

Chametz after Pesach



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After all of the *Pesach* dishes have been put away, we still have one *halacha* relating to *Pesach* which helps us hold on to the *Yom Tov's* inspiration for just a bit longer; it is known as *chametz she'avar alav haPesach* (literally: *chametz* which passed through *Pesach*).

I. General rules

The Torah forbids Jews from owning *chametz* on *Pesach*, and in order to discourage people from violating that prohibition, *Chazal* legislated that any *chametz* owned by a Jew on *Pesach* is forbidden forever to all Jews. Not only may one not eat such *chametz*, known as *chametz she'avar alav haPesach*, but one may not even derive any pleasure/benefit from the *chametz*. Therefore, if one accidentally purchased *chametz she'avar alav haPesach*, not only is he forbidden to eat the food, but he may not give it to a non-Jewish acquaintance, as that person will feel appreciative for the present.

That said, the only *chametz* which is forbidden after *Pesach* is *chametz* which is forbidden according to Torah law, but *Chazal* never imposed this penalty on *chametz* or mixtures of *chametz* whose ownership on *Pesach* is only forbidden *mid'rabannan*. We will discuss two examples of this *halacha*.

One case pertains to a container of food which contains less than a *kezayis* of *chametz*, such as a potato

kugel whose only *chametz* is two teaspoons of flour. [For purposes of this discussion, a *kezayis* is approximately the size of half a "large" egg.] There is considerable discussion in the *Poskim* as to whether the prohibition to own such a kugel on *Pesach* is *d'oraisah* or *d'rabannan*, and one ramification of that discussion relates to *chametz she'avar alav haPesach*. Although some favor the stricter approach, *Mishnah Berurah* is lenient. According to *Mishnah Berurah*, if a Jew owned the kugel over *Pesach* it would not be forbidden as *chametz she'avar alav haPesach*.

A second example is where the *chametz* is a tiny portion of the food (less than 1/60) but serves a crucial role in creating the food's structure or texture. *Mid'oraisah* such an ingredient, known as a *davar hama'amid*, can be *batel b'shishim*, but *mid'rabannan* it cannot be. As such, one would imagine that if a Jew owned food that contained a *chametz davar hama'amid* it would be permitted after *Pesach*. Yet *Mishnah Berurah* is *machmir* that foods that contain a *chametz davar hama'amid* are forbidden after *Pesach*. However, as a rule, a retail-sized container of food contains much less than a *kezayis* of *davar hama'amid* or *avidah lit'amah*; therefore according to *Mishnah Berurah* mentioned in the previous paragraph, the prohibition of *chametz she'avar alav haPesach* does not apply.

As noted, the prohibition of *chametz she'avar alav haPesach* is Rabbinic in nature, and therefore some *Acharonim* are of the opinion that if one is unsure as to whether a specific item is or is not forbidden, one may be lenient. Others argue that in cases of doubt one may not eat the food but may have benefit/pleasure from it. *Mishnah Berurah* 449:5 cites both opinions without offering a definitive ruling, but it is noteworthy that *Iggeros Moshe* is lenient. *Mishnah Berurah* does, however, note that all agree that the food is permitted if the majority of that type of food in the market is permitted (i.e. produced after *Pesach* or owned by a non-Jew over *Pesach*) or if there is any reason to believe this specific food was produced after *Pesach*. Later in the article we will see that this issue is quite relevant to many kosher consumers.

As with most prohibitions, it is generally accepted that if some *chametz she'avar alav haPesach* was mixed into other food, the entire mixture is forbidden unless the *chametz* comprises less than 1/60 of the mixture (i.e. *batel b'shishim*). For this reason, if a Jew owned *chametz* flour over *Pesach* and used that flour in a soup, the entire soup would be forbidden. One notable exception to this rule is in cases where *chametz she'avar alav haPesach* was mixed "yavesh b'yavesh" into permitted foods, where the rule is that the mixture is permitted as long as there

is less *chametz* than other foods (i.e. *batel b'rov*). *Yavesh b'yavesh* refers to “mixtures” where no one can tell the difference between the *issur/chametz* and permitted food, but each retains its distinctiveness. An example of this would be a supermarket that has five bottles of ketchup on the shelf that contain *chametz she'avar alav haPesach* and eight bottles that do not, and no one can figure out which bottles are the ones that are permitted. The different bottles of ketchup are “mixed together”, but each individual bottle retains its distinctiveness. In that case all 13 bottles would be permitted because the five forbidden bottles are *batel b'rov* in the eight permitted ones.

