

YD 113:1.2023

Rabbi Avram Israel Reisner

### The Meatless Menu

*Approved on May 2, 2023. The P'sak offers several options. For this paper, the committee voted on these options individually. Each option was subject to a separate vote, and vote totals can be found with the P'sak, on pages 34- 35.*

#### שאלה (Question)

May one who is observant of *hilkhot kashrut* (Kosher Laws) order food from a vegan or vegetarian restaurant which has no supervision?

#### תשובה (Response):

This *teshuvah* applies to both vegan and vegetarian restaurants.<sup>1</sup> It does not apply to pescetarian<sup>2</sup> restaurants, even those that expressly eschew seafood, due to significant uncertainty, in the absence of a *hekhsher* (supervision), that all the fish served will be of kosher varieties.<sup>3</sup> It does not apply to vegetarian options at restaurants that serve meat since the use of utensils for unkosher meat renders other foods prepared in them unkosher as well.<sup>4</sup> Given the well-accepted ruling by Rabbi Isaac Klein considering rennet as a *davar hadash / panim hadashot* (a new substance, no longer related to its precursors), thus permitting any cheese,<sup>5</sup> these restaurants differ in kind from restaurants serving meat

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*The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.*

<sup>1</sup>Vegetarian cuisine avoids any meat, fish or seafood, but permits the use of milk, cheese and eggs. Vegan cuisine goes further to prohibit any animal-based products and uses only plant-based foods.

<sup>2</sup> A more recent term, pescetarians (based on the Italian pesce meaning fish, according to Meriam-Webster; Latin piscis) avoid meat but permit fish and may permit seafood.

<sup>3</sup> Maimonides (Moses ben Maimon, 1135/8-1205), *Mishneh Torah, Hilkhot Ma'akhalot Asurot* (Laws of Forbidden Foods) 1.1. Nor is choosing the particular fish ordered sufficient due to concern about utensils in use with unkosher fish, and due to the real possibility of the substitution of an unkosher species for the listed fish (see <https://www.theguardian.com/environment/2021/mar/15/revealed-seafood-happening-on-a-vast-global-scale>, accessed 2/20/2022).

<sup>4</sup> Shulḥan Arukh (Joseph ben Ephraim Karo, 1488-1535), Y.D. 98.4. This is true only of utensils used within twenty-four hours of their use with unkosher foods (*ben-yomo*). In a busy restaurant it is my contention that we must treat every utensil as in recent use. There is a principle that "*stam kelim einam bnai-yoman*" (a utensil of which you have no specific knowledge as to its use is to be treated as if it had not been used in the prior twenty-four hours) [Shu" A, Y.D. 122.6-7]. However, that principle is based in part on the likelihood that the utensil was not in recent use [see Turei Zahav (Taz) (David ben Samuel haLevi, 1586-1667), Y.D. 122.4 and Siftei Kohen (Shakh) (Shabbetai ben Meir haKohen, 1621-1662) 122.4]. This is reasonable when applied to a private kitchen but should not be applied to a restaurant kitchen.

Some leniency in this regard, not as a matter of the formal laws of kashrut, but as a recognition of good faith attempts to reach full kashrut observance, is discussed by Paul Drazen in his article on kashrut observance in *The Observant Life*, ed. M. Cohen, pp. 335 ff. in his section on "Eating in Non-kosher Restaurants". See also the introductory comments by Paul Plotkin to his CJLS responsum, "Pizza From a Non-Kosher Establishment."

<sup>5</sup> Isaac Klein, "Kashrut" (alternatively known as "The Kashrut of Cheeses"), *Responsa and Halakhic Studies*, pp. 43-58 (see also his "The Kashrut of Gelatin," pp. 59-74). And see further details in footnote 11. Rabbi Klein based his *teshuvah* on a prior responsum by Ḥayyim Ozer Grodzensky of Vilna (1863-1940) [*Sheilot uTeshuvot* 3.33]. See

or fish in that they avoid the bulk of kashrut issues that demand a *hekhsher*. Thus the question is in order whether such restaurants can be patronized by kosher consumers in the absence of a *hekhsher*.<sup>6</sup>

**PART I -- בישולי גוים , פת גויים (Pat Goyim, Bishulei Goyim<sup>7</sup> / Bread baked by non-Jews, Foods cooked by non-Jews) :** Does the prohibition of eating foods prepared by gentiles apply today?

There is a rabbinic decree prohibiting the eating of many foods prepared by a gentile.<sup>8</sup> Mishnah Avodah Zarah 2.6 states plainly

אלו דברים של גוים אסורין, ואין איסורן איסור הנאה: חלב שחלבו גוי ואין ישראל רואהו, והפת והשמן שלהן (רבי ובית דינו התירו בשמן)<sup>9</sup>, ושלקות...

These are things of the gentiles that are prohibited [to eat], though their prohibition is not a prohibition of use: Milk that was milked by a gentile unseen by a Jew, their bread and oil (Rebbe and his court permitted oil), and their cooked foods...

The prohibition against their milk was a caution because gentiles were suspected of potentially mixing in the milk of some unkosher beast, and the Mishnah continues to list other specific items which are prohibited because they may have an unkosher substance mixed in.<sup>10</sup> But the prohibitions of their

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Moshe Feinstein (1895-1986), Igrot Moshe, Y.D. 3.17, at the very end of the teshuvah, where he appears to be alluding to that position and finds it acceptable. There are those within the Conservative Movement who have chosen not to avail themselves of this permissive opinion. They should regard this *teshuvah* as applicable only to vegan restaurants that do not use cheese products.

<sup>6</sup> This teshuvah is addressed to the individual kosher eater. As you shall see, it proposes a general permission. There are others who would wish to exercise the permissions addressed herein ONLY in extraordinary circumstances, such as when required for business purposes or when traveling. See footnotes 89, 101 and 102 (which restates what appears here). It is not addressed to the synagogue Rabbi, the *mara d'atra* (local authority), who has to formulate policies for the synagogue or community, such as whether to approve a synagogue or communal function at such a restaurant or whether to allow bringing food prepared there into the synagogue. These matters remain firmly in the purview of the *mara d'atra*.

<sup>7</sup> These are often referred to as פת עכו"ם (*pat akum*) and בישולי עכו"ם (*bishulei akum*). The term עכו"ם (*akum*), standing for עובדי כוכבים ומזלות (*ovdei kokhavim umazalot* / those who worship stars and constellations), is a euphemism employed at a later date so as not to offend the majority Christian population in Europe. It is significant to point out, however, that this is not a prohibition on idolaters only, which would be subject to the discourse of whether Christians are to be accounted idolaters. It is a prohibition against gentiles of any theological persuasion, because it is conceived of as a measure to prevent intermarriage.

<sup>8</sup> Mishnah Avodah Zarah 2.6; AZ 35b; Shu"t, Y.D. 113; Maimonides, MT, *Hilkhhot Ma'akhalot Asurot* (Laws of Forbidden Foods) 17.9 ff.

<sup>9</sup> This is presented in parentheses as it appears to be a later gloss. The Rabbi Judah whose court is reported to have permitted gentile oil was apparently Rabbi Judah the Patriarch's grandson, as expressly indicated on AZ 37a.

<sup>10</sup> With regard to gentile milk, since the prohibition is stated to be a caution against the potential admixture of unkosher milk, and that same milk was permitted if the milking had been observed by a Jew, assuring that there had been no such admixture, it is normative halakhah to permit any commercially produced milk, relying on government inspection in those places where such supervision may be assumed. This notion, that a gentile will follow the halakhic rules when aware of them and under scrutiny (even potential) comes to be known as *mirtat* (he trembles), and while in the original it refers to his concern about being observed by a Jew (see, for instance, with regard to milk, Shulhan Arukh Y.D. 115:1), it is easily extended to other forms of scrutiny.

See OU newsletter dated 12/22/2008 at <https://oukosher.org/blog/consumer-kosher/rav-moshe-ztls-heter-of-cholov-stam-revisited/>. (Note that despite the argument there in favor of the new reliance on dairy farm inspections, rather than Moshe Feinstein's original heter based on inspections of milk processing plants, found in



A] The intermarriage concern does not apply when the food preparation is at arm's length, unrelated to socialization:

The technical reason is simply that there is no reason to apply the decree of intermarriage to a public restaurant. Unlike fraternizing in a gentile's home, the context imagined by the Mishnah, there is no friendship developed in a restaurant setting between the staff and the diners, let alone an introduction and access to their daughters. And there is a clear history indicating that this decree is only to be applied where there are issues of חתנות and is not to be applied where there are not.<sup>14</sup>

Maimonides's presentation of the law is often clearer and more systematic than others. He presents this decree in chapter 17 of *Hilkhot Ma'akhalot Asurot, halakhot 9 – 24*, as follows:

(ט) ויש דברים אחרים אסרו אותן חכמים, ואע"פ שאין לאיסורן עיקר מן התורה, גזרו עליהן כדי להתרחק מן העכו"ם עד שלא יתערבו בהן ישראל ויבואו לידי חתנות. ואלו הן: אסרו לשתות עמהן, ואפילו במקום שאין לחוש לייין נסך, ואסרו לאכול פיתן או בישוליהן, ואפילו במקום שאין לחוש לגיעוליהן.

