus prevent the Jewish owner from being able to include the item in his general Mechirat Hametz.

Nevertheless, many Poskim are of the opinion that when an item is Eno BiRshuto, the owner does not even violate the prohibition of Bal Yera'eh – possessing Hametz on Pessah. This is the position of Rav Moshe Feinstein [1]. The Hazon Ish [2] on the other hand, argues and says that the owner would indeed be in violation of Bal Yera'eh.

In our situation, we can also rely on the fact that the Hametz may possibly already belong to the non-Jew, because the Jew has no ability to recall the Hametz [3], thus adding another reason to be lenient in this case.

There may be another issue, however, even according to those Poskim who permit keeping Hametz that is Eno BiRshuto, and that is the seller's Aharayut – guarantee – to the buyer. Although generally the Halacha is that accepting Aharayut for the Hametz of a non-Jew which is on the non-Jew's property does not pose a problem of Bal Year'e, this may not apply to Hametz that had once been on the Jew's property [4]. It is therefore questionable how to view this situation and it will depend upon the exact circumstances.

The seller is now faced with a problem. Since the non-Jew may return the item during or after Pessah, thus retroactively nullifying the sale, the Jew has owned the Hametz during Pessah in violation of Bal Yera'e! Additionally, as we explained earlier, the sale that was performed through one's Rav may have no effect on the Hametz that was listed for sale, since that Hametz, too, is considered to Eno BiRshuto [5]. Since this is a matter of dispute among the Poskim, a competent Rav should be consulted in each particular situation.

Hametz Sold on Consignment

One who sells a Hametz item on consignment—through Amazon or any other venue—is unable to recall the Hametz, which would make us inclined to consider it to be Eno BiRshuto, barring it from inclusion in the general Mechirat Hametz. Even so, the Halacha in this case is that the Hametz is considered to be BiRshuto – in his possession – and may be sold via a standard Mechirat Hametz pro-

The Radiant Sun: Ribbi Shalom Messas זצ"ל

A BIT OF HISTORY / דברי הימים

Golden Roots

One of the great luminaries of Moroccan Jewry in recent times was the revered Rav of Yerushalyim, Ribbi Shalom Messas זצ"ל. Ribbi Shalom was born in 1909 to his father Ribbi Mimoun and mother Rahel in Meknes, a city steeped in scholarship and *Yir'at Shamayim*, that has produced outstanding Hachamim for many generations. Ribbi Mimoun was the author of *Otzrot Shamayim* and son of the first Ribbi Shalom Messas, author of *Divre Shalom*, scion of the Messas and Berdugo dynasties of scholars with roots in Spain and Portugal.

The young Shalom showed great promise at a very early age, as he studied diligently under his teacher Ribbi Yitzhak Assabag זצ"ל.

Soon after tending to the publishing of the writings of his great-grandfather (Ribbi Refael Berdugo זצ"ל, nicknamed "*HaMal'ach*") on the Talmud, titled *Sharvit HaZahav*, Ribbi Shalom went on to author his own *Hiddushim* in his first *Sefer Mizrah Shemesh*, written at the tender age of 17 and published when he was 25 years old. In his introduction to this work he testifies: "throughout my youth, I have not dealt with or even looked at money whatsoever, as I was so engrossed with the love of the holy *Torah*".

The Rising Sun

Ribbi Shalom married his wife Jamila, daughter of Hacham Moshe Alchareiyeif זצ"ל. After being entrusted with leading the *Talmud Torah* of Meknes, which boasted around 2000 students, and heading *Yeshivat Keter Torah* which he established, Ribbi Shalom was called to serve as a *Dayan* in Casablanca. He was eventually appointed to be the Chief Rabbi of Casablanca and subsequently the Chief Rabbi of all Morocco.

As Chief Rabbi of Morocco, Ribbi Shalom enjoyed a very close relationship with the King of Morocco, Hassan the Second, who vested in him the authority to judge according to *Halacha* and fortify the standards of *Kashrut* in the country. Twice a year, Ribbi Shalom would be summoned to the king's palace to bestow upon him the *Hacham's* blessings.

