

# HALOCHOSCOPE <sup>TOI</sup>

Someone owns a corporation employing gentiles at all levels. Managers in the company routinely treat their staff to lunches or pizza, paid for by company funds. Many times the food is *Basar Bechalav*, a meat and dairy mixture. If the company pays for it, it belongs to the owner. He then benefits from it by giving it to his staff. Is this an issue of *Hana'ah*, benefit, from *Basar Bechalav*? Should he stop the practice, or insist that only plain pizza is ordered? If he does so, but someone does not listen, is he still liable? If this is not workable, is there a way he can avoid personal liability by partnering with a gentile?

The issues:

- (A) Benefit from *Basar Bechalav*
- (B) Benefiting by giving someone a gift
- (C) Benefit against one's will; benefit from something that one can not acquire
- (D) Partnerships, especially with gentiles

## (A) *Hana'ah from Basar Bechalav*

Recently we discussed *Basar Bechalav*. It would save us space and time if we did not expound on it here, but concentrated on the pertinent details. For more extensive discussion please refer to issue 40 in this volume.

The restrictions against benefit from *Basar Bechalav* only apply to Scripturally forbidden forms of the mixture. This is actual meat and milk cooked together. It also includes food cooked in the utensils of the opposite type. There is a minority view that forbids benefit from Rabbinically forbidden mixtures. However, this is not followed. Thus, if the mixture was not cooked, or if it was a mixture of chicken rather than beef, it may be benefitted from.

In our case, the mixtures include pizza with salami in it. One would assume that this is a forbidden mixture through cooking. However, we must first define cooking. When the Torah discusses cooking on a number of occasions it refers to food cooked in a liquid medium. This raises the issue of other forms of heat used to cook a mixture. The Talmud raises the issue regarding heat from the sun or from hot springs. This is not considered cooking. Then the issue of heat from smoking the food is raised. Though the Talmud seems to consider it Scripturally permissible, another passage seems to forbid it. Roasting them together is also assumed to be forbidden, especially roasting in a pot, which produces some liquid. Frying is a hotly debated issue. Most Poskim consider it Scripturally quali-

fied form of cooking. Some cite a Talmudic passage that seems to assume that in fat one does not cook. Thus, frying seems to be excluded. Some Poskim allow benefit from fried mixtures in cases of heavy losses if benefit is forbidden.

Some of the dishes being used by our company are not cooked together, but fried. The owner is in a situation comparable to heavy losses. If some of the food is not cooked conventionally, but microwaved, many Poskim compare it to cooking in the sun. Pizza seems to be cooked or roasted (baked), despite heavy fat content. The cheese does liquefy, and the Talmud does sometimes discuss meat and cheese. Though this could mean that the two are cooked together in a liquid medium, one must be concerned that the Talmud considers the mixture Scripturally forbidden even if they were cooked together without a medium. In addition, there are many other dishes that involve proper cooking.

There is a principle known as *Ain Issur Chal Al Issur*, once something is forbidden for one reason it can not become forbidden for a second reason. *Nevailah* is meat of an animal slaughtered in a manner not conforming to the laws of *Shechita*. This is forbidden to eat, but permitted to benefit from. If meat is already forbidden due to *Nevailah*, then is cooked with milk, it should be permissible. It was already previously forbidden. It forbids its mixtures, including in our case, the milk, but under the rules of *Nevailah*, which is permissible to benefit from.

[Actually, this raises another issue that was not mentioned in our original question. While one may benefit from forbidden food such as *Nevailah*, this is only true if it came into one's possession incidentally. One may not intentionally deal in such items for profit. Accordingly, one could suggest that the owner of the company should be precluded from using the *Nevailah* for these purposes. However, in our case, the *Nevailah* is not being sought after because it will produce any more than any other food. It is being used to satisfy the employees who want it. Thus, he is not "dealing" in forbidden foods.]

However, the principle can be overruled. If the second prohibition is in certain ways more than the first prohibition, the second one can take effect. In the case of *Nevailah*, as *Basar Bechalav* it will also be forbidden to benefit from. Maybe the new *Issur* could take effect. However, the Poskim point out that there is a major view that considers benefit a part of the general eating prohibition. Thus, it would not constitute an additional *Issur*, but a stronger form of the original *Issur*. This could not take effect where the food is already forbidden.