II. Which foods are included

Chametz is defined as what is created when one of the five grains – wheat, barley, rye, oats, or spelt – soaks in water for more than 18 minutes, and only *chametz* foods are forbidden after *Pesach* as *chametz she'avar alav haPesach*. *Kitnios* (e.g. rice, beans, corn) and other foods forbidden based on *minhag* are not *chametz*. Therefore, a Jew may own them on *Pesach*, and they remain permitted after *Pesach* regardless of who owned them.

Some foods are obviously *chametz*, e.g. bread, pasta, cookies, crackers, and pretzels, and are clearly included in the *halacha* of *chametz she'avar alav haPesach*. Other *chametz*-containing foods can easily be identified by reading the ingredient panel. Breakfast cereals, soy sauce, fish sticks, and other foods generally have one of the five grains listed prominently. Additionally, nowadays, wheat kernels are generally tempered/soaked in water for many hours before they are ground into

flour. Therefore *Mishnah Berurah* 453:24 rules that “standard” flour should be considered *chametz*, and he strongly implies that the same applies to *chametz she'avar alav haPesach* as well. Similarly, water is potentially used in two different stages of the processing of oats/oatmeal, and oatmeal should therefore be assumed to be *chametz*.¹

On the other hand, plain barley kernels (i.e. pearled barley) generally do not have any contact with water during processing; therefore one may purchase them from a Jew after *Pesach*. If barley is soaked in water under proper conditions, it ferments into beer, and since the barley was in water for more than 18 minutes, beer is *chametz*.² The consensus of the *Poskim* is that whisky produced from one of the five grains is considered *chametz* as well.³ It is noteworthy that although certain whiskies are assumed to be made of *kitnios* (e.g. bourbon is made from corn), a careful reading of the regulations often shows that the product must only contain 51% of that grain, and the rest typically is *chametz*.

Vinegar is created when alcohol is fermented, and the primary concern as relates to it regarding *chametz she'avar alav haPesach* is the source of the alcohol. In some vinegars, the source is apparent – malt vinegar is made from malt beer and is *chametz*, while wine or apple cider vinegar are made from fruits that obviously are not *chametz*. However, most vinegar is labeled “white distilled”, and the alcohol used to produce it can come from just about any grain. This vinegar is bottled and sold and is also a primary ingredient in pickles, olives, salad dressing, and condiments (e.g. ketchup, mustard, mayonnaise). Does that mean that

all of these products are forbidden if they were owned by a Jew over *Pesach*? Surprisingly, the answer to that question depends on where one lives, or more specifically, where the food was manufactured, as explained below.

As noted, white distilled vinegar can be made from just about any grain, and the finished product tastes exactly the same regardless of which grain was used. Therefore, vinegar is generally made from whichever grain alcohol is cheapest in that country. Thus, for example, in the United States, white vinegar is by and large made from corn alcohol (i.e. non-*chametz*), while in Europe it is often made from wheat alcohol (i.e. *chametz*). Of course there are exceptions to this rule due to market fluctuations,⁴ but we have seen that as relates to *chametz she'avar alav haPesach* one may surely rely on the *rov/majority*. Therefore, white vinegar (and vinegar-containing products) made in the United States may be assumed not to be in the forbidden category of *chametz she'avar alav haPesach*, even if owned by a Jew over *Pesach*.

