Navigating the Space Between Strict and Lenient

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<td>הורמת השוש סימן קכה</td>
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<td>Question: Regarding the legal principle of notein ta’am lifgam: does it apply during Passover? Is our custom to regard something with such a transmitted [and damaged] hametz-flavor as forbidden or permitted?</td>
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**Hashoha:** ירא דבלכל מקום שיאן מנה הידע, שיש לחזור דהמקיל אל הפיס, והמחמיר נבח עליו ברכה.

**Answer:** It seems that in any location where a distinct custom isn’t known, one can assert that the one who is lenient doesn’t lose anything and one who is stringent, may a blessing come to her.

וישנן הסעפות ירא דבלכל מקום שיאן מנה הידע, שיש לחזור דהמקיל אל הפיס, והמחמיר נבח עליו ברכה. פלוגה וזו, דרבו ויהו, ורובם מנה הידע.

And in this way, the TUR\(^2\) wrote that the Maharam Rothenberg\(^4\) was lenient when ruling for others but was strict in his own practice. He would say to people asking this question that, "this matter is greatly disputed" and therefore many act stringently.

וככלל שבוינו' אנקירנ'ה ירא דבלכל מקום שיאן מנה הידע, ויש לחזור דהמקיל, והמחמיר נבח עליו ברכה. פלוגה וזו, דרבו ויהו, ורובם מנה הידע.

And I received (heard that) that in Vienna and Kremsh, from early on, the practice was to be lenient, and in Neustadt the practice was to forbid such items. And one great rabbi\(^5\) was doubtful in a place where there is a practice to be strict, when there is also a tiny amount (less than 1/60th) and a damaged flavor: ought we forbid it? For one could claim that even the Geonim, who were [generally] strict on this, would agree in this case [to be lenient].

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1. Rabbi Israel Isserlein was born in Maribor, Slovenia. He lived in Vienna until the Jewish expulsion in 1421, and then served as rabbi in Maribor, then again in Neustadt, Austria. His decisions served as an important source for halachic practice among Ashkenazic Jewry, and many decisions were codified in Rav Yosef Karo’s Shulhan Arukh. (1390 - 1480)

2. There is a well-known rule that something that imparts a damaged taste (“noten ta’am li-fgam”) does not render a mixture forbidden. SA, YD, 103 - AVODA ZARA 65-66 STATES THAT WHEN NON-KOSHER TASTE MIXES WITH A PERMITTED SUBSTANCE, THE MIXTURE REMAINS PERMITTED IF THE ISSUAR HAS A DETRIMENTAL/DAMAGING IMPACT ON THE PERMITTED FOOD. THE GEMARA DEDUCES THIS FROM THE VERSE THAT PROHIBITS THE CONSUMPTION OF MEAT THAT WAS NOT RITUALLY SLAUGHTERED (NEVEILA): "YOU SHOULD NOT EAT ANY NEVEILA; RATHER YOU SHOULD GIVE IT TO A STRANGER IN YOUR MIDST OR SELL IT TO A NON-JEW..." (DEVARIM 14:21). THIS INFERS THAT ONLY FOOD THAT CAN BE GIVEN TO A "STRANGER," THAT IS, WHICH IS EDIBLE, IS PROHIBITED. HOWEVER, FOOD THAT IS NOT FIT FOR THE STRANGER IS NOT CONSIDERED NEVEILA, AND MAY BE CONSUMED. See also Bamidbar 31:21-23 for vessels and pagum.

3. R’ Jacob b. Asher, 1269 - 1343, Germany & Spain

4. Germany, 1215 - 1293

5. Maharil, R’ Yaakov ben Moshe Levi Moelin, 1365-1427, Germany
This distinction (where two factors are combined) is apparent in a Tosofot which states: even though we don’t nullify a forbidden substance intentionally, in a case where the substance is a damaged flavor, it can be anulled when it is a negligent amount.\(^6\)

And it [also] seems reasonable that for our case, there is no reason to make this [combination of factors] distinction. For the Mordechai\(^7\) wrote in the name of the Ravyah\(^8\), that wheat which fell into a well of water - according to the lenient authorities (in this matter) if the wheat gave off a damaged flavor, it is permitted.

The specifics of that case seem to show it to be a case where the wheat was not more than 1/60 the water in the pit [and was also pagum], and nevertheless he wrote according to the lenient authorities, a damaged flavor is permitted. Therefore this implies that it would be different for the those who rule strictly on this.

\(^6\) This distinction is apparent in a Tosofot which states: even though we don’t nullify a forbidden substance intentionally, in a case where the substance is a damaged flavor, it can be anulled when it is a negligent amount.

\(^7\) Mordechai

\(^8\) Ravyah
R. Tzvi Hirsch, the Maharatz Chajes (Darkei Ha-Hora’ah, ch. 3, 1805 - 1855, was an influential Galacian talmudic scholar), lists three categories of common practices that contradict established halakhah but require no rabbinic corrective:

1. Common practice is stricter than the law. If informing people of the leniency will cause confusion that risks their neglecting the law itself, then rabbis should do nothing.
2. Common practice is against an undisputed halakhah but the people will ignore rabbinic objections. In such a case, the rabbis refrain from intervening because “it is better that people sin accidentally than intentionally” (Beitzah 30a).
3. Common practice is contrary to an established halakhah but there is a lenient post-talmudic minority opinion. In such a case, says the Maharatz Chajes, the custom overrides the law.