



”את כל הדבר אשר אנכי מצוה אתכם היום

# תשמרו לעשות

לא תסף עליו ולא תגרע ממנו”

A HALACHA LEMA’ASE PUBLICATION

ע”פ פסקי מו”ר הרב אליהו בן-חיים שליט”א

ניסן תשע”ח | PESACH 5778

Graciously sponsored

לרפואה שלמה של רפאל בן מיכל

## IN THIS ISSUE:

CHARGING INTEREST IN HALACHA: WHAT IS A *HETER ISKA* AND HOW IS IT USED?

By Rabbi Shmuel Banilivy

SPILLING THE BEANS: CAN ONE HAVE *KITNIYOT* ON PESACH?

By Rabbi Mosheh Aziz

THE YEAR-ROUND *BERACHA* ON MATZA

By Dubbin Hanon

BUYING KOSHER FISH FROM A NON-KOSHER SUPERMARKET

By Eliyahu Ebrani

HOW LARGE IS A *KEZAYIT*?

By Avraham Ben-Haim

## CHARGING INTEREST IN HALACHA: WHAT IS A *HETER ISKA* AND HOW IS IT USED?

By Rabbi Shmuel Baniliv

### Introduction

The prohibition against charging interest on a loan to another Jew is listed many times in the Torah<sup>1</sup> and is discussed at length in the Gemara.<sup>2</sup> This prohibition applies not only to the lender but also to the borrower, witnesses, guarantors, attorneys and all others involved with the lending process. Instead, the Torah puts a strong focus on the importance of assisting fellow Jews financially without charging interest.<sup>3</sup> It is perfectly permissible, however, for a person to invest money in a Jewish business, and to share proportionally in whatever profits or losses there may be. Not only is that okay, it is recommended to do business with your fellow Jew.

In order to keep the continuous fluid economic flow and to allow the defined return typical of a loan in a halachically acceptable manner, our Sages over the last five hundred years developed a loan agreement called the *heter iska*. The *heter iska* does not suddenly permit interest-bearing loans, but rather it is a legal document redefining the nature of the loan into an investment. It is important for the parties involved to have an understanding of how *heter iska* operates before entering into its binding contract.

### The *Iska*

One of the first examples of something similar to our modern day *heter iska* is based on a partnership arrangement called an *iska*, discussed in the Gemara.<sup>4</sup>

The case can be illustrated with the following example:

Reuven is in New York. He knows that in Miami his merchandise can be sold at a much higher margin, so he gives his merchandise to a salesman Shimon to go down to Miami to sell his item for him. To encourage Shimon to work efficiently, Reuven motivates Shimon by agreeing to split the profits from the sale with him. But there is a catch: they are to share in any losses that occur as well- in particular, losses pertaining to abandonment and damage to the merchandise. In clearer partnership terms, one person provides capital for a business dealing, and the other actively runs the business. The Gemara structures this arrangement that half the money would be defined as an interest-free loan to the active partner, which would have to be repaid in the case of total loss; the other half remained capital of the silent partner, which allowed him to receive his proportional profit. Thus, at the end, the money would be returned, and any P&L (profit and loss) would be shared. Another reason for this structure is that due to the Halachic rules governing potential "loss due to abandonment" and losses from catastrophic events, both the giver of the money (investor) and the receiver (active partner) would be protected in a similar fashion without excess liability. Structuring the agreement this way both protected and encouraged the participants to

willingly enter into this type of agreement without excess worries.

There is a fundamental factor at play: In order for the contract to be valid, both the investor (Reuven) and the active partner (Shimon) have to be sharing in both profits and losses equally.

### An *Iska*-type Loan

A *heter iska* formulates a loan agreement to match the criteria to those of the business partnership described above.

Take the following situation, for example:

Lender- Reuven  
Borrower- Shimon  
Loan Details- Reuven lends to Shimon \$500,000.00 @ 10% for a one-year loan. Shimon is therefore obligated to pay Reuven the total sum of \$550,000.00 in return, when the year elapses. \$500,000 is principal and \$50,000 is interest.

In the partnership described earlier, both sides would be sharing in profits and losses equally. However, since we are trying to structure this partnership into a loan with a predetermined principal and interest, we must adjust the agreement to fit our conditions.

Specifically, the following three criteria must be met:

- (1) earn an interest-like return on the investment;
- (2) be assured of repayment of principal; and
- (3) do so in a manner that is halachically permitted.

Like the *iska* partnership examples explained above, half the money is redefined as an investment, still owned by Reuven. Therefore, Reuven is an investor, Shimon, on the other hand, is the recipient of the investment capital. The extra payments ("interest") are profits of the investment – and are therefore not technically considered interest.

## Conditions of the loan

Thus, we avoid an interest-bearing loan by defining it instead as an investment with profit. However, if Reuven is really a partner who is simply receiving his share in the profits, he should be liable to partake in the losses as well. That liability is avoided via a concept called protection of principal.

While it is not permissible to guarantee the investment principal 100%, The Terumat Hadeshen<sup>5</sup> (1390-1460) allows for an added condition in the loan agreement which would make it difficult to claim a loss and potentially avoid repaying the principal. We create a situation that the borrower will not be believed to claim a loss on the

basis of his own merit or record keeping, but will only be believed if he presents full documentation and halachically valid witnesses confirming the loss. Technically this is possible, but realistically this is highly unlikely. Therefore, it is safe to assume that the lender's money will be safe.

On the other hand, if the business is profitable, the lender is entitled to share in the profits of their "invested" money. However, these profits may amount to less or more than the 10% or whatever predetermined amount they expected. To solve this, the concept of expected earnings is introduced:

Based on the Terumat Hadeshen, the Kuntres haSM"A (1555-1614) allows the parties to predefine an expected earning on the "investment" money. The active manager will be believed that profits were less only if he brings valid proof or takes a severe oath in a Jewish court of law. As an alternative, to avoid having to go through that process, he can agree to pay the expected earning without taking an oath or providing documentation. On the other hand, if he pays this amount, the lender waives any further

claims against him. At the end of the day, it will be difficult for the borrower to claim a profit of less than 10%, yet he can suffice with giving only 10% profit even if business earns much more than that.