Certain enzymes, vitamins, flavors, and other items (e.g. xanthan gum, citric acid) are created through fermentation and are found in many products (including vinegar, noted above). One of the prime ingredients in fermentation is “glucose” (a.k.a. sugar), and, just like white vinegar, glucose can be created from any starch. As noted above, in many countries this means that the fermentation products can be assumed to be non-*chametz*. Even in countries where the glucose is generally *chametz*, these items do not pose much of a concern regarding *chametz she'avar alav haPesach* because (a) the items are gener-

ally *batel b'shishim* in the finished product, and (b) even in the cases where they are considered a *davar hama'amid*, there will always be less than a *kezayis* of the fermentation product in any retail-sized container.

It is also worth noting that *Mishnah Berurah*⁵ rules that non-*chametz* food that was cooked in a *chametz* pot before *Pesach* may be kept (i.e. owned) by a Jew over *Pesach*.⁶ Clearly, if the Jew is permitted to keep it over *Pesach*, there is no prohibition of *chametz she'avar alav haPesach* on such food.

III. Jewish store-keepers

It was noted above that the prohibition of *chametz she'avar alav haPesach* is limited to *chametz* owned by a Jew on *Pesach*, but *chametz* owned by a non-Jew is permitted. Towards this end, most conscientious Jews sell all of their remaining *chametz* to a non-Jew just before *Pesach* and repurchase it after *Yom Tov*. Therefore, as a rule, observant Jews rarely have any of their own *chametz* which is *chametz she'avar alav haPesach*, and they only deal with these *halachos* as relates to food purchased in stores after *Pesach*. That issue can be divided into three parts: buying from a non-religious Jewish storekeeper, food produced in a Jewish-owned factory, and food distributors who are Jewish.

If a non-observant Jewish storekeeper owned *chametz* during any part of *Pesach*, the *chametz* is forbidden to all Jews forever. In a

well-known set of *teshuvos*, *Iggeros Moshe*¹ discusses the case of a storekeeper who asks his Rabbi to sell his *chametz* to a non-Jew (i.e. *mechiras chametz*) but then continues to do business with *chametz* on *Pesach*. Does the fact that he continues to do business with the *chametz* show that the sale was just a sham, which is invalid and renders the *chametz* in the store *chametz she'avar alav haPesach*? While there were those who took a strict position on this



matter, *Iggeros Moshe* ruled that the written document of sale overrides the unspoken intentions of the storekeeper, and the sale is valid. Therefore, any *chametz* owned by the storekeeper from before *Pesach* may be purchased and eaten by Jews after *Pesach*. However, *Iggeros Moshe* has two important caveats:

Any *chametz* sold by the storekeeper **on** *Pesach* is forbidden as *chametz she'avar alav haPesach*, since the Jewish storekeeper took/stole it from the non-Jew who purchased all of the *chametz*. This will be relevant in a further section of this article.

Any *chametz* purchased by the storekeeper **on** *Pesach* is not covered by the *mechiras chametz* and is

forbidden as *chametz she'avar alav haPesach*.

The second caveat is quite relevant to the observant Jew buying from the store after *Pesach*. There is a *safek* (doubt) on every piece of *chametz* in the store – did the storekeeper purchase it before *Pesach* so that it is covered by the *mechiras chametz*, did he purchase it on *Pesach* so that it is forbidden, or did he purchase it after *Pesach* in which case it is surely permitted? In some

cases, one can determine exactly which products fit into each category, but in most cases, it is impossible to make an exact determination, and the *safek* remains unclear. We have seen earlier that there is a disagreement as to what to do if one is unsure whether a given product is or is not *chametz she'avar alav haPe-*

sach, and one should consult with the local *Rav* for direction on this matter.

At some point, the majority of the store's stock will not be *chametz she'avar alav haPesach*, and at that point one may purchase *chametz* without any qualms. Obviously, the determination of how long it takes before most of each type of *chametz* is permitted depends very much upon the type of product and the nature of the business. Fresh bread only lasts for a few days, while whisky, pasta, and canned goods have a very long shelf life; 24-hour newsstands get deliveries much less frequently than large supermarkets. Sometimes, the products delivered

on *Pesach* do not hit the shelves until a few days after *Pesach*, while in other cases they have all been sold by that time. Clearly, local experts and *Rabbonim* who are familiar with the store, community, and people's shopping habits must be consulted in making this decision.