Accordingly, since the meat products used in these mixtures are almost definitely *Nevailah*, the mixture can not be forbidden Scripturally. It is, therefore, per-

mitted to benefit from. However, not all Poskim seem to accept the aforementioned argument. They consider the new prohibition more potent than the first prohibition. In addition, some point out that there is a view that a mixture containing some forbidden food is not always forbidden Scripturally. The guidelines to forbid the permissible content of the mixture are more lenient. Thus, it would be possible that the cheese, which is permissible, does not become forbidden Scripturally as a result of the *Nevailah* flavor mixed into it. The guidelines for *Basar Bechalav* could then apply to the mixture.

However, this argument is usually applied when the foods are intermingled by cooking in the opposite types of utensils. The content of the utensil is small by comparison to the other permissible food. For example, it is forbidden to use water from a pot that absorbed both types of flavors from splashes, for use as shampoo. It is also forbidden to feed this water to animals. It is also forbidden to turn on the fire (considered cooking the flavors together) under the pot of a gentile used for both types, though the meat content in any of these could be *Nevailah*. It is possible that it would not apply to a mixture cooked dry. When there is a liquid content, the flavor is spread uniformly throughout the mixture. When they are cooked dry, or with minimal liquids, the flavor spreads to the immediate vicinity, in a more concentrated form. Thus, things like pizza might not be restricted under this rule. Nonetheless, the Talmud maintains that greasy mixtures do spread uniformly. Traditionally, pizza is a greasy food. Accordingly, benefit from the *Basar Bechalav* involves at least a complicated set of rulings, some permitting it while others forbidding it. In this situation, certain mitigating factors could be applied, such as *Hefsed Merubeh*, if the issue involves serious losses. [See *Tur Shulchan Aruch Yoreh Deah 87:1-6*, commentaries.]

#### **(B) Benefit by giving a gift**

In our case the benefit is not direct. The owner of the company does not receive anything from the recipient of the food. However, as mentioned, one may not benefit by feeding animals. This includes even wild or stray animals. There is a personal pleasure from seeing them feed off one's food. This is why one may not dispose of a *Basar Bechalav* mixture in the garbage. Animals might raid the garbage cans, it must be buried, or more practically, flushed down the toilet. Especially in our case, there is more tangible benefit by treating his employees to lunch. In fact, any type of gift, especially in situations where there is some sort of goodwill expected in return, is considered benefit to the donor. [See e.g. *Psachim 21b-26a*, Poskim, *Tur Sh. Ar. Orach Chaim 443:1* etc. commentaries.]

### **(C) Benefit when one does not want it**

Can one consider it benefit when he does not want to receive the benefit? Two issues arise. First, is this truly benefit? He does gain from it, but would rather not gain from this particular type of food. Second, if something is forbidden to benefit from one can not acquire it legally. The acquisition will not take effect. It is not considered his own. However, he will benefit from it anyhow. This is like benefitting from someone else's Basar Bechalav. Is this forbidden?

On the first issue we must presume that the benefit gained is ultimately to his advantage. Therefore, he must be considered benefitting from it, despite his good intentions. True, he does not need it to be Basar Bechalav to gain benefit, but it is after all Basar Bechalav. Though we find that one may deal in wheat over Pesach, despite the presence of some Chameitz grains, because he does not benefit specifically from the Chameitz, here the entire product is Basar Bechalav, and he does benefit from it. On the second issue, benefit is forbidden from anything that causes it. Thus, for example, one may not ask a gentile to feed animals with Chameitz on Pesach, even if the gentile uses his own Chameitz. Therefore, this would not work as a dispensation. [See as in B]

### **(D) Partnerships**

After the fact, a partnership will not help in our situation. Part of the company's money was spent for the Jew. The employees were treated, partly to benefit the Jewish partner. *Berairah* is a mechanism whereby we may suggest that benefit went to one partner (the gentile), or that it came from his part in the money. However, this is not applied in cases involving a Scriptural issue. However, one could stipulate before the money is spent, and even better, before a partnership is made, that this should be the agreed mechanism. Then, any such situations will be deemed to be under the auspices of the gentile partner. To make such a partnership, one could make a manager a partner by considering some of his pay a commission on the earnings he makes with company money. Thus, some of the money is being "loaned" to him and he then "invests" it in "his enterprise". Consequently, the gentile who treats the employees to lunch does so on his own initiative. [See Sh. Ar. O.C. 245 443:1 448:1 450, commentaries.]

In conclusion, the owner should arrange a partnership with a gentile, that will mean that the gentile is the one gaining this benefit.