(י) כיצד? לא ישתה אדם במסיבה של עכו"ם... ואין שותין שכר שלהן... ואינו אסור אלא במקום מכירתו, אבל אם הביא השכר לביתו ושתהו שם, מותר, שעיקר הגזירה שמא יסעוד אצלו....

(יב) אע"פ שאסרו פת עכו"ם, יש מקומות שמקילין בדבר ולוקחין פת הנחתום<sup>15</sup> העכו"ם במקום שאין שם נחתום ישראל... אבל פת בעלי בתים אין מי שמורה בה להקל, שעיקר הגזירה משום חתנות, ואם יאכל פת בעלי בתים יבוא לסעוד אצלן.

(יג) ... הדליק ישראל ואפה עכו"ם או שהדליק העכו"ם ואפה העכו"ם ובא ישראל וניער האש מעט... הואיל ונשתתף [ישראל] במלאכת הפת... ואפילו לא זרק אלא עץ לתוך התנור, התיר כל הפת שבו, שאין הדבר אלא היכר שהפת שלהן אסורה.

(9) There are other things the sages prohibited which, although they do not have a basis in the Torah, they decreed against them in order to create distance from the gentiles with the object that Jews will not mix with them and [so that they not] come to marry. These are they: They forbade drinking with them, even where there is no reason to suspect wine of libation, and they forbade eating their bread or their cooked foods, even where there is no reason to suspect unkosher food.

(10) How so? A person should not drink at a gentile's party... One does not drink their spirits... though it is only forbidden in the place where it is sold,<sup>16</sup> but if one brought the liquor to one's own home and drank it there, it is permitted, for the basis of the decree is lest one dine with them at their home...

(12) Even though they prohibited the bread of a gentile, there are locations where they are lenient in the matter and buy the bread of a gentile baker where there is no Jewish baker... but

<sup>14</sup> Rashba (Solomon ben Abraham ibn Aderet (1234-1310) opposes this leniency, seeing the decree as absolute [cited in Shulhan Arukh, Y.D. 112.1] and not situational, but the lenient approach has prevailed. See <https://koltorah.org/halachah/bishul-akum-by-rabbi-chaim-jachter>.

<sup>15</sup> Better known in the Talmud's Aramaic as פת פלטר (*pat palter*).

<sup>16</sup> This appears to be extending the prohibition beyond יינם סתם (gentile wine), to a prohibition against fraternizing over spirits, first at a party, next at a tavern or pub.

concerning the bread [baked by] a homemaker, there is no one who rules leniently, for the basis of the decree is [so that they not come] to marry, and if one eats home-baked bread one may come to dine with them at their home.

(13) ... If a Jew lit [the oven] and a gentile baked [bread], or a gentile lit and baked but a Jew came and stirred the flames a bit... since [the Jew] participated in the work of [preparing] the bread... even if [the Jew] only cast some wood in the oven, this permits all the bread in the oven, for this whole matter is only to signify that their bread is prohibited.

Two details stand out – despite the prohibition on gentile liquor, the law recognizes that it is only a device to prevent fraternization, so if one drinks alone the decree does not apply. Similarly re gentile bread. The bread of a homemaker was prohibited, because of the implications of dining at their home. But a gentile baker's bread, where no fraternization is implied, many permitted. As Rosh explained, as reported by his son in Tur Y.D. 112,

קצת מהמחברים חלקו בין של בעל הבית לשל פלטר, דלא שייך חתנות אלא בשל בע[ל] הב[ית], הלכך אסרוהו... אבל בשל פלטר אין כאן כ[ל] כ[ך] קירוב דעת, שבאמנותו הוא עוסק.

A few codifiers distinguished between a homemaker and a baker, since concern about marriage only applies to a homemaker, for which reason they prohibited [their bread]... but that of a baker, in that case there is no socializing, for the baker is simply plying his trade.<sup>17</sup>

This exemption from the decree against gentile bread for a professional baker was initially treated as a matter of extraordinary need, thus only to be allowed where no Jewish baker was present and understood as an expression of the status of bread as a staple (מפני חיי נפש / because it is life-giving)<sup>18</sup>. However, the Ashkenazic norm is that reported by the gloss there (Shu"א Y.D. 112.2):

ו"א דאפילו במקום שפת ישראל מצוי שרי.

There are those who say that even where Jewish bread is available it [a professional gentile baker's bread] is permissible.

And this leniency became standard even in many Sephardic communities.<sup>19</sup> The fact that across the spectrum of Jewish observance we do not class gentile prepared foods at our supermarkets as suspect of being prohibited (and that "kosher supermarkets" stock such items under the supervision of mainstream *halakhic* authorities) attests to the fact that these prohibitions are not applicable in the

<sup>17</sup> This is identified by Joseph Karo, in Bet Yosef [to Tur Y.D. 112, s.v. ולדעת] as "the custom of the Yerushalmi," referring to Yerushalmi AZ 2.8. In the Bavli, on AZ 35b R. Yoḥanan draws a similar distinction between a situation (בעיר) where encountering young gentile women is an issue, therefore the prohibition must hold, and a situation (בשדה) where such encounters are less likely, therefore the prohibition can be relaxed. This seems to be the justification for permitting factory prepared commercial breads. Rosh himself, as we shall see, had an even more lenient understanding.

<sup>18</sup> This leniency is presented in the Talmud Yerushalmi thus: מקום שאין פת ישראל מצויה, בד"ה הוא שתהא פת נכרים / אסורה, ועימעמו עליה והתירה מפני חיי נפש. / Where Jewish bread is not available, by law gentile bread should be prohibited, but the law was fudged and they permitted it due to concern for its life-giving nature. It is reported as the legal stance of "some" by Maimonides and by Karo, Shulḥan Arukh, Y.D. 112.

<sup>19</sup> Kaf HaḤayim to Shulḥan Arukh (Jacob Ḥayim Sofer, 1870-1939), Y.D. 112.30 reports of both the Sephardic community in Constantinople (Istanbul) and that in Baghdad, as well as in other locations, that they permitted gentile baker's bread despite the presence of Jewish bakers under the argument that if the Jewish baker's production is not sufficient for all the people in town, it may be treated as a location that has no Jewish baker.

absence of חתנות concerns.<sup>20</sup> This widely accepted exception applies to the context of the public restaurant, where there is typically a physical barrier between the diners and the kitchen staff, wherefore the decree against gentile cooked food is not applicable, and the contact with the wait staff, such as it is, is not social in nature.<sup>21</sup>

B] There is a history of these social decrees atrophying and going out of practice.

The more fundamental reason is that there is good reason to hold that we should not continue to apply the prohibitive decree at all.

Several things can be taken away from Maimonides's presentation. The four prohibitions of gentile wine, oil, bread and cooked foods are treated as a unit, and the justification of one seems to apply to each. The prohibitions are social and unrelated to any concern of kashrut. Maimonides is insistent that we understand that there is no underlying prohibition. But what are we to make of the statement in Maimonides's *Halakhah* 13 that the decree that one should not eat food prepared by a non-Jew can be dismissed by a "sign," the intervention by a Jew in some small way in the lighting or maintenance of the flame, allowing eating the food that was functionally prepared by the non-Jew?<sup>22</sup>

These *halakhot* remain a unit in the Shulhan Arukh, being treated seriatim in Yoreh Deah #112-114. The prohibition of gentile oil mentioned in the Mishnah was formally rescinded already in the early amoraic period as reported on AZ 36a,<sup>23</sup> thus does not make it into these medieval legal codes. The halakhah prohibiting drinking with a gentile is severely curtailed in 114.1 (if it's only occasional it is permitted; and if you are living with a gentile, consider it your house) and it is altogether dismissed by Isserles in his gloss there: "In these lands it is our custom to be lenient."<sup>24</sup> Similarly, the prohibition of gentile bread has been effectively superseded by the permission of commercial baker's bread, even where Jewish bakers are active [thus the gloss by Moses ben Israel Isserles (Rema, 1530-1572) to Shu" A Y.D. 112.2], and even a gentile's home-baked bread is sometimes permitted.<sup>25</sup>

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<sup>20</sup> חתנות concerns cannot apply where there is no interaction between the manufacturer of a good and its customer. In the earliest example known to me, Isaac ben Joseph HaLevi (13<sup>th</sup> c.) writes in Bedek HaBayit 3.7 reflecting on the permission of baker's bread: האופה אופה בבית מיוחד לכך... דכי הא לא חשיב בישולי נכרים, דלא איקרובי דעתא שייר/ A baker bakes in a dedicated space... in such a case it is not considered [included in the prohibition of] gentile cooking because fraternization is not relevant. This seems to be one factor standing behind the mainstream Orthodox hashgahah industry with regard to gentile foods. (See Menachem Genack (OU Kashrut administrator)'s article *Belnyan Bishulei Akum*, Mesorah I.94-96).

<sup>21</sup> In the first draft of a responsum on whether one may eat packaged goods that do not bear kashrut certification, but bear vegan certification, our colleague Ariel Stofenmacher states it this way: "Simply put, the confraternization risk does not apply when dealing with packaged foods." The same can be said of restaurant dining.