IV. Jewish manufacturers

The status of Jewish-owned food manufacturers and distributors is somewhat more complicated than that of a storekeeper. If the storekeeper completes a *mechiras chametz*, at least the *chametz* which he owned from before *Pesach*, is permitted after *Pesach*. However, if a manufacturer (or distributor) sells *chametz* from his stock to a supermarket on *Pesach*, we have seen that *Iggeros Moshe* is clear that that *chametz* is forbidden, which means that the *chametz* being sold in the supermarket is *chametz she'avar alav haPesach*.

As a rule, a food manufacturer or distributor structures his business as a corporation, rather than as a sole proprietorship. This led some *Poskim* to suggest that *chametz she'avar alav haPesach* does not apply to the corporation's *chametz*, because the *chametz* is considered to be owned by the corporation, as opposed to the individual Jew.¹ However, the generally accepted opinion is that of *Iggeros Moshe*², who rules that if a Jew owns either a very large percentage of the company's stock or enough stock to have a voice in the management of the corporation, the *chametz* owned by the corporation is considered to be Jewish-owned. Thus, the fact that the manufacturer is a corporation does not necessarily obviate concerns of *chametz she'avar alav haPesach*.

As relates to the food manu-

facturer, the onus of guaranteeing that the food is not *chametz she'avar alav haPesach* generally falls upon the Rabbis who certify the food as kosher, and there are different opinions as to how to deal with this. The most straightforward approach is to require that on *Pesach*, all Jewish-owned companies not purchase, produce, or distribute anything that contains any potentially *chametz* ingredients. Additionally, many *Poskim* are of the opinion that if a Jew is financially responsible for a non-Jew's *chametz* on *Pesach*, that *chametz* is forbidden after *Pesach*.³ Therefore, the Jews would be even more restricted in their dealing with any *chametz* in the plant.

Others allow the use of the items listed above as not likely to be *chametz* (e.g. vinegar, fermentation products). Furthermore, they allow the companies to use *chametz* in products that do not carry a *hashgachah*, based on *Poskim*⁴ who rule (for different reasons) that equipment used for *chametz* on *Pesach* may be used after *Pesach* without *kashering*. [Of course, even those who follow this approach arrange for the company to perform a *mechiras chametz* on the *chametz* they own.] This gives the Jewish-owned companies a certain degree of flexibility to continue operating their business on *Pesach*, albeit with some restrictions. However, even those who follow this position would have no choice but to force a Jewish-owned all-*chametz* company, such as a bakery, to be closed for the entire *Pesach*.

There are those who take an even more lenient approach. They allow the Jewish owners of the company to sell the entire company – not just its *chametz* – to a non-Jew, using a modified *mechiras chametz*, and consider the Jewish “owners”

to be mere employees who help the new owner manage his company for *Pesach*. In this manner, the *hashgachah* considers the company no longer “Jewish-owned,” and imposes no restrictions as to what they can do on *Pesach*.

Others disagree with this latter approach for two reasons. First, they claim that the sale of an entire company to an unknown buyer who has never even seen it, has no idea of what he is buying, does not have the means to follow through on the purchase, and is never given a fair accounting of the profits he “earned” during his week-long ownership, is such an obvious sham as to invalidate the entire transaction. Secondly, there are serious *halachic* questions as to whether *chametz* purchased during the week of *Pesach* belongs to the “buyer” (i.e. the Jew) or the company's “owner” (i.e. the non-Jew); these questions are beyond the scope of this article.

In response to these two concerns, some *hashgochos* rely on the sale of the “whole company” only in cases of a Jew and non-Jew who are partners, in which case it is somewhat more plausible that they would sell their shares to one another. To make the sale more real, it is structured between the partners (rather than with an outsider), the Jew is forced to not participate in business operations during *Pesach*, and the non-Jew is required to sell his share to the Jew for a corresponding number of days at some other part of the year (often set as the time when he would otherwise be going on vacation). This form of *mechiras chametz* is somewhat better than the one mentioned previously, while still allowing the company to operate on *Pesach*.

