

HALOCHOSCOPE



This week's question:

Someone bought a natural medicine on Pesach, in the form of a swallow pill containing oat bran as its third ingredient. May he use it? If he may not use it, may he still keep it? May he obtain a refund? If one finds out after Pesach that it had this ingredient, may he benefit from it?

The issues:

- A) *Bal yaira'eh uval yimatzei*, not keeping *chameitz* over Pesach; *Tashbisu*, the obligation to destroy *chameitz*; *Chameitz she'avar alav haPesach*, not benefiting from *chameitz* that a Jew owned on Pesach
 - B) Acquiring *chameitz* on Pesach
 - C) Is bran considered *chameitz*?
 - D) Are there special considerations for medications?
- A) *Bal yaira'eh uval yimatzei*; *Tashbisu*; *Chameitz she'avar alav haPesach*

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

There are various levels of *chameitz*. Pure *chameitz* is made from one of the five cereal grains that leavened as a result of water. This includes bread and other dough items, or other things made directly from the grains, such as beer or vinegar. Mixtures of *chameitz* have a part that is considered *halachically* significant of *chameitz*. If there is an eighth part *chameitz*, it is Scripturally forbidden to eat. If it is less than this proportion, but more than one sixtieth, the poskim debate the severity of its prohibition. Some consider it only Rabbinically forbidden to eat. Nonetheless, if the entire mixture in one location contains an olive sized part of *chameitz*, one violates Scriptural *bal yaira'eh*. If it is less than one sixtieth, no Scriptural violation applies. However, if it was mixed on Pesach, it may not be eaten Rabbinically. If it was made by mixing *chameitz* that was in the possession of a Jew, it must be destroyed. If a mixture of non-*chameitz* was cooked together with some *chameitz* that was later removed, the non-*chameitz* mixture is also forbidden to eat. However, since no actual *chameitz* is present in the mixture, some say that this is not included in *bal yaira'eh*. Others rule stringently, since the mixture is forbidden to eat. If the non-*chameitz* was not cooked with actual *chameitz*, but absorbed *chameitz* flavor from a pot that had *chameitz* cooked in it earlier that day, the mixture is forbidden

to eat on *Pesach*. However, in this case, all are in agreement that one does not violate *bal yaira'eh* for keeping it. This would be the case with many commercial products that are not certified kosher for passover, but contain no *chameitz*. Nonetheless, in this case, too, if the cooking was done on *Pesach* the food must be destroyed. In that case, since one may not keep it in his possession, one violates *bal yaira'eh* with it. Pure *chameitz*-type foods that do not fully leaven or were never fully edible, are called *nuksh*e. While one does not violate Scriptural *bal yaira'eh* for his, it must be destroyed Rabbinically. If it is totally inedible before *Pesach*, it may be kept. For example, flour might be used as an ingredient in the production of hides. If it started out fit to be eaten and then went a little bad, it is still considered regular *chameitz*. If it becomes totally inedible before *Pesach* it loses its *chameitz* status. If regular *chameitz* food becomes inedible it does not lose its *chameitz* status unless it becomes unfit for consumption by a dog, before *Pesach*. If it turned this bad on *Pesach*, such as when mixed into a potion as a medicine, it must be destroyed. The poskim debate whether this is a Scriptural obligation. Thus, if it was not in the Jew's possession before being mixed, there would be a debate on whether *bal yaira'eh* is violated. [If it is fit for a dog's consumption, it could still be used in certain food-grade *chameitz* applications. Therefore, it does not lose its *chameitz* status.]