<sup>22</sup> In *Halakhah* 13 Maimonides indicates that even in face-to-face interaction with a gentile any involvement by a Jew can be treated as a "sign" sufficient to allow the gentile prepared food. This leniency is another factor relied upon by Orthodox hashgahot. This specific exemption is essential to almost every kosher restaurant and catering establishment in this country and many in Israel that insist that the *mashgiah* or another Jew light the stove or oven, from which point gentiles do much of, perhaps all of, the food preparation

<sup>23</sup> With regard to [gentile] oil – R. Judah [Nesiah, the grandson of Rabbi Judah the Patriarch, editor of the Mishnah] and his court voted to permit it. See note 8.

<sup>24</sup> That is, to permit and not to prohibit. This is the case with regard to spirits. The prohibition of "stam yeinam" lives on with regard to wine until our day, see discussion ahead.

<sup>25</sup> Siftei Kohen #10 comments on Maimonides's blanket prohibition of gentile home-baked bread that "this is Maimonides's view, but we do not hold by it". He refers to what seems to be the view he supports, referred to in

Indeed, there is reason to consider that, with regard to bread, this decree may have been lifted altogether, or if not formally lifted, may have fallen into disuse in some halakhically oriented communities.

The language of the Tur in the name of his father suggests that this is the case. Above I cited Rpsch's explanation of Maimonides's stance prohibiting a homemaker's bread. But in the passage right before that, Rosh offers a more liberal opinion. Jacob bar Asher writes (Tur Y.D. 112):

וגזרת הפת לא נתפשטה בכל המקומות. וכתב א"א הרא"ש ז"ל: ועל [ה] סומכין הגדולים שאינן אוסרין אותו לבני מדינתן, שנוהגין בו היתר. כי הם אומרים שהם מהמקומות שלא פשט איסורו שם... ולדעת א"א הרא"ש ז"ל אין חילוק בין פת של בעל הבית לשל פלטר.

The decree concerning bread did not spread to all places. My father the Rosh wrote: That is what the great sages who do not prohibit it to their congregation rely on to permit it. For they say that these are places where the prohibition did not take hold... And according to my father the Rosh there is no distinction between the bread of a homemaker and that of a baker.<sup>26</sup>

The Talmud reports on Avodah Zarah 35b that some believed that Rabbi himself<sup>27</sup> had overruled the prohibition on gentile bread, but the Talmud immediately rejects that claim, saying:

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Shu" A 112.8 as "some say," which permits home-baked bread when no commercial bread is available. In itself this retains a prohibition on home-baked gentile bread, but Bet Yosef (Y.D.112, s.v. לכאורה) utilizes a comment by Rashba that it is the intent to sell, not the professional status of the baker that yields the permission. Pri Hadash (Hezekiah ben David da Silva, 1659-1698) expands this by permitting bread "intended to be given away" as equivalent to *pat palter*, and explains that, when bread is offered as a gift, absent specific knowledge that it was intended to be used for the baker's own use, one may assume that the gift gives him pleasure, therefore it may be considered as if it were a baker's bread intended for others. The Sephardic sage, the author of Kaf HaHayim [Y.D. 112.46], takes this as the grounds upon which "it is our custom" to accept the bread offered in hospitality in a Beduin tent (whereas Ovadia Yosef specifically rebuts this [Yalkut Yosef, Y.D. 112.7]). If the gentile's pleasure is the measure of when it is permissible to partake of his home-baked bread, little is left of the prohibition.

Arukh haShulhan (Yehiel Michel Epstein, 1829-1908), Y.D. 112.3 puts it this way: ולא בטולה לגמרי לגזירה זו אלא / המציאו בה קולות הרבה כמו שיתבאר leniencies, as I shall make clear.

<sup>26</sup> In Bet Yosef [Y.D. 112, s.v. וולדעת], Karo expresses incredulity about this report that Rosh might have permitted home-baked bread as he permitted baker's bread, citing the Rosh himself in a responsum saying: "In a place that follows the custom of the Yerushalmi to purchase [bread] from a [gentile] baker and to prohibit that of homemakers, a baker's bread is always permitted, even if a homemaker had purchased it from him, and homemakers' bread is always prohibited." But Prisha (Joshua ben Alexander haKohen Falk, 1555-1614) corrects that the Rosh responsum specifically was conditioned on being "a place that follows the custom of the Yerushalmi" that is the view of the other codifiers, implying that he held there was no difference and all are permitted.

Yom Tov ben Moshe Zahalon (1559-1638) notes that the reason offered to permit baker's bread to those who otherwise prohibit gentile bread, serves as an answer to the apparent question why baker's bread is not itself prohibited under the decree against all gentile food. In Teshuvot Maharitatz (yeshanot) #161 he writes:

לאו קושיא היא, משום דשלקות גופייהו טעם האיסור ... משום חתנות, וכיון שכן סברי... דבפלטר ליכא חתנות, דבאומנותו / This is no question, since [with regard to] cooked foods themselves, the reason for the prohibition is... due to [inter]marriage, therefore they thought... that with regard to a baker there is no [concern of inter]marriage, for the baker is simply plying his trade (cited in Shiyurei Berakhah to Birkei Yosef, Yoreh Deah 112.9 by Haim Yosef David Azulai, 1724-1806), that is, that the prohibition of gentile cooked food is not separate from and no more severe than that of gentile bread. Both should be treated equally.

<sup>27</sup> As with the clause in the Mishnah, there is reason to question whether this report is of Rabbi Judah the Patriarch, editor of the Mishnah, or of his grandson, Rabbi Judah the Patriarch II (known as Nesiah), who flourished

כסבורין העם התיר רבי הפת. ולא היא. רבי לא התיר את הפת

The people believed that Rabbi permitted [gentile bread]. But that is not so.

Rebbi did not permit gentile bread.

However, Tosafot A.Z. 35b, s.v. מכלל, writes:

מדקאמר פת לא הותרה בב"ד, מכלל דאי בעי הוה שרי ליה. אלמא: לא פשט איסורו. ומכאן סמכו עתה לאכול פת של עובדי כוכבים, כיון שלא פשט איסורו בכל ישראל.

Since he [Rabbi Yohanan] stated that gentile bread had not been permitted by the court, one may infer that it could have been, had [the court] wanted to. Why is this? The prohibition had not spread. This is the basis on which today one eats the bread of gentiles, since the prohibition did not spread throughout Israel.<sup>28</sup>

Tosafot also points to a Yerushalmi that seems to attest to the release of this prohibition.

פיתן: רבי יעקב בר אחא בשם רבי יונתן: פת מהלכות של עימעום היא. כך אני אומר: מקום שפת ישראל מצויה בדין הוא שתהא פת נכרים אסורה, ועימעמו עליה והתירוה.

With regard to their bread: R. Jacob bar Aḥa says in the name of R. Yohanan: Bread is among the *halakhot* that were fudged. Thus I say: In a place where Jewish bread is available, the law should require that gentile bread should be forbidden. But they fudged and permitted it. [Yerushalmi Avodah Zarah 2.8 and Shabbat 1.4]<sup>29</sup>

True to the term עימעום which I have translated “fudge,” the development being described here is unclear. Seeking to unpack the situation, Rabbi Isaiah diTrani presents it this way:

התירו העם, ואף על פי שטעו והתירו שלא ברשות בית דין, הניחום בית דין בהיתרם. ולא רצו לאוסרם, כדמפרש בירושלמי: עימעמו עליה והתירוה. ומאז נהגו התר בדבר. וזהו: "מכלל דאיכא למאן דשרי". שבודאי אין חכם שהתיר פת של גוים לכתחילה, אלא מאיליהם התירוה העם, אלא שבית דין לא רצו למונעם.

The people permitted it [gentile bread]. Even though they were mistaken in permitting it without leave of the court, the court let them continue permitting it. They did not want to place

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in the late 3<sup>rd</sup> century. The involvement of R. Judah the Patriarch II (known as Nesiah) on AZ 37a indicates that at that date the prohibition against gentile bread had not yet been lifted, but this begs the question whether the event depicted was of the popular misunderstanding of his grandfather, or whether it is another instance of unclear attribution that really refers to R. Judah Nesiah. Dimi, and likewise Yohanan and Helbo, could reasonably be construed as referring to either.

<sup>28</sup> Tosafot goes on to justify that ruling based on subsequent discussions in the gemara, one arguing that one should not prohibit something that cannot be maintained by the majority of the population (36a), a statement made in justifying the waiving of the prohibition of gentile oil (which in the Mishnah abuts the prohibition of bread), applying that reasoning to bread as well, and the other reporting the story on 37a wherein Rebbi's grandson relates his court's decision to permit gentile oil. Rebbi's grandson's aide asked whether, that being the case, “in our day” it would be appropriate to permit gentile bread as well. Rebbi's grandson responded: I do not wish my court to be known as permissive. Since this was a temporal concern, Tosafot asserts that: ואחריו באו בית / After him another court arose that permitted it (a historical assertion apparently arrived at by deduction).