From Meknes to Yerushalayim

In 1978, then-Israeli Chief Rabbi, Hacham Ovadia Yosef זצ"ל asked Ribbi Shalom to come to the holy city of Yerushalyim and serve as its Sephardic Chief Rabbi – a position which he held for 26 years, until his passing. When he departed for *Eretz Yisrael*, Rabbi Messas was escorted to the airport by Morocco's King Hassan himself, who requested that the Rabbi bless him one last time before his departure.

During his tenure as Rav of *Yerushalayim*, Ribbi Shalom wrote many *Teshuvot* to the great *Poskim* of our generation such as Hacham Ovadia Yosef זצ"ל, Rav Yosef Shalom Elyashiv זצ"ל, the *Tzitz Eliezer* and more. Although he had many *Halachic* disputes with Hacham Ovadia, they admired each other greatly as is evident from the countless times which they quote each other in their many *Halachic* works. It is told that Hacham Ovadia would not permit an *Aguna* before first consulting with Ribbi Shalom.

A Beacon of Halacha

Ribbi Shalom was an extremely prolific author and *Posek*. He was very careful to preserve the *Sephardic* customs, and would often invest long days and nights in order to be able to establish a *Minhag* in accordance with *Halacha*.

He would also not hold back from answering any of his critics, and often



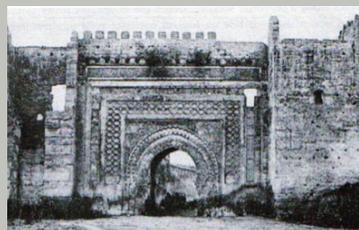
write back and forth five or six times to those who questioned his *Pesakim*, even if they were younger *Talmide Hachamim*. Hacham David Yosef שליט"א, son of Hacham Ovadia, related that he once wanted to argue a matter of *Halacha* with Ribbi Shalom and received a warning from his father: "When you argue with Rav Messas, make sure to review your claims ten times!"

The many *Sefarim* Ribbi Shalom wrote in *Halacha*, *Darush* and other areas of Torah span his lifetime, from his early youth until a year before his passing. They include: *Mizrah Shemesh*, *Tevu'ot Shamesh*, *Shemesh U'Magen* and many more. He also invested tremendous efforts in publishing the manuscripts of the scholars of Morocco of the previous generations.

The Sun Sets

Rabbi Shalom Messas, passed away on *Shabbat HaGadol* in the year 5763 (2003), at the age of 94. Tens of thousands of people flocked from all over *Eretz Yisrael* and abroad to attend his *Levaya*, and he was buried in *Har HaMenuhot* in *Yerushalayim*. His *Sefarim* still serve as an enlightening resource to many *Talmide Hachamim* across the globe, and many communities have held on to precious and ancient *Minhagim* in accordance with his *Pesakim*.

The Mallah (Jewish Quarter) of Meknes



Teshuvot Shemesh U'Magen



cedure. This is because a consignment is similar to an *Iska* (a *Halachic* term for an investment, with very specific characteristics) which both the *Ketzot HaHoshen*[6] and *Netivot HaMishpat* [7] consider to be *BiRshuto*.

Operating a Business that Sells or Relies on Hametz

If, in any aspect of its functioning, a business that relies on *Hametz* (e.g. a nursing home facility), we would run into an issue of “mistaker *b’issur hana’ah*” – deriving benefit from an item in which this is forbidden. Not only is it forbidden to eat *Hametz* on *Pessah*, but it is also forbidden to derive benefit from it.

The best solution available is to sell the entire business to a non-Jew (as opposed to just selling the *Hametz* within the business, which is the customary procedure), using a contract that is legally binding. Since the contract is recognized by *Dina D’Malchuta* – the law of the land – it is therefore considered a valid *Kinyan Situmatta* (transaction through a universally agreed-upon act of acquisition). One can sell items that are considered to be *Eno BiRshuto* using *Kinyan Situmatta*.

This would also allow the owner to continue operating the business during *Pessah* (provided that he has a valid *Shabbat* arrangement in place), as he is not deriving any benefit from the *Hametz*. The profits that he receives would be attributed to the interest from the sale of the business and would therefore not be considered to be derivation of benefit from the *Hametz*.

Before *Pessah*, we would like to wish our fellow Jews a *Hag Kasher V’Sameah*. If we do our best to ensure that our *Pessah* is *kosher* according to *Halacha* – even in regard to our businesses – we can rest assured that it will be a happy one, as well.