However, an aspect of interest remains in this arrangement. As a profit-sharing partner in the business venture, shouldn't the lender also share in the workload? To work for them free of charge is itself considered interest on the half that is a loan! To avoid this small potential for an interest-like transaction, the lender must compensate the borrower in some way for doing work in this business venture on their behalf. They can do this by giving the borrower at the beginning a salary (\$1 USD is commonly used) for his efforts. By attaching a *heter iska* to our documents in a loan agreement we have created an investment partnership, which protects the principle, allows payment of agreed upon expected earnings, and provides a salary for services of the active partner so that he does not work for free.

לעילוי נשמת האשה הכשרה שגדלה בניה ובנותיה בדרכי התורה

**ורדה בת בן-ציון ע"ה**

## SUMMARY:

- ❖ The concept of charging Interest in Jewish law is a very complicated and well-spoken about topic. That being said, over the past few hundred years a business structure has been instituted, that in the event the charging of interest exists in a business transaction between two Jews, this contract is the appropriate mode to be used. What it does is "re-define" our interest-bearing loan into a partnership. Through this re-definition we transform the original lender and borrower structure into that of two partners in the ordinary course of business. With no increased liability, and barely any extra paperwork, there is no reason why someone already entering a transaction of this sort should not be using a *heter iska*.

## ENDNOTES

1. שמות כב כד, ויקרא כה לו, דברים כג כ-כא
2. ובעיקר בפרק חמישי של מסכת בבא מציעא
3. שמות כב כד
4. בבא מציעא דף קד ע"ב
5. תרומת הדשן שב

The following page contains a Hebrew-English *heter iska* document that may be used in conjunction with a loan agreement with interest to make it Halachically permissible.

Special thanks to Attorney Nathaniel Livingson Esq. for reviewing and translating the agreement from its original Hebrew

## נוסח היתר עיסקא<sup>1</sup>

אני \_\_\_\_\_ החתום מטה, מודה בזאת כי קבלתי סך \_\_\_\_\_ מאת \_\_\_\_\_ בתורת עיסקא, והתחייבתי להתעסק בסך הנ"ל שיראה בעיני שהוא קרוב יותר להרויח בו. אולם אם אצטרך להשתמש לפעמים בכסף הנ"ל לצרכי השונים לא אחשב גזלן. הריוח או ההפסד שיהיה בכסף הנ"ל יחולק שווה בשווה ביני ובין בעל הכסף הנ"ל, ובכל אופן שיהיה אנכה מחלקן של בעל הכסף הנ"ל, סכום השווה לדולר אחד אמריקאי עבור טירחתי בחלקו בתקופת השותפות.

הוסכם בינינו שלא אהיה נאמן לומר שהפסדתי בסך שקיבלתי בתורת עיסקא אלא אם יעידו שני עדים כשרים ונאמנים שאין להם קירבה משפחתית אלי ואינם קשורים בשום צד לעסקים שלי, שהפסדתי בכסף העיסקא למרות שהתעסקתי בו בדרך הטובה ביותר. גם הוסכם בינינו שלא אהיה נאמן על סכום הריוח אלא בשבועה חמורה.

אולם בפירוש הוסכם בינינו שאם ארצה ליתן לו עבור חלקו בריוח לאחר ניכוי שכר טירחתי, סך \_\_\_\_\_ בכל חודש. הריני פטור מכל שבועה, וגם אם ארויח יותר יהיה המותר שייד לי בלבד.

הריני מתחייב בזה להחזיר את הסך הנ"ל שקבלתי בתורת עיסקא לא יאוחר מיום \_\_\_\_\_ עם זאת הוסכם בינינו שכל זמן שלא אחזיר את הסך הנ"ל שקיבלתי בתורת עיסקא, ישאר הסך הנ"ל בידי בתורת עיסקא על פי התנאים הנ"ל.

כל האמור לעיל קבלתי על עצמי בקנין סודר כתיקון חז"ל. והכל שריר ובריר וקיים.

ובאתי על החתום \_\_\_\_\_

<sup>1</sup> מספר מלוה ה' של הרב משה לוי ז"ל

**Heter Iska- An Agreement Concerning Interest on Loans**

Jewish religious law strictly prohibits the paying or receiving of interest on loans made between Jews. However, when monies are advanced in the course of a business transaction an agreement may be entered into, whereby the provider and receiver of the funds are equal partners. This partnership is based upon the stipulation that, upon request, every loss must be proved by two trustworthy witnesses, and all profits verified by oath. All consequent profits or losses are then equally shared. However, in order to avoid these very strict requirements, the provider of the funds, under this contract, agrees to waive his share of the profits in lieu of receiving a fixed percentage of the money advanced. This percentage is then considered profit, rather than interest on the loan. This agreement becomes effective when the receiver of the funds executes a form as set forth below.

**THE AGREEMENT**

I \_\_\_\_\_ the undersigned, hereby acknowledge that I have received the sum of \$ \_\_\_\_\_ from \_\_\_\_\_ as an investment. I obligate myself to invest this sum in the manner which in my discretion is most profitable. However, use of these funds for other purposes as I see fit will not incriminate me in any fashion. The profits and losses realized through the use of these funds are to be distributed equally between the undersigned and the investor. In any event, I shall reduce from the investor's proceeds \$1 USD in consideration of the effort which I place into the investment during the term of the investment.

It is agreed between the parties that I do not retain credibility to report losses without the presentation of two trustworthy witnesses who are valid according to all the details of Jewish law and are of no familial relation to me and with whom I do not have any financial ties and who can testify to our losses despite my investing it in the manner that is most profitable. It is also agreed between us that I do not retain credibility to report profits except under oath.

It was explicitly agreed between the parties that I may, in my discretion, pay the investor the amount of \$ \_\_\_\_\_ per month which shall serve as the investors' share of the profits less my share. In such event, I will be exempt from any oath and if the profits exceed the amount paid to the investor, the remainder belongs solely to me.

I obligate myself to return the initial principle sum which I have received as an investment no later than \_\_\_\_\_. It is agreed between us that so long as I have not yet returned the initial sum, it will remain in my possession as an investment subject to all the aforementioned terms and conditions.

I have accepted all of the above upon myself through an act of acquisition as established by The Rabbis. The above terms are hereby approved, unambiguous, and in full force.