In addition to the two negative *mitzvos*, a positive *mitzvah* is associated with the *chameitz* in one's possession. *Tashbisu* means to destroy *chameitz*, from one's possession. This means that one must either actually destroy it, or do *bitul*, nullify it. With *bitul* one also renounces claims of ownership, removing it from his possession. Whether this fulfills the specific *mitzvah* of *tashbisu* is debated. It is also debated whether one may rely on this to rid himself of known *chameitz*. This can only be done before the *chameitz* becomes forbidden. Once it becomes forbidden to benefit from, he is legally (*halachically*) unable to effect *bitul*. The only option then is destroying it. This is usually done by burning. We follow the view that permits destroying it in other ways, including flushing it down into a sewer. If *chameitz* is found on one's property on *Pesach* it must be destroyed. Even though the property owner might not own the *chameitz*, nor be liable for it, someone might come to eat it. Furthermore, the finder might think of retaking possession of it. Though technically this might not work, he could be held liable for *bal yaira'eh*. If a gentile stores *chameitz* on the property of a Jew, it must be well guarded so that no-one could eat it inadvertently.

If a Jew kept *chameitz* over *Pesach*, in violation of the aforementioned *mitzvos*, the *chameitz* may not be benefited from after *Pesach*. The Talmud debates whether this is a Scriptural prohibition. We follow the view that it is forbidden Rabbinically. It is a penalty against the person who violated *bal yaira'eh*. It is an incentive to destroy it, rather than keep it in violation of *bal yaira'eh*. Benefit would include eating it, using it to feed animals or any other personal use, selling it, or even giving it away such that the donor receives a benefit. [See Psachim 5b, 12b 27b-29a 42a-46a, Poskim. Tur, B.Y. Sh. Ar. OC 442, 448, commentaries.]

B) Acquiring chameitz on Pesach

Receiving a refund on a mistaken purchase can be debated. The purchaser is receiving money for *chameitz*. It is not really an intended benefit from *chameitz*, rather an attempt to avert a loss. If the purchase was never valid, he is simply receiving money that

is rightfully his already. On the other hand, if the purchaser had some intention of claiming the item as his own, he might have been in violation of *bal yaira'eh*. Even if *chameitz* was in one's possession beyond his control, which is always considered an exemption from any violation or liability, the penalty of *chameitz she'avar alav haPesach* applies. Therefore, the first item for consideration is whether the item purchased was legally considered in the possession of the Jewish buyer.

There is a question whether it is legally possible to acquire *chameitz* on *Pesach*. Ownership in Jewish law must give the owner exclusive rights of use. If it is forbidden to derive benefit, one can not take possession. His ownership is meaningless. Accordingly, one should not be in violation of *bal yaira'eh* even on his own *chameitz*, due to its uselessness. The torah considers it in his possession just so that he can violate the commandments. This raises the question of whether one could take possession of *chameitz* during *Pesach*. Some say that if the only reservation to gaining possession is the prohibition to benefit, this is overcome in the same way that previously owned *chameitz* is considered owned, for the purposes of *bal yaira'eh*. Another resolution hinges on the seller being a gentile. For the seller the item had value, and Scripturally, for the Jew it will have value following *Pesach*. Therefore, the gentile may participate in this transaction legally, and the legality carries over to his customer, the Jew. Only once the Jew takes possession does it become forbidden and valueless. Ordinarily, one could claim that he does not want the purchase to take effect until after *Pesach*.

In our case, the purchaser might never have intended to eat it on *Pesach*, since he had not checked its certification. He bought it thinking it would be fine after *Pesach*. After checking its ingredients, he realized that he may not keep it in his possession. This might make the purchase a *mekach taus*, mistaken transaction. Full awareness is necessary for a transaction to take effect. Ownership is a state of the mind. Transferring ownership requires a meeting of the minds of both parties. If information was withheld or misrepresented, the transaction is void. However, in our case, it would be hard to claim that something was concealed or misrepresented. The only claim might be that the purchaser forgot something. This would not usually help invalidate a sale. [See Rambam, *Chameitz Umatzah* 1:3, commentaries.]

C) Is bran considered chameitz?