Sources

[1] אגרות משה או"ח ח"א סי' קמו [2] או"ח סי' קיה סק"ד [3] ע"ש באג"מ דמייירי בששלה ישראל לישאל במתנה, באופן שודאי חייב המקבל להחזירו אם לא חזר בו הנותן קודם שמשך המקבל. משא"כ בניד"ד, דכיון דע"פ דינא דמלכותא אין המוכר יכול לחזור, פקע בעלותו. [4] ע"ש באג"מ שם. אלא דיש להסתפק אם היה כותב כן בניד"ד, דשאני התם דמייירי שבעלותו הישראל מעולם לא פקע, והאחריות דמדובר שם מייירי בדין הואיל ויכול לישאל עליו, דזהו המשך מבעלותו הקדומה. וא"כ י"ל דדוקא התם לא מיקרי מקבל אחריות על חמצנו של עכו"ם בבית עכו"ם, כיון דהאחריות הוא המשך מבעלותו הקדומה של הישראל. משא"כ בניד"ד דמוכר החמץ לגוי ואח"כ מקבל עליו אחריות בעלמא, י"ל דהוי קבלת אחריות שמתחיל ברשותו של גוי. ע"כ לא החלטתי לאיסורא, ודו"ק. [5] ונחלקו בזה הקצה"ח סי' שגד והחת"ס שו"ת חו"מ סי' קסט. ויסוד המוח' תלוי לכאן' בהא דס"ל להקצות דכיון דאין הלוקח יודע דבטל המוקח גרע מכל נפקד דעלמא דנחשב ברשותו דהמפקיד, דשאני נפקד דהיה מחזירו ע"י בקשת המפקיד, משא"כ כאן דתלוי ברצון הלוקח ובידיעת הלוקח. ויש להביא ראיה לדברי החת"ס מסוגיא דב"ב דף קפ"ה בסוגיא דאחרין, דמבואר שם בר"ף דאע"ג דיכול הראשון למכרו ולהפקיעו מידי האחרין, מ"מ נחשב מוחזק ויורש הבעל של האחרין. ומבואר ברשב"ם שם קכ"ד ע"א דדין ראוי ומוחזק תלוי בכח המוריש למכור ודו"ק [6] סי' סו [7] שם

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A Labor of Love

A Final Word / סוף דבר

The question of the *Rasha* in the *Haggada* is packed with cynicism: "מה העבודה הזאת לכם?" – "What is this work unto you?" The *Ritva*, *Shibbole HaLeKet* and others understand that the *Rasha* is mocking the *Mitzvot* of *Pessah* by distancing himself from what he refers to as “work”. Our answer is equally hard-hitting, accusing the *Rasha* of heresy and declaring that had he been in *Mitzrayim* he would not have been saved.

The commentaries are baffled as to why the *Haggada* chose to give a different answer than that of the *Torah*. Faced with this question, the *Torah* tells us: "זבח פסח הוא לה', אשר פסח על", "and you shall say, this is a *Korban Pessah* to *Hashem*, who skipped over the homes of *Bene Yisrael* and delivered our families". We must also understand why the *Torah* relates – following this answer – that the nation bowed in gratitude before *Hashem*.

Perhaps, the explanation lies in what leads the *Rasha* to feel that *Pessah* is a burden. The *Hovot HaLevavot* bases his work on the premise that one must serve *HaKadosh Baruch Hu* out of a deep sense of gratitude for the magnificent world He has created for us and the life He has given us. This is especially true with regards to *Am Yisrael* who have been the recipients of *Hashem's* kindness from the days of our forefathers, followed by *Yetzi'at Mitzrayim*, the *Midbar* and the myriad of miracles which ensure our existence each and every day. A nation that truly appreciates the good that *Hashem* has bestowed upon them, feels privileged to be able to serve Him and sees all of the *Mitzvot* as an opportunity to reciprocate *Hashem's* love for His people. The *Rasha* who does not feel this way, comes to view *Pessah* as a drain and excludes himself from *Am Yisrael's* collective conscience. Such ingratitude would have excluded him from the exodus, and the response the *Torah* gives to his question is the reassertion – to ourselves – of our deep appreciation of *Hashem's* goodness, followed by the nation's bow of gratitude before G-d. As we approach *Pessah*, let us remember what great privilege it is to be able to serve *Hashem* and perform each *Mitzva* out of gratitude and love.

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