Signed on \_\_\_\_\_

X \_\_\_\_\_

## SPILLING THE BEANS: CAN ONE HAVE *KITNIYOT* ON PESACH?

By Rabbi Mosheh Aziz

### Introduction

Pesach is among the most important holidays on the Jewish calendar. Maimonides lists eight different commandments regarding *chametz*, *matza*, and telling over the story of Yetziat Mitzrayim.<sup>1</sup> The Torah prohibits us on Pesach from owning<sup>2</sup> or eating<sup>3</sup> *chametz* – any food made from five different grains that has come into contact with water and fermented. The five grains which can be used for making *matza* for the night of Pesach are the only ones which can become *chametz*.<sup>4</sup> These grains are identified as wheat, barley, and three other grains which are types of wheat and barley.<sup>4</sup>

### The Opinion of Rabbi Yochanan ben Nuri

The Gemara<sup>4</sup> quotes the minority opinion of Rabbi Yochanan ben Nuri, who maintained that rice is also considered a grain with regards to Pesach. Accordingly, Rabbi Yochanan ben Nuri ruled that rice which has come into contact with water and fermented is considered *chametz* on Pesach (and consequently, that rice can also be used to make *matza* for the first night of Pesach).

Later on, the Gemara<sup>5</sup> says that Rav Huna taught that one should bring rice and spinach to serve on the first night of Pesach as part of the Seder. The Gemara then says that the eminent sage, Rava, would particularly go out of his way to search for rice and spinach to serve them on Pesach,

in order to fulfill the words of Rav Huna. As the Gemara further elaborates, this was to demonstrate that halacha does not follow the minority opinion of Rabbi Yochanan Ben Nuri. Rice is not a grain which can become *chametz* on Pesach and is therefore 100% completely permissible to consume on Pesach according to Jewish law. (On the flip side, if one were to make *matza* out of rice flour, they would not fulfill the mitzva of eating *matza* on the night of Pesach.)

### The Custom to Refrain from *Kitniyot*

The Rama<sup>6</sup> writes that the custom among Ashkenazim is to refrain from consuming *kitniyot* on Pesach. *Kitniyot* are defined as certain species of grains, legumes and seeds. While traditions of what foods are considered *kitniyot* vary from community to community, they usually include rice, beans, lentils, corn, peas, chickpeas, sesame, mustard, etc. These foods are not *chametz* and never fall under the Torah's prohibition of *chametz*; only the five grains listed in the Gemara can become *chametz*. Therefore, the Rama adds that unlike *chametz*, *kitniyot* may be kept in the home over Pesach and do not have to be discarded before Pesach the same way actual *chametz* must be discarded. The custom to refrain from *kitniyot* only includes cooking and eating *kitniyot*, but one may keep them at home and consume them after Pesach. Over the centuries, some Sephardic communities have

accepted the custom to refrain from eating some or all of the *kitniyot*. In the Persian Jewish community, different families have different customs regarding which *kitniyot* they will consume on Pesach and which *kitniyot* they will not consume.

### Reasons for the Custom

Rabbi Meir HaKohen (1260-1298), author of the Hagahot Maimoniyot, writes in the name of the Semak<sup>7</sup> that the reason for the custom of not eating *kitniyot* is not because we are afraid that it will come into contact with water and ferment, because every child knows that only the five grains identified by the Talmud can become *chametz*. Rather it is because these legumes are cooked and eaten in a similar manner that the five grains are cooked and eaten, and they can be ground into flour and baked into bread just like the five grains. Therefore, an unlearned individual might confuse the two and come to accidentally eat *chametz* on Pesach. The Semak says that even though it is explicit from the Talmud that *kitniyot* are permitted for Pesach, that was only for their generation where people were educated and would easily differentiate between *chametz* and *kitniyot*. However, in the later generations, many people are unlearned, and therefore they should be stringent not to have any form of legumes on Pesach in addition to not having *chametz*.

## Opposition to the Custom

Rabbi Yaakov Ben Asher (1269-1343), author of a work called the Tur, writes<sup>8</sup> that some rabbis forbid the consumption of rice and other *kitniyot* because wheat is often mixed with them. However, he says that this practice is an unwarranted stringency and is not the accepted custom. Rav Yosef Karo<sup>9</sup> quotes Rabbenu Yerucham who also writes that the custom which some have of not consuming rice and *kitniyot* on Pesach is a senseless custom. Rav Yosef Karo adds that this custom (in his time) was only observed by Ashkenazim, and it is entirely permissible to own, cook, and eat *Kitniyot* on Pesach.

Rabbi Yaakov Emden (1697-1776) testifies<sup>10</sup> that his father, Rabbi Tzevi Hirsch Ashkenazi, better known as Hacham Tzevi, was tremendously pained by the custom of Ashkenazim to refrain from eating rice and other *kitniyot*, and would say that if he could gather the strength, he would certainly abolish this awful custom since it is a stringency which can lead to a leniency. The Hacham Tzevi noted that since very little kosher for Passover food was available to those who did not eat *kitniyot*, many people would need to bake more matzot during the Pesach holiday, and very often they would not be careful with all of the halachic details in proper baking of *matza*. They would bake them improperly, and would come to eat *chametz* on Pesach. Furthermore, this custom restricts a person from *Simchat Yom Tov*, the mitzva of enjoying the holiday. Rabbi Emden finishes by saying, "Praiseworthy is the righteous man who smashes these stringencies

against the rock." (Paraphrasing Tehillim 137:9).

## A Potential Talmudic Source

Rabbi Hezkia de Silva, better known as the Peri Chadash<sup>11</sup> and Rabbi Eliyahu of Vilna, better known as the Gra,<sup>12</sup> both quote an interesting Talmudic proof for the custom of refraining from *kitniyot*. The Gemara<sup>13</sup> notes that Rav Pappi permitted adding *chamise* (a type of flour) to a cooked dish to thicken its texture, because *chamise* would not leaven in the pot so there was no concern for *chametz*. The Gemara then notes two versions of how the prominent Sage, Rava, reacted to Rav Pappi's ruling. According to the first version recorded in the Gemara, Rava disapproved of Rav Pappi's ruling, and responded, "Is it possible that one would permit such a thing in a place with slaves (i.e. unlearned individuals)?" According to the second version, Rava not only approved Rav Pappi's ruling, he actually would use *chamise* himself to thicken a cooked dish. Rashi,<sup>14</sup> and the Ri"ף<sup>15</sup> and the Rosh<sup>16</sup> all assert that *chamise* means oven-dried grain. Since the grain was toasted in the oven, it would no longer leaven, and that is why Rav Pappi permitted using it in a cooked dish. However, Rava (in the first version) disapproved of the practice because one may come to confuse it for regular flour and come to have *chametz* on Pesach. However, Tosafot<sup>17</sup> and the Sefer HaAroch<sup>18</sup> assert that *chamise* refers to ground lentil flour, not oven-dried grain. Rav Pappi permitted using lentil flour in a cooked dish because it is not *chametz*, however, Rava (in the

first version) forbade it because one may come to confuse it for regular flour, and come to have *chametz* on Pesach. The Peri Chadash and Gra both note that lentils are one of the *kitniyot*. Therefore, if we follow the Gemara's first version of Rava together with Tosafot's explanation, we would find that Rava did forbid eating certain *kitniyot*, even though he himself ate rice on Pesach<sup>5</sup>.