Bran was generally used as animal feed. It needed to be softened in water first. It is forbidden to own or benefit from *chameitz*, so one may not soften grain for animals. Bran is considered a part of the grain and does leaven. Husks are considered straw and do not leaven. The Talmud debates scalding flour in hot water, though it kills the yeast. We follow the view forbidding it. It is like telling a *nazir*, banned from grape products, to steer clear of a vineyard. The Talmud permits scalding bran. However, nowadays we are not expert in what the Talmud considered true scalding. Therefore, one may not wet bran at all. Accordingly, bran that has been mixed into a mixture is probably considered, at the very least, a *chameitz* mixture. [See Psachim 39b-40b, Poskim. Tur, Sh. Ar. OC 465.]

D) Medications containing chameitz

Two issues arise with regard to medications. When taken orally, there is an issue with the actual ingestion of *chameitz*. When applied externally there is an issue of benefiting from it. However, if the patient is seriously ill enough to warrant extreme mea-

sure, he may violate *mitzvos* like eating *chameitz* to save his life. On the first issue, there are many considerations. If the medicine is in edible form, it is basically a matter of eating *chameitz*. This is forbidden Scripturally when an olive sized piece is eaten, and Rabbinically when a tiny amount is consumed. If the *chameitz* is inedible for humans, but edible for animals, it may not be eaten, but may be stored in one's possession. If it is inedible for animals, it may even be ingested. However, it must have reached this state before the onset of *Pesach*. When *Pesach* began it was not even considered *chameitz*. People do not eat this stuff. Nonetheless, in the case of a medication that consists of a mixture of *chameitz* and chemicals or herbs that activate the desired reaction in the body, there is a concern of *achshevai*, the patient has decided to consider the inedible *chameitz* ingestible food. *Chameitz* that is totally inedible for a dog loses its status. Benefit is permitted. However if a human chooses to eat it anyhow, he has lent it food status. Most poskim forbid this Rabbinically. One may keep it in his possession. However, in the case of a medicine, *achshevai* might not apply. First, the patient is not really 'eating' it, since it is unpalatable. He takes it only because his doctor says it will cure him. Second, he gets no normal eating sensation out of this. [See Psacim 21b, (Rosh) 45b, Poskim. Tur Sh. Ar. OC 442:4 9-10, commentaries. Shaagas Aryeh 75. Sdei Chemed, Yom Kippur 63:8. Chazon Ish OC 116:8. Igros Moshe OC II:92. etc.]

True medications are not considered edible except for the sick. That is when the issue of *achshavei* arises. If the item is considered edible for others as well, such as a supplement, the poskim debate whether one could class it as a medication. If the item is a swallow pill, but consists of edible foods condensed into this form, the issue becomes even more problematic. While the food is edible, the manner of eating is unusual. Must eating involve the pleasure of chewing and swallowing food, or is swallowing something intact also a form of eating since it reaches the stomach? In our case, where the item is a supplement, and is not for the seriously sick, it could be considered *chameitz* in some form. In addition, the usual issue of *chameitz* in a medication involves the binder. In this case, the *chameitz* is an essential ingredient. Eating it would be forbidden. If the entire package of medicine contains enough to make up an olive sized piece, the owner would be in violation of *bal yaira'eh*.

On the Parsha ... *One who touches the carcass [of a permissible animal] is defiled until evening. And one who eats the carcass ... [11:39-40].* The Torah does not mean to defile one who eats without touching the food. It adds the case of one who eats the carcass because eating requires a minimum size (*kezayis*), to teach us that food defiles in this amount. However, the term 'one who eats' implies one who did so intentionally. Would he listen to rules of *tum'ah*? Why does the Torah not say 'If one should one eat ..'? *Meshech Chochma* answers: It refers to one who is allowed to eat *nevailah*, because he is seriously ill. One might have thought that the rules of *tum'ah* are a deterrent against eating. If one may eat he would not be defiled by the touching. The Torah says he still is defiled. Thus, we may deduce that the minimum amount to defile is the same as minimum forbidden to eat.

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