<sup>29</sup> The sugya in the Yerushalmi there engages in a discussion about the accuracy and generality of this dictum, among other things introducing the possibility that it was only intended as a permission for a commercial baker's bread. But it reports that while the rabbis of Caesarea applied that limitation, “we do not do so.”



a prohibition on them, as the Yerushalmi explains: They fudged the matter and permitted it. Ever since then the custom has been to permit this – that is the meaning of [the Talmud:] “infer that someone permits.” There is surely no sage that initially permitted gentile bread. But the people permitted it themselves and the court did not wish to oppose them.<sup>30</sup>

This does not appear to be a strong, principled permission, but neither is it a ringing stance in favor of the continuance in force of the prohibition of gentile bread. And it attests to the historical fact that it was being disregarded in the circles of the Tosafists. In fact, we have a defense of the permission to eat gentile bread reported in the name of Rabbenu Tam that comes close to a complete teshuvah<sup>31</sup>:

אומר ר"ת: ואנו שאוכלין, אף על פי דבכולה שמעתין דהכא מודו כולהו אמוראי דפת גוים אסורה, יש לנו לסמוך להתיר מדקאמר הכא: א"ר יוחנן אפילו למ"ד התיר רבי את הפת הני מילי בשדה וכו'<sup>32</sup>, ומשמע דאיכא למ"ד דפת גוים שריא. ואין זה טעות גמור, ובשל סופרים הלך אחר המיקל. ואמרינן נמי לעיל<sup>33</sup>: ר' ירמיה זבן פיתא, ותימה וכו' אכל בישולי גוים? ... אמרינן בירושלמי בפירקין<sup>34</sup> ... דא"ר יוחנן לא אסרו דבר שהוא חיי נפש ... ומסתבר לו לשון חיי נפש שרי לישראל ... ואין נראה לדחות שישראל סייע אותו באפייתו. ואמרינן נמי בירושלמי בפ"ק דשבת<sup>35</sup>: ... עימעמו עליה והתירוה מפני חיי נפש. ואמרינן נמי בירושלמי בפרק ב' דפסחים<sup>36</sup>: ... מתניתין במקום שלא נהגו לאכול פת גוים אבל במקום שנהגו לאכול פת גוים מותר. משמע דבמנהגא תליא מילתא. ועוד אמרינן לקמן<sup>37</sup>: דאמר ליה ר' שמלאי לר' יהודה נשיאה בימינו תתיר את הפת כמו שהתרת את השמן מפני שלא פשט איסורו ברוב ישראל. וא"כ פת נמי שאלו ר' שמלאי שיתירנה לא פשט איסורא ברוב ישראל. ואנו נסמוך על זה, שנאמר כי אנחנו מרוב שלא פשט האיסור ... ועוד אמרינן בירושלמי<sup>38</sup>: אם הלכה רופפת בידך ראה היאך הציבור נוהגין ועשה כן... וכן המנהג.

Rabbenu Tam says: And we, who eat it [gentile bread] -- even though in the totality of the sugya here all the amoraim agree that gentile bread is prohibited, we are justified in relying, to permit, on that which it says here: R. Yoḥanan says that even one who permits [gentile] bread, only intended in the field... which means that there is someone who permits gentile bread (N.B.

<sup>30</sup> Piskei haRi" D to AZ 35b. Isaiah di Trani (c. 1180-c. 1250).

<sup>31</sup> This citation is from Tosafot R. Judah b. Isaac of Burina, a student of Rabbenu Isaac of Dampierre (a contemporary of Rabbenu Tam in the 12<sup>th</sup> c.) to AZ 35b. These were published in Shitat haKadmonim al Massechet Avoda Zarah, N. Y., 1969. A similar analysis can be found in the commentary of Isaac ben Moshe of Vienna (c. 1200-c.1270) to AZ 35b, Sefer Or Zarua IV, Piskei Avodah Zarah #187-9, and in the name of Mordecai (ben Hillel haKohen, c. 1250-1298) in Shakh, Shulḥan Arukh, Y.D. 112.8.

<sup>32</sup> Note that this girsa in R. Yoḥanan differs from that which is before us in print and manuscript.

<sup>33</sup> AZ 13b.

<sup>34</sup> Yerushalmi AZ 1.4. This is presented in an amusing anecdote wherein one amora challenges another for illegitimately buying at a gentile fair. The other responds: And you've never bought bread (in a similar situation)? And the first responds: that's different, citing R. Yoḥanan that buying such a food staple is permitted.

<sup>35</sup> Yerushalmi Shabbat 1.4.

<sup>36</sup> Yerushalmi Pesahim 2.2. The Mishnah is discussing the status after Pesah of ḥametz that resided in the hands of a gentile over Pesah. The Mishnah rules that it is permissible to benefit from it, but notably fails to say that it is permitted to eat it. The Talmud then considers whether that implies that it is NOT permitted to eat it. (Imagine what havoc that would wreak with the sale of ḥametz). The Talmud's response is that the reason the Mishnah excluded the permission to eat is because eating gentile bread was not considered, because that Mishnah was composed in a place where it was not the custom to permit eating gentile bread, independent of the rules of hametz after Pesah, but that had it been composed in a place where one might eat gentile bread, the Mishnah would have indicated that that too is permitted after Pesah.

<sup>37</sup> AZ 37a.

<sup>38</sup> Yerushalmi Ma'aser Sheni 5.2.

without specifying any limitation). And this is not an error, and in such a matter of rabbinic law one should follow the lenient position. And we said earlier: R. Yirmiyah bought bread [at a gentile fair]... This is astonishing: Did he eat gentile food?... And in the Yerushalmi of this chapter [in the parallel sugya] it says... that R. Yoḥanan said that they did not prohibit something that is needed for sustenance... And it seemed reasonable to him [R. Yirmiyah] that what is considered sustenance is permitted to a Jew... and it is unreasonable to parry that a Jew might have assisted in its baking. It also says in Yerushalmi Shabbat that they fudged this and permitted it on account of it being needed for sustenance. And they say further in Yerushalmi, in chapter 2 of Pesahim: Our Mishnah applies where the custom was not to eat gentile bread, but where their custom is to eat gentile bread, it is permitted. This indicates that this was a matter of custom. Furthermore, we say later [in the Bavli] that R. Simlai asked R. Judah the Patriarch [II grandson of the editor of the Mishnah] whether he would permit gentile bread in this moment like he had just permitted gentile oil because the prohibition had not spread throughout Israel – it follows that bread, also, about which he asked him that it be permitted, its prohibition had likewise not spread throughout Israel. We can rely on this, saying that we are among the majority where the prohibition has not spread... And furthermore, we say in the Yerushalmi: If you are not certain what the law should be, see how the populace is behaving and do that... Such is the custom.

That the decree of the Mishnah had come to be regarded as a matter of custom is most clearly stated in the Yerushalmi, and that the world of the Tosafists accepted the custom to rule permissively seems clear. We have already seen that the Tur reports this as the opinion of his father, although he conceded that others disagreed. And this teshuvah of Rabbenu Tam was codified as *halakhah l'ma'aseh* (halakhah as practiced) in the circles of Ashkenaz at the time. Thus Sefer Mitzvot Gadol writes:<sup>39</sup>

במקום שנהגו לאכול פת של גוים אף באכילה מותר

Where it was the custom to eat gentile bread, even to eat it is permissible.<sup>40</sup>

Or Sefer Mitzvot Katan:<sup>41</sup>

הפת עמדו עליו חכמים והתירוהו. ויש מפרשים שהיתר זה אפילו במקום שמצוי פת של ישראל. וכן נהגו. ויש מפרשים במקום שאין פת של ישראל מצויה, אבל אם פת ישראל מצויה אסור.  
[With regard to gentile] bread – The sages took a vote to permit it. Some say that this permission applies even where Jewish bread is available. That is the custom. Others say that it applies [only] where Jewish bread is not available, but if Jewish bread is available it is forbidden.

Clearly customs differ. One can see the continuing pull of the old rabbinic prohibition, but the bottom line, in 13<sup>th</sup> century Ashkenaz it was the standard custom to permit gentile bread. In the definitive language of Isaac ben Moses of Vienna, known as Or Zarua:<sup>42</sup>

<sup>39</sup> Negative Commandments 148. SM" G is written by R. Moses ben Jacob of Coucy, France, c. 1200-1260.

<sup>40</sup> "Even," here, to distinguish from those who forbid eating it but permit having benefit from it.

<sup>41</sup> Commandment 223. SM" K (officially named Amudei haGolah) is written by R. Isaac ben Joseph of Corbeil, France, d. 1280.

<sup>42</sup> Sefer Or Zarua, IV, Piskei Avodah Zarah, #189, see n. 30 for biographical information on the author.

הילכך: האידנא נמי, כל מאן דבעי למיכליה אכיל ליה, ולא מחינן בידיה... ואמ' בגמ' בירוש'... במקום שנהגו לאכול פת גוים אפי' באכילה מותר. הא למדת דהיכא דנהגו לאכול פת גוים מותר... הילכך: על זה יש לסמוך ולאכול פת גוים אפילו אית ליה פת ישראל. ומי שנהג איסורא בפת גוים, על ידי חיתוי גחלים ודאי שרי.