As with all matters of *halacha*,

consumers should consult with their *Rav* as to which of these methods they deem acceptable, and for information as to which *hashgochos* follow which standard.

V. Jewish distributors

In recent years, the Jewish community in the northeastern United States has become aware that a major distributor of food in that area is a company owned by Jews. This situation is considerably more complicated than those discussed above. Packaged products from dozens of manufacturers pass through a distributor's warehouse on a daily basis, yet the distributor is not "certified" as kosher so there is no *Rav* who has any real say as to what he can or cannot do on *Pesach*. Furthermore, whereas people can attempt to figure out approximately

how long it takes for their local supermarket to deplete the supply of forbidden products and restock its shelves, a distributor is one step removed from the consumers, and it is extremely difficult to get an accurate picture of which products were owned on *Pesach*.

Due to the seriousness (or as others would say, "hopelessness") of the situation, some Rabbis have suggested creative ways to allow the distributor to perform a *mechiras chametz* which will even cover the *chametz* he purchases and sells on *Pesach*. While it is clear that making some effort to correct the situation is better than doing nothing, many *Rabbonim* have serious reservations about the effectiveness of this sale. As noted above, they consider the *mechirah* to be effective only as it relates to *chametz* owned by the distributor before *Pesach* and not

sold to anyone on *Pesach*, which for a major distributor may amount to very little of his stock.

Even according to the stricter approach, not all of the *chametz* products found in supermarkets (owned by non-Jews) are forbidden, because the supermarket itself has stock from before *Pesach*, or stock which it purchased so long after *Pesach* that it was not owned by the distributor on *Pesach*. In this case more than in those noted earlier, it is close to impossible to figure out which *chametz* is or is not forbidden. This brings us back to the differing opinions discussed above: If one is unsure as to whether a particular food is *chametz she'avar alav haPesach*, may one eat the food or not? In such a case, please consult your local *Rav* for guidance.

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(Endnotes)

- 1 *Shulchan Aruch* 448:3.
- 2 *Mishnah Berurah* 442:1 & 447:101.
- 3 See *Gra"z*, *Kuntres Acharon* 442:9, and *Chazon Ish* 116:11, 13-14.
- 4 *Mishnah Berurah* *ibid*.
- 5 *Mishnah Berurah* 442:27.
- 6 *Mishnah Berurah* applies the same principle to an *avidah lit'amah*, an ingredient that flavors the entire food.
- 7 See *Gra"z* *ibid*. for a possible explanation.
- 8 This is based on the rule of *safek d'rabannan l'kulah*, i.e. one may be lenient regarding doubts relating to prohibitions which are only Rabbinic in nature.
- 9 *Iggeros Moshe* OC 4:96.
- 10 See *Shulchan Aruch* 447:11 and *Mishnah Berurah* 447:105.
- 11 *Mishnah Berurah* 447:105.
- 12 See the end of *Mishnah Berurah* 454:13.
- 13 *Shulchan Aruch* 442:5.
- 14 *Mishnah Berurah* 442:4.
- 15 For example, one large commercial vinegar company in the Midwest buys approximately 12% of their alcohol from a supplier whose starch source is *chametz*.
- 16 *Mishnah Berurah* 442:1 (end).
- 17 This leniency applies even if the pot was *ben yomo* and even if the *blios* were not *batel b'shishim* in the food (*ibid*).
- 18 *Iggeros Moshe* OC 1:149 & 2:91.
- 19 This would either be due to civil law's view of a corporation or because the stockholders do not have voting rights – see *Zecher Yitzchok* #8, end, and *HaElef L'chah Shlomo* OC 238.
- 20 *Iggeros Moshe* EH 1:7 (end). See also *Minchas Yitzchok* 3:1, who takes a stricter approach.
- 21 See *Mishnah Berurah* 440:5.
- 22 *Sha'arei Teshuvah* 447:2, *Be'er Haitev* 447:4 and *Mishnah Berurah* 447:4 & 451:4.