However, Rabbi Ovadia Yosef<sup>19</sup> notes that Rabbi Yosef Karo<sup>20</sup> writes clearly that with regards to this *sugya* in Pesachim, the halacha does not follow the first version of Rava. The halacha follows the second version, which says that Rava endorsed adding *chamise* to a cooked dish. Therefore, even if we take the approach that *chamise* means lentils, both Rav Papi and Rava approved eating lentils on Pesach.

## Checking Rice for Pesach

Amongst those who eat rice on Pesach, one must make sure to check the rice carefully to ensure there are no grains of wheat or barley mixed into the bag. The accepted custom is to check the rice three times, at a time when children and other distractions are not present, so that one can focus properly on the task of checking.<sup>21</sup> More recently, with advances in commercial production, it is uncommon to find actual wheat or barley in the rice, and Rav Ben-Haim has ruled that it is enough to check the rice once.

## A Sephardic Woman Married to an Ashkenazi Man, or Vice Versa

The general custom is when a couple gets married, the wife will accept upon herself the customs



of her husband's community. Therefore, a Sephardic woman who marries an Ashkenazi man should not cook rice or other *kitniyot* in their home. However, if they are visiting her parents for Pesach, it is permitted for her to eat *kitniyot* in her parents' home.<sup>22</sup> If an Ashkenazi woman marries a Sephardic man and wishes to start eating *kitniyot* on Pesach, it is recommended for her to do *Hatarat Nedarim*, an annulment of vows, before she starts eating *kitniyot* on Pesach. If she chooses to continue her practice of not

eating *kitniyot* on Pesach, she may still cook rice or other *kitniyot* for her husband (in general, it is permitted for Ashkenazim to cook *kitniyot* for Sephardim even though they will not eat the *kitniyot* themselves. This is because *kitniyot* is not halachically forbidden like *chametz*, it is only a custom which one refrains from).<sup>23</sup>

### **Can One do *Hatarat Nedarim* to Annul his Custom?**

Amongst the Sephardim, Rav Ovadia Yosef rules that one who has the custom not to eat *Kitniyot*

on Pesach and wishes to discontinue his custom may do so through *Hatarat Nedarim*, since the Sephardim who accepted the custom only accepted it as a stringency. Amongst the Ashkenazim however, one may not be able discontinue this custom through *Hatarat Nedarim*, since it is a custom which has been accepted as a communal edict.<sup>24</sup>

## Summary:

- ❖ The Torah prohibits only five grains which are leavened to eat on Pesach.
- ❖ Many communities and families have the custom to refrain eating *kitniyot* on Pesach. The custom to refrain from *kitniyot* is originally an Ashkenazi custom, though some Sephardic communities have adopted the custom or some parts of it.
- ❖ Among those that do not refrain from *kitniyot*, the custom is to check rice three times carefully before using it on Pesach. Rav Ben Haim rules that nowadays, checking once is enough.
- ❖ A Sepharadi who has the custom of refraining from *kitniyot* on Pesach may discontinue his practice through Hatarat Nedarim.

## ENDNOTES

1. הלכות חמץ ומצה בכותרת
2. שמות יב: יט, יג: ז
3. שמות יב: יט
4. משנה פסחים לה. ובגמרא שם
5. פסחים קיד :
6. דרכי משה או"ח תנג, ובהג"ה בשו"ע או"ח סימן תנג סעיף א
7. מובא בבית יוסף או"ח סימן תנג
8. ארבעה טורים או"ח סימן תנג
9. בית יוסף או"ח תנג
10. ספר מור וקציעה תנג, מובא בשו"ת יחווה דעת ח"א סימן ט
11. פרי חדש או"ח תנג
12. ביאור הגר"א או"ח תנג
13. פסחים מ :
14. שם ד"ה בחסיסי
15. פסחים יב : בדפי הרי"ף
16. פסחים פרק ב הלכה כח
17. שם ד"ה רבא מחו ליה קידרא בחסיסי
18. מובא ברא"ש שם ובית יוסף או"ח סימן תסג
19. חזון עובדיה פסח דף פג בהערות
20. בית יוסף תסג
21. חזון עובדיה פסח דף פב
22. חזון עובדיה פסח דף פח
23. חזון עובדיה פסח דף פו-פז
24. חזון עובדיה פסח דף פד-פח, ובשו"ת יחווה דעת ח"א סימן ט

## THE YEAR-ROUND BERACHA ON MATZA

By Dubbin Hanon

### Introduction

It is well known that the *beracha* recited before eating any bread baked from one of the five grains is "Hamotzi Lechem Min Ha'aretz." However, sometimes the *beracha* on baked items made of the five grains changes to "Boreh Minei Mezonot." The Gemara<sup>1</sup> introduces something called *pat haba'a bikisnin*, upon which we recite Mezonot because it is usually eaten as a snack. If one eats the amount that one is normally kove'a seuda on them (3-4 *kabetza* within nine minutes), he would then recite Hamotzi, as on regular bread.<sup>2</sup>

### Defining *Pat haba'a bikisnin*

There are three opinions among the early commentaries as to how to define *pat haba'a bikisnin*. The first opinion is that held by Rabbenu Chananel,<sup>3</sup> the Tur,<sup>4</sup> and the Shiltei Gibborim.<sup>5</sup> They contend that the word "kisnin" in this context means pockets. As such, they explain *pat haba'a bikisnin* as being pockets made out of regular bread dough (flour and water) that are filled with various other things like nuts, sugar, or chocolate. The second opinion is one shared by Rashi,<sup>6</sup> Rambam,<sup>7</sup> and Meiri.<sup>8</sup> They claim that this refers to a food made out of a bread-like dough that has been kneaded with spices or flavorings in the dough itself. While regular bread is mainly flour and water, this "bread" has other ingredients that enhance the flavor. As such, it loses its status as being one hundred percent bread and becomes *pat haba'a*

*bikisnin*. The third opinion takes a very different approach. Rav Hai Haon<sup>9</sup> and the Aruch,<sup>10</sup> claim that *pat haba'a bikisnin* is a type of bread that is baked very thin and dry, akin to modern day crackers. Although they are made from the same ingredients as bread, due to their appearance and texture they are not eaten as bread during a meal, and thus the *beracha* is Mezonot. As for the final ruling, Shulchan Aruch<sup>11</sup> accepts all three definitions. Any of these three types of baked goods are considered *pat haba'a bikisnin* and require a *beracha* of Mezonot.