Therefore, today, too, whoever wishes to eat it [gentile bread] eats it and we do not object... As it says in the Talmud Yerushalmi... Where it was the custom to eat gentile bread, it is permitted also to eat it. So you see that where it was the custom to eat gentile bread it is permitted... Therefore: One can rely upon this and eat gentile bread even though one has Jewish bread. Even one who maintains a prohibition of gentile bread is [himself] certainly permitted [to eat it] by the expedient of [a Jew] stirring the ashes.

In fact, Or Zarua specifically addresses the issue that abandoning the prohibition is effectively abandoning a prohibition intended to stem intermarriage. He sees this as the direct implication of the Yeushalmi's report that the Rabbis of Caesarea only allowed the purchase of bread from a gentile baker, but that "we do not hold by that." He writes, parsing the words of Yerushalmi AZ 2.8:<sup>43</sup>

"רבנן דקיסרי בשם ר' יעקב בר אחא כדברי מי שהוא מתיר ובלבד מן הפלטר... לשון הירושלמי, כלומר, ודוקא מן הפלטר התירו לקנות פת גוים ולאכול, ולא מבעלי בתים גוים, שלא יהא כל אחד נמשך אחר אוהבו גוי וקונה ממנו ונותן עיניו בבתו. ואתי לעבור אלאו דלא תתחתן. ולא עבדין כן". אלא נהגו שכל אחד קונה מאוהבו גוי ולא חיישינן לבנותיו.

"The Rabbis of Caesarea ruled in the name of R. Jacob bar Aha in accordance with the one who would permit, but only with regard to [bread] from a [gentile] baker." This is the language of the Yerushalmi which indicates that they only permitted buying and eating gentile bread from a baker, not from gentile homeowners, so that everyone should not be drawn to his gentile friend, buying from him and casting his eye on his [friend's] daughter, leading him to transgress the negative commandment not to marry...

"This is not how we behave". The custom is that anyone may buy bread from his gentile friend and we do not concern ourselves with [the matter of fraternizing with] his daughters.

Moreover, there is the subtle indication even among those who maintained the decree that they recognized that many others did not and were willing to be lax about its observance. Rabbenu Tam, above, pointed out the formulation in the Yerushalmi that treats the decree against gentile bread as a matter of custom. The same phenomenon is recognizable in the Shulhan Arukh itself when, after stating the details of the prohibition in the first paragraphs of Yoreh Deah, Siman 112, Karo writes in paragraphs 13 and 15 about persons who are and are not avoidant of gentile bread. Then this astonishing leniency in paragraph 13:

מי שאינו נזהר מפת של עובד כוכבים שהיבא אצל בעל הבית הנזהר מפת של עובד כוכבים, ועל השלחן פת ישראל ופת של עובד כוכבים היפה משל ישראל – יבצע בע[ל] הב[ית] מן היפה, ומותר בכל אותה סעודה בפת של עובדי כוכבים.

[In a case of] a person who does not adhere to [the prohibition of] gentile bread who dined with a homeowner who does adhere to [the prohibition of] gentile bread, and on the table are [both] Jewish bread and gentile bread that is more appealing than the Jewish bread – the homeowner should break bread [= make motzi] on the finer [loaf] and is permitted throughout that meal [to partake of] the gentile bread.

<sup>43</sup> Sefer Or Zarua, IV, Piskei Avodah Zarah, #188 and see footnote 29.

Do we, should we, see ourselves as among those who “do not adhere to [the prohibition of] gentile bread”? The Conservative Movement has addressed these sorts of issues in another area and argued, as a matter of principle, that we see ourselves and our gentile neighbors as equal members of society and reject social discrimination that holds us separate from those of other religious persuasions. Although in the body of his 1964 responsum permitting factory produced gentile wine Rabbi Israel Silverman relied heavily on the commercial manufacture to nullify the prohibitions of *stam yeinam*, in a footnote he writes:

בזמן הזה פג כחה של הגזירה הזאת לגמרי, והעובדה היא שמשואי תערובת אינם תוצאות ישירות משתיית סתם יינם דווקא.

In our day the force of this decree has altogether waned. It is a fact that intermarriages are not *specifically* the direct result of drinking gentile wine.<sup>44</sup>

In his subsequent responsum on consuming gentile wine, passed in 1985, Elliot Dorff, immediate past chairman of the Conservative Movement’s Committee on Jewish Law and Standards, addressed this in the body of his teshuvah:

We must squarely face the issue of whether we intend to be concerned any longer with what remains of the rabbinical prohibitions against drinking wine made by gentiles. I believe that the answer should be “no”... The original motivation for the prohibition against using wine touched by non-Jews was to prevent mixed marriages...If anything that problem is more acute in our day...I frankly doubt, however, that prohibiting wine touched by non-Jews will have any effect whatsoever on eliminating or even mitigating that problem... In keeping with our acceptance of the conditions of modernity, we in the Conservative Movement would undoubtedly hold that, short of mixed marriages, Jews *should*<sup>45</sup> have social and business contact with non-Jews.<sup>46</sup>

If Rabbi Dorff in his text modestly suggests that the Conservative Movement “would undoubtedly” hold that we are no longer bound by prohibitions only peripherally aimed at countering intermarriage by limiting Jewish social interactions with gentiles, surely it is clear that we do so hold from the passage of the responsa on gentile wine by Rabbi Silverman in 1964 and by Rabbi Dorff in 1985 and even more clearly, from the responsum of Reuven Hammer, The Status of Non-Jews in Jewish Law and Lore Today, that was passed unanimously in 2016. He writes:

Practices that were valid in keeping Jews from contact with idolaters, especially at the times of their holy days, and other items such as *bishul akum* (food cooked by non-Jews) and the prohibition of *stam yenam* (wine produced by non-Jews), while not intrinsically discriminatory, no longer serve any purpose. These measures were originally concerning idolaters, while we live in societies whose inhabitants are not so categorized. As previously indicated in the 1985 Teshuvah on wine written by Rabbi Elliot N. Dorff, today such prohibitions serve no purpose, are

<sup>44</sup> Israel Silverman, Be’Inyan Stam Yeinam shel Goyim, Proceedings of the CJLS 1927-1970, III, p. 1300 ff. Emphasis in original. Translation is the author’s. An English version translated by the editors of that volume follows the Hebrew original directly, p. 1305ff. Their translation of this comment differs subtly in nuance from that presented here.

<sup>45</sup> Emphasis in the original.

<sup>46</sup> Elliot Dorff, The Use of All Wines, Responsa 1980-1990, The Committee on Jewish Law and Standards of the Conservative Movement, p. 295 ff.

([www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19861990/dorff\\_wines.pdf](http://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19861990/dorff_wines.pdf))

not effective in preventing intermarriage and indeed can be seen as promoting negative feelings toward non-Jews.<sup>47</sup>

Specifically, the votes supporting the responsa of Rabbis Silverman and Dorff only commit to disregarding the decree concerning *stam yeinam* (gentile wine). As we have said, these decrees are of a piece, and what applies to one should be applicable likewise to all. That conclusion follows in the general formulation of Rabbi Hammer, which was unanimously approved. Yet I felt the seriousness of disregarding the decree of gentile cooked foods deserved a more complete treatment than Rabbi Hammer's incidental reference. In light of CJLS's desire to have fully reasoned responsa and not simple voice votes, this stands as a fourth responsum on this complex, expressly addressed to the matter of *bishulei goyim*.

**It seems clear that we should seize upon the precedent of medieval Ashkenaz to disregard any vestige of the prohibition of gentile bread as our own. If we are no longer willing to accept the social limitation inherent in the decree in one regard, neither should we do so in another.**<sup>48</sup>

#### More on the matter of בישולי גויים : A hesitation

Yet, as reasonable as it seems to treat all these decrees as one, tradition has been not to do so. Thus the Tur writes, contrasting a cooked item to a bread<sup>49</sup>:

הוא בכלל איסור שלקות, ובאותו לא נהגו היתר בשום מקום

It is considered prohibited as a cooked item, and about that there is no place whose custom it was to be permissive.

Arukh HaShulhan<sup>50</sup> explains:

שלקות שבישל עובד כוכבים, והוא מאכל כשר, מ[כל] מ[קום] אסרום חז"ל. והיא חמורה מפת, שנתבאר בסי[מן] הקודם שהקילו בו... ושלא נתפשטה גזירת הפת בכל ישראל. אבל איסור שלקות נתפשטה בכל ישראל, ואין בזה ח"י נפש כבפת... ומתחילה גזרו עליה מטעם חתנות

Cooked foods that were cooked by a non-Jew but were kosher food, nevertheless the sages forbade them. This is more weighty than bread, of which it was explained in the last section that

<sup>47</sup> <https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/Hammer%20Teshuvah%20Final.pdf>

<sup>48</sup> In his responsum on wine, Silverman cites Moses Isserles, Responsum 124, to this effect:

Today... It is acceptable for [their wine] to be treated the same as their bread, oil and cooked foods. And see Yom Tov Zahalon's comments, cited in footnote 26.