### *Matza as Pat haba'a bikisnin*

Indeed, the predominant Sephardic practice is to treat *matza* as *pat haba'a bikisnin*, and this is the ruling of Maran Hachida in his work *Machazik Beracha*<sup>12</sup> as well as Chacham Ovadia Yosef.<sup>13</sup> (This only applies to hard, brittle *matza*. If one is eating the softer "Yemenite" *matza*, the appropriate *beracha* would be Hamotzi.)

Others argued and wrote different reasons why *matza* should be considered different from the other crunchy breads, and require a Hamotzi on *matza*. This is the common practice among Ashkenazim. Rav Tzvi Pesach Frank<sup>14</sup> writes that although crackers are only Mezonot, real matzot would be Hamotzi because they are eaten as a meal. Rav Eliezer Waldenberg<sup>15</sup> offers a full defense of the Ashkenazic practice to recite Hamotzi on *matzah* (even if

eaten as a snack) year-round. Among his reasons is that since one becomes accustomed to treating *matza* as bread on Pesach, Ashkenazim regard it as bread year-round as well.

Nevertheless, the common practice among Sepharadim is to recite Mezonot on *matza* during the year.<sup>16</sup> This is because our poskim believe that making something into a meal is an objective standard, based on the amount you are eating (the volume of four *betzim* within nine minutes, which is less than two square machine-made *matzot*). It does not depend on the time and place, of whether it is a "meal food." (This is similar to the discussion about the *beracha* on "sweet challah," which matches the criteria for *pat haba'a bikisnin* according to the second opinion quoted above.) Chacham Ovadia does add, however, that it is praiseworthy to only eat *matza* during a bread meal so that the *matza* will be exempt with the Hamotzi and Birkat HaMazon recited on the bread; in this way one avoids all doubts. Alternatively, one can aim to eat two *matzot* or more, which is considered a meal, and make a *beracha* of Hamotzi. In fact, Rabbi Yaakov Sason, grandson of Chacham Ovadia reports<sup>17</sup> on his Halacha Yomit that apart from Pesach, Chacham Ovadia Yosef himself would never eat *matza* outside of a meal containing bread.

## **Pesach vs Year-Round**

The question arises, why is it that Sepharadim recite Hamotzi on *Matza* during Pesach, even if eaten in small amounts, while during the year they recite Mezonot?

The answer is that on Pesach, *matza* becomes our bread.

Normally *pat haba'a bikisnin* requires a Mezonot because it is not the normal bread. On Pesach, we cannot say that it is not usually eaten as bread for during Pesach this *Matzah* becomes the "bread". Chacham Ovadia<sup>18</sup> adds that after Pesach, before people buy their chametz, the *beracha* on

*matza* would still be Hamotzi because this is still their bread. Chacham Benzion Abba Shaul<sup>19</sup> writes that if the last day of Pesach falls out on Friday (as it does for Israelis this year), the *beracha* on *matza* for that Shabbat immediately following Pesach would still be Hamotzi.

## Summary:

- ❖ During the year, one should ideally strive to eat *matza* either as part of a meal with bread or to eat enough to be considered a meal (two machine-made *matzot* within nine minutes) and make a *beracha* of Hamotzi.
- ❖ If one is eating less than that amount and it is not part of a meal with bread, one should make the *beracha* of Mezonot.

## ENDNOTES

1. ברכות דף מב ע"א
2. שלחן ערוך או"ח סי' קסח סעי' ו
3. מובא בתלמידי רבנו יונה ברכות דף כט ע"א בדפי הרי"ף ד"ה שאין לך דבר שטעון ברכה לפניו ואין טעון ברכה לאחריו אלא פת הבאה בכסנין
4. או"ח סי' קסח
5. דף ל ע"א בדפי הרי"ף
6. דף מא ע"ב ד"ה פת
7. ה"ל ברכות פ"ג ה"ט
8. פסחים דף לו ע"א ד"ה וממה
9. מובא בערוך
10. ערך כסן
11. או"ח סי' קסו סעי' ז
12. סי' קנח ס"ק ה
13. יחיה דעת ח"ג סי' יב
14. הר צבי או"ח ח"א סי' צא
15. ציץ אליעזר חלק יא סי' יט
16. גם העיד הרב אליהו בן-חיים שליט"א שכך היה נוהג מורו ורבו הג' רב עזרא עטייה זצ"ל
17. הלכה יומית יט שבט תשע"א
18. חזון עובדיה ברכות עמוד סד
19. אור לציון ח"ג סי' ט סעי' ד

## BUYING KOSHER FISH FROM A NON-KOSHER SUPERMARKET

By Eliyahu Ebrani

### Introduction

Is one allowed to buy kosher fish fillet, such as salmon or tuna, from a supermarket which is not under Rabbinic supervision and sells non-kosher fish side-by-side? In this article we will explore the potential issues and concerns involved and conclude with Rav Ben-Haim's final decision on the question.

Note that we are not dealing with buying fish from a non-kosher restaurant. Eating fish at a non-kosher restaurant is forbidden for a number of reasons.<sup>1</sup> This article is focused exclusively on purchasing raw kosher fish, which has been cut into a fillet, from a supermarket that also carries non-kosher food items.

### Determining that the species of fish is kosher

For a fish to be kosher, it must have both fins and scales.<sup>2</sup> Some fish, like catfish and shark, do not have scales, and thus may not be eaten. Other marine animals, such as crab, shrimp, and lobster, do not have fins or scales, and are prohibited. Our Sages have a tradition that any fish with scales will also have fins, thus the Shulchan Aruch<sup>3</sup> rules that one who finds a piece of fish with scales on its skin may eat of it. Regarding our question, then, it emerges that one who would like to purchase fish from a non-kosher establishment must first be sure that the fish is from a kosher species, like salmon and tuna, and not from a non-kosher species such as catfish or shark. If one sees the fish with scales on the skin, it is

clearly a fish from a kosher species. If the fish's skin has already been removed, then one must be able to identify it (based on its flesh) as a kosher species with complete certainty. Some fish have very distinct patterns of flesh, such as salmon, while others can be difficult to identify.

### Kosher fish touching non-kosher fish

When purchasing a kosher fish from a non-kosher supermarket, there may be concern that since the kosher fish is placed adjacent to the non-kosher species, perhaps the kosher fish will absorb some taste from the non-kosher variety, making it forbidden to eat. With further analysis, however, it is evident that this is not relevant in a modern fish market or supermarket. We have a principle in Halacha that cold foods that touch each other do not absorb taste from one-another. This principle can be found in the laws of Pesach where the Shulchan Aruch<sup>4</sup> allows using a vessel that has been used year-round for Hametz, on Passover, as long as the vessel was always used while cold. In Hebrew, we call this principle "צונן בצונן אינו בולע ואינו פולט". Since fish are kept in a cold environment, this fear of a kosher fish absorbing taste from a non-kosher fish that may be next to it is not an issue.

### The knife

Another potential concern that is raised when one would like to purchase a fish fillet from a supermarket that does not have

any Rabbinic supervision is the concern that the fish was cut using a 'non-kosher' knife. If it was cut with a non-kosher knife, there is a concern that some of the taste of the non-kosher fish will be transferred to the kosher fish. However, this too is not relevant in this circumstance.

There is a Talmudic principle specific to knives called "דוחקא דסטכינא." This concept literally translates to "pressure of the knife", the idea being that a knife is under pressure while cutting, and will release flavor even if the knife has not been used for 24 hours. This principle would then prohibit one to eat fish cut by a knife that had previously cut a non-kosher one. But in reality, the Shulchan Aruch<sup>5</sup> rules that this concern only applies to onions, radishes and other foods with a sharp flavor. These foods have such a sharp flavor that even if they are cut when cold, they have the Halachic status of being hot, and will draw taste out of a knife even if the knife was not used for 24 hours. For items that do not have a sharp taste, this principle does not apply. It is noteworthy that the Tosafot<sup>6</sup> mention that in their times, Jews would even buy (properly-slaughtered) meat from non-kosher butchers, despite that the butcher would process the meat with his own knife. Tosafot justify this practice by explaining that since the food in question is not sharp, "דוחקא דסטכינא" only applies when the knife was used while it was hot.

## Grease

A further concern is that the knife will transfer actual grease that came from a non-kosher fish, but this too is not a concern we must suspect according to Halacha. The Shulchan Aruch<sup>7</sup> rules that one may purchase a drink called "לימוני" (lemonade) from a non-Jew. This was a drink made of lemons and Maran permits buying it even though the non-Jewish vendor is using his own knife which may have been used earlier to cut something forbidden, and may have absorbed grease from something non-kosher. However, since the drink was made with many lemons, the first few lemons may have absorbed some taste or grease from the knife, but after a few lemons were cut the knife is said to be clean of any previous taste. Then, once all the lemons are mixed together, whatever possible non-kosher taste or mixture would be nullified "בטל" by the vast majority of kosher lemons.<sup>8</sup> Since a normal supermarket prepares many fish at a time, we can compare our case to the case of "לימוני", and thus, even if the knife was previously used to cut a non-kosher food, only one or two fish out of the many fillets being processed would have absorbed grease from the knife, and so all the fish are permissible. We have another Halachic principle that we do not assume something is forbidden unless we have reason to suspect so - "אחזקי איסורא לא" - "מחזקיני". One who finds a salmon fillet in a supermarket need not be concerned that this fish was

perhaps the first one in a batch that was processed immediately after a non-kosher fish, and may have absorbed some taste, but instead may assume that this fish was from the majority of fish, which were not processed immediately after a non-kosher fish.

## Common practices within the fish market industry

We must note, also, that in most supermarkets fish and other types of seafood, like mussels, crab, and shrimp, are usually prepared using different tools. The large knives used to cut fish into fillets are normally unsuitable to cut small seafood, and thus are generally reserved exclusively for fish. That said, since the majority of fish available on the market are kosher varieties, given that they have fins and scales. We may also apply the well-known rule that in cases of uncertainty, Halacha follows the majority. Thus, chances are that the fish prepared prior to the fillet one would like to purchase was also kosher, and if such, the knife would be transferring taste from another kosher fish, which is permissible. Additionally, we should also point out that in many supermarkets the employees regularly wash the knife, for sanitary purposes, and especially between different types of fish. In places where the fillets are cut in front of the customer, one should try to request that the vendor rinse the knife before preparing their fish. This mitigates the concern that non-kosher grease would have been transferred to the kosher fish. One who would like to be even

more careful with the Halacha can bring their own knife to the store, although this is not absolutely necessary.

## At home

Given that there is a small chance that the knife which cut a fish fillet was previously used to cut a non-kosher fish, and since fish are rather greasy, and the knife may transfer some non-kosher grease to the kosher fish, one should rinse the fish upon arriving home. This way, even in the highly unlikely scenario that a non-kosher fish was processed immediately prior, the kosher fish would be permissible after being washed. The Shulchan Aruch<sup>9</sup> rules that if vegetables were cut with a meat knife, one who would like to eat the vegetables with dairy foods must scrape off the top layer of the vegetable, which came in contact with the meat knife. However, if one cuts a vegetable that has a sharp taste, such as a radish or onion, with a meat knife that was not washed, the Shulchan Aruch rules that one must remove a full layer off the vegetable, the thickness of finger, which is about 2-3 centimeters.<sup>10</sup> The Pitchei Teshuva<sup>11</sup> points out that in our case, too, since the knife is not necessarily clean, one should seemingly be required to remove the part of the fish fillet that had touched the non-Jewish vendor's knife. However, the Pitchei Teshuva is lenient quoting the Havot Yair<sup>12</sup> who ruled that one simply needs to rinse the fish thoroughly.