Because this responsum focuses on gentile cooked foods, I have focused on medieval Ashkenaz and its leniencies with regard to gentile bread. I have seen one source, in a *shiur* taught by R. Ethan Tucker, that suggests that that community found reason to have greater social interaction with their gentile neighbors than the early law allows with regard to social drinking as well. In response to Maimonides's codification of a prohibition against drinking at a gentile party (above p. 4), Moshe HaKohen of Lunel (a Provençal sage of the time of Maimonides) writes in his *Hagahot* there:

מכל מקום, אין אנו נזהרין מזה, שאנו שותים במסיבות מיינו ואין אנו חוששין לחתנות. ויש לומר כי הרב לא אסר אלא על ידי קריאה וזימון...

Nevertheless, we do not concern ourselves with this. We drink at their parties of our own wine and do not worry about intermarriage. One can say that the Master only prohibited where we were [privately?] invited...

<sup>49</sup> Tur, Y.D. 112.

<sup>50</sup> Y.D. 113.1.

they were lenient about it... and that the decree of bread did not spread throughout all Israel. However, the prohibition of cooked foods did spread throughout Israel, and it is not a matter of life-giving as is bread... From its origin this was prohibited due to intermarriage...

So traditional sources, though they concede that the decrees against gentile liquor and oil are no longer maintained and that against bread was reduced by many and eliminated by some, maintain the prohibitions of *stam yeinam* and *bishulei goyim*. But we have seen that the legal rulings of CJLS have removed the strictures also against gentile wine, and argued against the propriety of continuing to maintain the underlying structure of all these prohibitions. We have noted also the strong inclination toward leniency in the matter of *bishulei goyim* since the time of the Talmud.<sup>51</sup>

**While the concern about the effects of intermarriage upon our community are preeminent, we do not feel that these forms of restriction are appropriate. We welcome social interaction with all ethical human beings, whatever their religious beliefs. Thus, notwithstanding the halakhic literature in this regard, we feel it correct to complete the elimination of all these decrees. Gentile cooked food is no longer to be considered prohibited.**

**PART II -- איסור וגיעולי גוים (Isur v'Giulei Goyim / Impermissible foods and their ramifications): On the role of and need for certification (a hekhsher).**

The feature of vegan and vegetarian restaurants that make it attractive to consider whether they might be acceptable absent a hekhsher is that they should, ostensibly, have no products that require our concern. Thus the first question to ask is whether we can rely on their uncertified claim to be, in fact, free of animal products. This is an inquiry into נאמנות (*ne'emanut* / trustworthiness). If their uncertified claim cannot be trusted, that again brings us to a full stop in our consideration, for they would require a hekhsher for that reason.

I noted above in footnote 10 that there is a precedent for relying on government inspection in order to claim as a matter of Jewish law that "*anan sahadei*" (we are witnesses), wherein we make the halakhic claim that while we have not ourselves witnessed the fact being put in evidence, we are certain of its truth, for it is so clear to us that we can act as if we have witnessed it.<sup>52</sup> While neither the word "vegetarian" nor the word "vegan" are defined by statute in federal regulations,<sup>53</sup> there is federal consumer regulation that requires that labeling must be truthful and not misleading, and states each have separate and discrete regulations to that effect.<sup>54</sup> While these are different in every state, porous and variously enforced, and while in other countries there might be even less concentration on consumer transparency, it seems reasonable to assert that gross violations of vegan and vegetarian claims by the serving of identifiable meat dishes would not be in the interest of a restaurant, therefore it would not be the choice of a restaurateur to be in flagrant disregard of his or her obligations in this

<sup>51</sup> See the final comment by Isserles in Shulhan Arukh Y.D. 113.11 and the Jachter article cited in footnote 14.

<sup>52</sup> Entzyklopedia Talmudit, "anan sahadei", II.70b. Adin Steinsaltz, The Talmud: A Reference Guide, p. 105b. The Talmudic example he cites is the position of Rabban Shimon ben Gamaliel on Berakhot 17b that a groom may not recite the Shema on his wedding night because "anan sahadei" (we are quite certain) that he will not give it his proper, full attention.

<sup>53</sup> [https://www.vrg.org/journal/vj2006issue3/2006\\_issue3\\_labels.php](https://www.vrg.org/journal/vj2006issue3/2006_issue3_labels.php)

<sup>54</sup> <https://www.lexology.com/library/detail.aspx?g=9fd41625-bced-4bcb-9d3c-96dabf86b673#:~:text=Each%20state%20also%20regulates%20advertising,administration%20of%20sweepstakes%20and%20contests>. <https://www.justia.com/consumer/deceptive-practices-and-fraud/false-advertising/>.

regard.<sup>55</sup> So with regard to the preparation of meat it is fair to say that “*anan sahadei*” that establishments advertised as vegan or vegetarian do not prepare and serve foods that are recognizably meat or meat derivatives. The same cannot necessarily be said of the various additives: emulsifiers, stabilizers, humectants, colorants, moisturizers, anti-caking agents, flavor-enhancers and more that can be in a product being used by the restaurant or of the greasing agents that might be animal-derived that were used on the equipment that processed them. These items are often not required to be labeled, and not all will carry vegan or vegetarian certification.<sup>56</sup> It is this concern about the inadvertent presence of unkosher ingredients despite the proprietor’s efforts to shut out all meat-based products that remains the paramount obstacle to eating in any restaurant absent a hekhsher.

But this question does not go to the reliability of the restaurateur. Even dedicated vegan or vegetarian proprietors might miss additives that, were they aware of them, they too would reject. Vegetarian certifying agencies might be expected to catch more of these offending additives, and professional mashgihim potentially even more, but not all vegan/vegetarian restaurants have certification, and it should be admitted that even professional mashgihim have been known to miss some items (as does the most diligent kashrut observant cook in their own shopping and cooking). Now, as a rule we allow ourselves to rely on the best efforts of appropriate players, then accept the dictum that לא נתנה תורה למלאכי השרת / the Torah was not given to angels.<sup>57</sup> Halakhah needs to be cognizant of human limitations and concede that some level of risk is inevitable. The issue is how to reckon with that risk.

### **Some thoughts on risk, the individual’s obligation to eat kosher, and the meaning of its observance**

We do not demand *hashgahah* when we eat at our neighbor’s house. We are prepared to accept -- if they represent themselves as kosher and are known to be generally upstanding -- that we can accept

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<sup>55</sup> See footnote 10. McDonald’s, certainly not easily mistaken for a vegetarian restaurant, was sued by several vegetarian groups and individuals in 2001 for liability for its claim that it was cooking its fries in vegetable oil, implying that they were suitable for vegetarians, while they continued to use beef ingredients for purpose of flavor. They settled in 2002 for 10 million dollars (NY Times, Mar. 9, 2002). How much more so are restaurants advertising their fare as vegetarian or vegan in danger of liability if there are animal products in use in their kitchen.

<sup>56</sup> It is of interest that vegan certification agencies are concerned even that animal bone-char not be used in the process of purifying sugar. (<https://www.peta.org/about-peta/faq/are-animal-ingredients-included-in-white-sugar/>) and many vegan and vegetarian certifications do claim to concern themselves not only with the ingredients of the product they certify but also with its production process. For example, the Vegetarian Society of the UK, one of the oldest and most broadly known vegan and vegetarian food certifying agencies, requires a declaration that a food carrying their vegan or vegetarian mark “Contains no ingredient resulting from slaughter. The Vegetarian Society Approved vegetarian trademark cannot be displayed on any product that contains, consists of, or has been produced with the aid of products consisting of or created from, any part of the body of a living or dead animal. This includes, but is not limited to, any of the following: • Animal flesh or body parts (e.g. meat, poultry, fish, shellfish, insects) • Meat, fish or bone stock/stock cubes • Animal carcass fats (including suet, lard or dripping) • Gelatine, aspic, gelatine-based block or jelly crystals, or isinglass • Animal rennet or any other by-product of slaughter • Royal Jelly • Shellac • Any food or ingredient made with processing aids created from any of the above.” [“Vegetarian Society Approved” trademark application form.] Further they assert that “The Vegetarian Society Approved trademarks are only licensed to products that meet our strict criteria. This isn’t done on a self-certification basis (after all, even manufacturers in the know can get it wrong occasionally). The Vegetarian Society Approved trademark accreditation involves independent ingredient and production method checking by our experts here at the Vegetarian Society.” [“Vegetarian Society Approved” marketing pack].

<sup>57</sup> Berakhot 25b, Yoma 30a, Kiddushin 54a, Me’ilah 14b.

their word. But what assurance do we have that that is so? Arukh HaShulhan, Yoreh Deah 119.1, explains, in a section dealing with *ne'emanut* (trustworthiness), that: כל ישראל בחזקת כשרות קיימי / All Jews are assumed to be upright.<sup>58</sup> He surely knew that assumption could not be broadly true. Rather, that was clearly intended to be an initial assumption, whereas he notes in 119.5 that Tur and Shulhan Arukh began at the other end, opening this section this way: אין לסמוך ... האסורים / One who is suspected of eating forbidden things...one may not rely on him with regard to them.<sup>59</sup> Still, in their day, Tur continues: במה דברים אמורים: בחשוד, אבל בסתם כל אדם הוא בחזקת כשרות / Of what are we speaking [that one may not rely on them with regard to the kashrut of the food]: Of one who is suspected, but any [other] person may be assumed to be reliable.<sup>60</sup> What level of risk are these classic codifications willing to accept in the name of *hezkat kashrut* / the assumption of reliability)?

Arukh HaShulhan, for one, is not willing to accept the risk inherent in this assumption, so he determines that the assumption of reliability can only be applied to those one knows, whereas [119.9]:

בזמן הזה, שרבתה הפריצות והמינות, אסור לקח מאדם שאין מכירין אותו בלא כתב הכשר  
In our day, where non-observance and heretical beliefs abound, it is forbidden to buy from a person one does not know without written certification.

In essence he has moved an average Jew from the assumption of reliability to the category of suspicion, and, truth is, with regard to kashrut observance that does not seem unreasonable in our day.

Arukh HaShulhan [119.4] further distinguishes the assumptions of trustworthiness we operate under when dealing with individuals from those we operate under when dealing with merchants. Basing this distinction in the Talmud's requirement of inspectors of commercial scales and measurements,<sup>61</sup> he concludes:

חנוני קבוע שמוכר תמיד בכל עת ובכל שעה שאני דהוא מורה התירא... אף על גב דאין איש מישראל חשוד על הגניבה... מ"מ החנוונים מפני שהם מוכרים תמידים תקף להו יצרייהו דממונא  
An established merchant who always sells, whenever, is different, because he [is likely to] permit [himself to disregard the rules]... Even though a Jew is not suspect of theft... nevertheless, merchants, given that they are regularly involved in sales, will [likely] be overcome by their desire for money.<sup>62</sup>

In my initial thoughts about this teshuvah I imagined that I would be delving deeply into the question of how reliable we could consider the claims of a restaurant that held itself out to be vegan or vegetarian. That would mean delving into these halakhot of the level of trust accorded both to a merchant and,

<sup>58</sup> This phrase does not mean that they are assumed to keep kosher. Rather, it means much more broadly that they are assumed to be observant of Torah and mitzvot, which, of course, includes the rules of kashrut.

<sup>59</sup> Tur and Shulhan Arukh, Yoreh Deah 119.1

<sup>60</sup> The language of the Tur, there. Karo does not carry this language forward, but appears to agree with the specific legislation that the Tur predicates upon this.

<sup>61</sup> Bava Batra 89a, Maimonides, Hilhot Geneivah (Laws of Theft) 8.20.

<sup>62</sup> Epstein is not pioneering this line of thought, but his presentation is clearer than earlier sources that hint at this analysis. See the comment of Moshe Isserles in his gloss to Shulhan Arukh 119.1 and the comment by Taz there. See also a short responsum addressing these matters by Nathan ben Amram Gestetner (1932-2010) in his *Lehorot Natan* 14.44.



potentially, to a non-Jew. But I realized that that was immaterial in the end, largely being obviated by the ability to rely on government laws against misrepresentation and the restaurateur's incentive to maintain a positive commercial reputation, especially today, when the opinions expressed in local press and national restaurant guides and apps have attained such outsize importance, on the one hand, and because the source of additives might be unknown to the restaurateur. As I said before, the remaining question of the effect of potential additives to our ability to eat at a vegan or vegetarian restaurant that does not have a hekhsher does not go to the reliability of the restaurateur. So I refer here to the beginnings of that inquiry into *ne'emanut* to consider another point having to do with the nature of kashrut observance itself. Must a kosher consumer strive for absolute certainty in matters of kashrut?

It is necessary, for a moment, to inquire what the nature and meaning of kashrut observance is. Is it one of many mitzvot whose observance is demanded by God, such that it is to be measured by the faithfulness of our pursuit of it? In that case, eating a non-kosher food through no fault of our own, as when the food is presented under a proper hekhsher but is later found to have been flawed in some way, or simply when we were mistaken about its kashrut, בשוגג, though we have applied all required caution, has one valence. Or, is it rather a matter of the purity of our body, which can be defiled by the entry of non-kosher food? In this case the implications might be quite different.

One could argue that the Torah's wording in Leviticus chapter 11 which presents kashrut in terms of *tum'ah* (טומאה) (*tum'ah* / impurity) argues for the latter understanding. In that case, it would make sense to seek absolute certainty that food one eats is kosher and any uncertainty, however slight, would need to be avoided. Indeed, the current Orthodox pursuit of *humrot* (stringencies) seems to gesture in this direction. However, several features of the halakhah of kashrut seem to indicate otherwise.

1) This quick review of the laws of *ne'emanut*, with its willingness to rely on an assumption of kashrut, demanding *hashgahah* only where the situation points to a reason to be skeptical, is one such indicator. I can rely on an assumption when the deep question is whether I am taking sufficient measures to obey God's command. I can do so less readily where the ramification of error reaches to my essential purity or impurity.

2) A well known basic premise of the laws of kashrut relating to the transfer of taste into and out of dishes is that *סתם כלים אינם בני יומן* (*stam kelim einam b'nei yoman* / the pots of a gentile (any pot used in an unkosher kitchen) whose prior history of use is unknown may be considered not to have been used in the past twenty four hours), for which reason, while it may not be used without kashering, were something cooked in it without that kashering, that foodstuff would be considered kosher, permissible to eat. Such a pot (unused for 24 hours), if it is clean, with no visible residue, is understood to leave only a residual unpleasant taste which does not render the food cooked in it unkosher.<sup>63</sup> This is the law recorded in Shulhan Arukh, Yoreh Deah 122. In explaining this quite standard ruling, Shakh explains<sup>64</sup>

<sup>63</sup> This principle is called *notein ta'am lifgam* (נותן טעם לפגם / leaving a flavor that taints), and like the principle of *bittul b'shishim* (nullification one part in sixty – see next paragraph) serves as a way to disregard trace amounts of a non-kosher food. We are concerned about the taste left behind in a pot by unkosher food, but at the point where that taste is no longer a pleasant enhancement of a cooked food it may be disregarded. The existence of this principle itself attests to the willingness of halakhah not to obsess about ingesting unkosher food.

<sup>64</sup> Shakh Y.D. 122.4. הטעם, כתבו הפוסקים, דהוי ספק ספיקא: ספק נשתמשו בו היום או אתמול, וא[ם] ת[מצא] ל[ומר] נשתמשו בו היום, שמא נשתמשו בו בדבר שהוא פוגם בעין או שהוא אין נ[ותן] ט[עם].

that this is based on a ספק ספיקא (s'feik s'feika / a double doubt). The first doubt is whether the pot was used in the prior twenty four hours or not. The second doubt – whether in using the pot during that period the cook prepared a forbidden food or, perhaps, only a food which by its nature leaves no [forbidden] taste, or leaves a repugnant taste.<sup>65</sup> We will be discussing the principle of s'feik s'feika, of double doubt, in some detail later on, but for the present purposes it is sufficient to notice that a person in fear of mistakenly consuming unkosher food could hardly rely on this vague presentation that **maybe** there was no unkosher taste here. Out of uncertainty that person would surely require that the pot be kashered and reject any food prepared in it before that was done. Yet the halakhah permits.<sup>66</sup>

3) Another fundamental premise of the halakhah also speaks to this disinterest in the physical possibility of unkosher food reaching us. We hold to the principle of the possibility of בטול (bittul / nullification). By this principle there are times where we can disregard a small amount of unkosher food that is mixed into that which we eat. A familiar application of this notion is the operation of *bittul b'shishim*, nullification one part in sixty, by which we need not be concerned about a small portion of unkosher food mixed into a large kosher pot. This nullification operates even if we know for a fact that that unkosher food is present, but cannot remove it. Rather than prohibit the food, we permit it, because we say that the small portion (less than 1.67%) either may be disregarded or, alternatively, ceases to exist.<sup>67</sup>

4) The extent of this notion is much greater than is commonly recognized. The nullification in sixty is a rabbinic stringency seeking to mimic the extent that standard foods can be tasted in a mixture. But, say the rabbis, the Torah itself allows that things that are in the minority may be considered nullified, a

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The reason, according to the authorities, that this [= food cooked in a pot of unknown status may be eaten] is a double doubt: We are not certain if the pot was used today [= in the past twenty-four hours] or yesterday, and if you were to argue that it was used today, perhaps it was used [to cook] an item that itself imparts a tainting flavor, or perhaps leaves no [forbidden] taste at all. See Tos. AZ 38b s.v. גאי משום.

<sup>65</sup> The language seems on its face to indicate that the food left either a repugnant taste or none at all. That seemed odd since those are rather rare cases and the third more obvious and more prevalent case of the pot being used for a foodstuff that leaves an acceptable taste, like preparing broccoli or other vegetable, went unmentioned. I concluded that the Shakh when referring to leaving a taste was referring to leaving a forbidden taste, the subject of the halakhah's discussion of *notein ta'am* (leaving a flavor), and indicated this by the bracketed insertion in my translation.