## Rav Ben-Haim's ruling:

- ❖ It is permitted to purchase fish from a non-kosher supermarket if following conditions are fulfilled:
  - One is certain the fish is from a kosher species, like tuna or salmon
  - One rinses the fish upon arriving home.
- ❖ One who would like to go beyond what is minimally demanded by the Halacha should ask the vendor to rinse the knife before cutting their fillet, and when arriving home should gently scrape away the top layer of the fish that came in contact with the knife.

## ENDNOTES

1. There was an incident recently where a person visited a non-kosher sushi restaurant, thinking it would be okay to order from them as long as the fish itself is from a kosher species. At the end of the night, the chef came out, and informed the customer that he had added some crab and shrimp into the sushi roll for extra flavor. This incident illustrates one of the many severe issues involved in eating at non-kosher restaurants, namely, that a non-kosher restaurant will often mix kosher and non-kosher ingredients together or cook kosher food items with non-kosher food items and in non-kosher pots, rendering the whole mixture totally forbidden. Although many times we think we know what the ingredients are, there are always surprises and that is one reason why we must only eat at establishments with kosher certification.

2. ויקרא יא ט-יב

3. יו"ד סי' פג סעיף ג

4. או"ח סי' תנא סעיף כב וע"ע ביו"ד סי' צא סעיף א-ב וברמ"א שם.

5. יו"ד סי' צו סעיף א

6. חולין דף ח ע"ב ד"ה אגב דוחקא דסכינא בלעה

7. יו"ד סי' צו סעיף ד

8. רמ"א שם

9. יו"ד סי' צו סעיף ה

10. יו"ד סי' צו סעיף א

11. שם ס"ק ה

12. סי' קעט



## HOW LARGE IS A KEZAYIT?

By Avraham Ben-Haim

### Introduction

At the seder night, we are required to eat a total of four kezaytot of matza: two at motzi matza<sup>1</sup> (only one is necessary if it is difficult to consume two<sup>2</sup>), one for korech,<sup>3</sup> and one for the afikoman.<sup>4</sup> Additionally, we must eat a kezayit of maror.<sup>5</sup> In this article, we will attempt to define this unit of kezayit and explain its parameters.

### Volume, weight and density

To fully understand this unit and how it relates to our modern units of measurement, it is essential to understand the difference between volume and weight and their interrelationship- density.

Volume is the measurement of how much space something occupies. Modern units of volume include cubic centimeters (cc), liters (L), milliliters (ml) and gallons. The markings of a measuring cup, for example, indicate volume. The volume of a solid object is usually measured via water displacement- for example, if you fill a measuring cup to its 100 milliliter (ml) mark with water and then submerge an egg in it, the water will rise to the 160 ml mark, indicating that the egg has a volume of 60 ml.

Volume is distinct from weight, which is quantified in units of grams,<sup>6</sup> ounces or pounds. Weight is measured with a scale.

Volume and weight are related to each other through density. Density is the ratio of how much something weighs divided by how much space it occupies. For example, marble is much

denser than foam. One centimeter cubed of marble weighs much more than one centimeter cubed of foam. Alternatively, 100 grams of marble occupies much less space than 100 grams of foam does. Density is a fixed measurement for every substance, and if we know the density of a substance we can derive its weight from its volume or vice versa.

With these three concepts in mind, we will have an easier time understanding the measurements which the Torah gives us.

### Kezayit is a unit of volume

There is an abundance of evidence that demonstrates that the units of the Torah, such as kezayit ("an olive size"), kakotevet ("a date size") and kabetza ("an egg size"), are units of volume.<sup>7</sup>

Firstly, the Mishna<sup>8</sup> describes the measurement of a kabetza as the water displacement of an average-sized egg. As we mentioned above, water displacement is a measurement of volume and not of weight.

Another proof that these are units of volume and not of weight comes from the Talmud Yerushalmi.<sup>9</sup> There, while discussing the unit of kakotevet – a date- (which is slightly smaller than kabetza), the gemara specifies that you must squeeze the air out of the date before you measure it. Squeezing the (weightless) air out would not change the weight of the date, but rather its volume. (When it is

squeezed together, it occupies less space.)

In several places, the Rambam discusses this concept regarding the laws of separating challah from dough.<sup>10</sup> According to halacha, if one kneads a dough that contains 43.2 kabetza of flour, one must separate a fistful and either give it to a Kohen or burn it, depending on the location and other circumstances. For the sake of convenience, the Rambam converts this measurement into units of weight common in his time- the dirham. Significantly, he always specifies that these weight measurements are substance specific, because different types of flour have different densities. Since kabetza is a unit of volume, 43.2 kabetza of a very dense type of flour will weigh more than 43.2 kabetza of a lighter flour. He concludes in one place<sup>11</sup> by saying that anyone who thinks that these units are units of weight is making an obvious mistake. He clarifies this again explicitly in his work Mishne Torah.<sup>12</sup>

It is clear that the units of kezayit and kabetza are fundamentally a unit of volume. Kezayit or kabetza can only be presented as a unit of weight for a single substance with a specific density. The weight of a kezayit or kabetza will vary from substance to substance based on its density.

### Ratio between kezayit and kabetza

Today, there is a larger variety of sizes among olives than among eggs. Furthermore, the kabetza can be most directly related to

other Torah units such as the *kav*, *log* and the *revi'it*. For the sake of consistency, the unit of *kezayit* is usually presented through its ratio to the volume of an egg. There is a difference of opinion among the Rishonim concerning the ratio between the units of *kezayit* and *kabetza*. The Tosafot<sup>13</sup> held that a *kezayit* is half a *kabetza*. The Rambam<sup>14</sup> held that a *kezayit* is less than one third of a *kabetza*. There is evidence that the Rashba<sup>15</sup> held that a *kezayit* is less than a quarter of a *kabetza*. The Shulchan Arukh<sup>16</sup> quotes the opinion of the Tosafot, and we ideally measure a *kezayit* at one half of a *kabetza*. However, in circumstances where that proves difficult, the opinions of the other Rishonim can be used instead.<sup>17</sup> Additionally, it is only recommended to follow the stringent opinion of the Tosafot for the first *kezayit*, which is a *mitzva deorayta*. The remaining portions

of *matza* and the *kezayit* of *maror* are all *derabanan* and the Rambam's measurement of *kezayit* can be used for these portions.<sup>18</sup>

### **Kezayit in modern units**

Multiple water displacement studies of an egg conducted in the bet midrash of Harav Eliyahu Ben-Haim shlit"א have shown that a large egg (the most common size available) has an average volume no larger than 56 ml, which is the commonly accepted standard as calculated by Rav Haim Naeh.<sup>19</sup> Accordingly, a *kezayit* would be 28 ml according to the Tosafot, 19 ml according to the Rambam, and 14 ml according to the Rashba.

Ideally, at some point before the seder night, everyone should take a measuring cup and get an idea of how much *matza* comprises for a *kezayit* by crushing up *matza* and seeing

how much is required to fill a measuring cup to the 28 ml mark. (A one-ounce disposable shot glass is usually 30 ml large and can be used to measure one *kezayit*.) As we have emphasized, the weight of a *kezayit* varies from *matza* to *matza* based on its density and size. As per the measurements conducted under the guidance of Harav Ben-Haim, a *kezayit* was found to be a quarter of a round, handmade *matza* and a third of a square, machine made *matza*. However, this is only accurate for the sample that was measured in this instance, and other brands of *matza* may be denser or smaller. Therefore, everyone should ideally measure out a *kezayit* of whatever type of *matza* they intend to use at the seder. This is especially true of handmade *matza*, which often varies widely in thickness from brand to brand.

## Summary:

- ❖ The *kezayit* is a unit of volume, not weight.
- ❖ Ideally, one should value the *kezayit* at 28 milliliters. If that proves difficult, one can use 19 ml or even 14 ml.
- ❖ Before Pesach, one should ideally measure out a *kezayit* of the *matza* he intends to use at the seder to get an idea for how much a *kezayit* is of his *matza*. This can be done most conveniently by filling a one-ounce disposable shot glass with crushed *matza* to get an impression of how much *matza* makes up a *kezayit*. It should come out to approximately a quarter of a round, handmade *matza* or a third of a square, machine made *matza*, although it varies by brand.

## ENDNOTES

1. שלחן ערוך או"ח סי' תעה סעי' א
2. באור הלכה שם ד"ה כזית מבל אחד
3. משנה ברורה שם ס"ק טז
4. שלחן ערוך או"ח סי' תעז סעי' א
5. שלחן ערוך או"ח סי' תעה סעי' א
6. Technically the gram is a unit of mass, but in a place with fixed gravitational force such as our entire planet Earth, mass and weight will always be consistent with each other
7. שיעורי משקל גם נמצאים בהלכה, כגון שיעור הקטרת שנתנה לפי המנה (כריתות דף ו ע"א), ושיעור הבשר שבן סורר ומרה חייב עליו שנתנה בטרטימר דהיינו חצי מנה (סנהדרין דף ע ע"א)
8. כלים פרק יז משנה ו
9. יומא פרק ח הל' ב
10. פרוש המשנה עדויות פ"א משנה ב וחלה פ"ב משנה ו
11. חלה שם וז"ל: וכל שנותן שיעור חלה במשקל הרי זה טועה וטעותו ברורה מאד, אלא אם כן רצה לשער בקירוב ובמין מסויים.
12. הל' חמץ ומצה פ"ה הלכה יב
13. חולין דף קג ע"ב ד"ה חלקו
14. ע' בפרי חדש סימן תפו ד"ה שיעור כזית יש אומרים שדייק כן ממש"כ הרמב"ם בכמה מקומות שונות
15. תורת הבית דף צו ע"א אולם יש בדבריו טעות סופרים וצריך ישוב וע' מש"כ בזה הגר"ע יוסף ז"ל בספרו חזון עובדיה פסח ח"ב עמוד מג. וא"א הרב אליהו בן-חיים שליט"א ביאר לנו בשעוריו שהטעות הוא שבמקום כזית צ"ל רביעית ואז דברי הרשב"א מכוונים. ע"ש.
16. או"ח סי' תפו סעיף א
17. משנה ברורה סי' תפו ס"ק א
18. כ"כ המשנה ברורה שם אבל רק פסק כן בדיעבד. אולם הגרש"ז מלאדי כתב כן אף לכתחילה (שלחן ערוך הרב סי' תפו סעי' א). והגר"ע יוסף ז"ל גם הביא שיטה זו בשם הרב שבח פסח (חזון עובדיה פסח ח"ב עמוד מב).
19. ספר שיעורי תורה עמוד לב (שער ג אות ה)

## ABOUT THE AUTHORS

**Rabbi Mosheh Aziz** is an assistant rabbi for the Mashadi Jewish Community and 5th grade teacher at Long Island Hebrew Academy in Great Neck. He received his Yoreh-Yoreh Semicha both from Harav Eliyahu Ben-Haim Shlita and from Yeshiva University's Rabbi Isaac Elchanan Theological Seminary, and completed a Master's Degree in Social Work at Yeshiva University's Wurzweiler School of Social Work. Recently, he published his first book with his *chavruta* Avraham Ben-Haim, *Shenot Haim*, a practical guide to Hilchot Avelut based on the teachings of Harav Ben-Haim.

**Rabbi Shmuel Banilivy** is a graduate of Yeshiva University and a musmach of Harav Eliyahu Ben-Haim Shlita. After completing his undergraduate degree, he returned to Israel to study in Darchei L'Horaah Rav Mordechai Eliyahu Kollel. He is currently working as an accountant.

**Avraham Ben-Haim** attended Yeshiva University's Rabbi Isaac Elchanan Theological Seminary where he studied under his father, Harav Eliyahu Ben-Haim Shlit"א. He has worked on several other books, including a practical guide to Hilchot Avelut titled *Shenot Haim*, co-written with his *chavruta* Rabbi Mosheh Aziz. He currently studies medicine at New York Institute of Technology, and is the managing editor of Tishmeru Laasot.

**Eliyahu Ebrani** is a graduate of Yeshivat Birkat Moshe in Ma'aleh Adumim. Today, he is studying under Rabbi Eliyahu Ben-Haim at Yeshiva University. Eliyahu is also currently pursuing a college degree in finance.

**Dubbin Hanon** is a graduate of Yeshiva University and is currently finishing his Semicha from the Rabbi Isaac Elchanan Theological Seminary. He is a close student of Rav Hershel Schachter Shlit"א and a fellow at the Marcos and Adina Katz Kollel. He is also a contributor to the Halachipedia project.