<sup>66</sup> I could not resist this additional example, even though it reflects the disdain in which many classic sources treated our gentile neighbors. But while that is unfortunately true, and the example is distasteful for that reason, that is not the point and may be set aside for the moment. The point of the tale is just how willing the sages were to disregard the specter of eating unkosher if they could find reason to permit. Shakh to Y.D. 118.38 speaks of the following case (cannot tell if it was real or hypothetical), that was brought by Beit Yosef (Karo) in the name of Shiblei HaLeKet (Zedekiah ben Abraham Anav, 13<sup>th</sup> c.): If a gentile said: Do not eat from the food in this pot because I rendered it unkosher (n.b.: the Hebrew says that he cast חלב into it – but because of the problem of Hebrew being presented without vowels it is impossible to tell whether this was a meat pot into which he cast milk (חלב / halav) or any pot into which he cast unkosher meat fat (חלב / heilev). Either will do to make the point). Though he has warned us to beware the nonkosher foodstuff, we do not accept his testimony since he is a gentile whose testimony is invalid, and the food is permitted.

<sup>67</sup> In a recent book about halakhah (Coherent Judaism, Academic Studies Press 2020, pp. 50-52), Rabbi Shai Cherry makes the interesting observation that the Priestly Torah presented in Leviticus represented an “ontological halakhah” wherein our actions had an impact upon reality, but that The Mosaic Torah represented by Deuteronomy and continued and developed by the rabbis “shift[s] away from ontological halakhah” and gives the example of kashrut and the rule of *bittul b'shishim* to show that halakhah “is simply a fiat without metaphysical consequences.”

concept called *bittul b'rov* (nullification in a majority). On this basis it is established that כּל דפּריש מרובא פּריש (*kol d'parish me-ruba parish* / whatever is separated is assumed to have separated from majority). In the absence of other information an object found unmarked and separated from its full context may be treated as coming from the majority. This applies to a piece of meat, which may be assumed to be kosher if found in an environment where most pieces of meat are kosher.<sup>68</sup> Were kashrut an area where we were worried about pollution of our bodies, the halakhah could not have chosen to apply this analysis to kosher and unkosher foods. But it does.

Let me offer a clip from a current Orthodox guide to kashrut.

Whenever two similar tasting foods become mixed, the non-kosher food may become *batel* [nullified] in a simple majority of kosher food. This is true even if the non-kosher food remains intact but is unrecognizable among the pieces of kosher food... *Rishonim* [the early sages] disagree about the underlying principle... In the opinion of most authorities *bittul b'rov* [nullification to a majority] is based upon the simple probability that each individual piece of food that will be removed... comes from the kosher majority. Others contend that *bittul b'rov* is a unique principle by which the non-kosher food completely loses its identity and becomes permitted matter...

In the opinion of Rashba... each piece, as eaten, is assumed to be from the permitted majority. Indeed, even the last piece may be eaten by the same person... Rashba does concede, however, that one may not eat the entire mixture at once... This is the opinion *halakhically* accepted by most authorities.

Other *Rishonim* contend that one person may not eat the entire mixture... [H]e leaves uneaten a piece equal... to the original non-kosher food. This piece may, however, be eaten by another Jew...

Yet other *Rishonim* take a more stringent position. They require that one of the pieces not be eaten by *anyone*... [O]ne may assume that perhaps that piece was the prohibited piece...

A fourth opinion is that of the Rosh who takes a more lenient and radically different view... In his opinion... *bittul b'rov* brings about the complete transformation of the non-kosher food into kosher food. The non-kosher food has been nullified and has completely lost its identity. Therefore, the entire mixture may be eaten by one person even at once.<sup>69</sup>

The radical opinion of the Rosh, at least, does not have one eating anything non-kosher, if only by a magical transformation. Everyone else seems comfortable with knowingly eating non-kosher. They do not seem overly concerned about the impurity of their souls.<sup>70</sup>

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<sup>68</sup> A Baraita on Hullin 95a: תשע חנויות כולן מוכרות בשר שחוטה, ואחת מוכרת בשר נבלה... בנמצא - הלך אחר הרוב. If nine stores sell kosher meat and one non-kosher... if [a piece of meat is] found – follow the majority. See Shulhan Arukh 110.3-4 that this is not applied to an individual piece of meat (as the source indicates), but is applied when dealing with a mixture, that too based on a *s'feik s'feika*.

<sup>69</sup> Rabbi Binyomin Forst, *The Laws of Kashrus*, pp. 53-56

<sup>70</sup> Yet another concept that indicates the sages' willingness to disregard the potential that forbidden matter is being permitted is the strange concept of assignment, תּוּלִין, whereby in some cases of uncertainty where there are both kosher and unkosher pots, and kosher and unkosher foods that get mixed into them, but you do not know

When Deuteronomy asks about God's expectations of us (מה ד' א-להיך שאל מעמך / What does Adonai your God ask of you?), the answer is not perfection, but only that we strive to act in accordance with the law.<sup>71</sup>

### **Matters of *Safeik* and *S'feik S'feika* – Doubt and Double Doubt – in Determining A Ruling (*p'sak*)**

*Hashgahah* is the art of banishing doubt. With good training and close supervision one can hope to banish almost all doubt, to attain near 100% certainty. Many, including our kashrut supervisory organizations, will strive for that. Indeed out of their personal and religious drive for certainty they have developed a lucrative industry upon which many depend. That near total certainty is clearly to be preferred in a certain sense.

But halakhah, Jewish law as it has been formulated, admits doubt and allows for it in determining *p'sak* halakhah (literally, the cut of the law), as we have noted. The most evident sign of that are the basic principles ספק דאורייתא לחומרא (*safeik d'oraita l'humra* / an uncertainty with regard to a Biblical law should be ruled stringently) and ספק דרבנן לקולא (*safeik d'rabbanan l'kula* / an uncertainty with regard to a rabbinic law should be ruled leniently).<sup>72</sup>

1) Sometimes it is acceptable to rely on the notion that there is sufficient reason not to have doubt, and thus to conclude that there is no need of *hashgahah*. A Talmud passage on AZ 34b illustrates this notion that *hashgahah* is **only** necessary where there are grounds for suspicion, and is **not required** when there are grounds to believe there is no concern. The Amoraic discussion revolves around a shipment of a pickled fish beer (apparently a delicacy), which might have wine in it, a potential non-kosher additive (thus this is an excellent analog of our issue):

ההוא ארבע דמורייסא דאתי לנמילא דעכו, אותיב רבי אבא דמן עכו נטורי בהדה. א"ל רבא: עד האידינא מאן נטרה? א"ל: עד האידינא (למאן) [למאי] ניחוש לה? אי משום דמערבי ביה חמרא, קיסתא דמורייס בלומא, קיסתא דחמרא בד' לומי!

A shipment of muries (fish beer) arrived at the port of Akko. Rabbi Abba of Akko set a watch over it. Rava said to him: Until now who was watching it? Abba responded: Until now, what concern did we have? If [our concern was] that they might mix in some wine, a pint of beer goes for a dollar, whereas a pint of wine goes for four dollars! (The coin here represented as a dollar is a Luma, the volume measure represented as a pint is a Xestes. The equivalences are approximate and for illustrative purpose only).

Rashi explains Abba's answer: "In the gentile's country wine is expensive and beer cheap, but here, wine is cheap and beer expensive, so we need to be concerned with mixing it in. " Abba's point: no *hashgahah* was necessary where no seller would waste the more expensive wine in beer, but I have now set a watch, because I'm concerned about the new situation.

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which went where, it is acceptable to assume that the kosher was mixed into the kosher pot and the unkosher into the unkosher pot, wherefore the kosher pot is fine to eat from. Y.D. 111 (and see a similar case in Y.D. 110.7)

<sup>71</sup> Deut. 10:12. Note also the less legalistic, more moral prophetic formulation of Micah 6:8.

<sup>72</sup> Beitza 3b in a slightly different form – these become the general terms by which this concept is known. It appears in the Talmud in other terms as well, such as בשל סופרים הלך אחר המיקל, בשל תורה הלך אחר המחמיר, (In matters of Biblical law follow the strict opinion, in matters of the scribes follow the lenient opinion) on AZ 7b.

This is true wherever the halakhah discards a consideration as *מלתא דלא שכיחא* / a matter rare or uncommon, such that it does not merit halakhic consideration.<sup>73</sup>

2) At times nullification of small amounts is permitted to serve to remove doubt of possible contamination. Now, the general rule is that we only rely on *bittul* after the fact, but, as we do when we rely on *bittul b'shishim* to disregard traces of *hametz* when an item is purchased before Pesah, though the item we purchase has technically already undergone *bittul* before we enter the picture, we are comfortable with reliance on *bittul b'shishim* as a strategy undertaken *l'khat'hilah*. A sharper version of that reliance on *bittul b'shishim* as a strategy undertaken *l'khat'hilah* is evident in the permission given grudgingly for the use of unkosher fining agents in winemaking where the intent of the winemakers is to remove those agents, though we know they will fail, since the remaining unkosher fining agent will be *batel b'shishim*.<sup>74</sup> Not everyone is comfortable with this leniency, but many are. The *bittul* is acceptable when we act *l'khat'hilah* because it is at arms length, one step removed from the action we take, though altogether foreseen.

3) Another such case of *safeik* neutralized by removal to a safe distance is evident in the principle of *s'feik s'feika*, the principle of double doubt. Here this is a matter of probability which can almost be reduced to an equation. The *safeik* we speak of is considered an equally weighted doubt – we disregard any information that might weight our determination to either side – to wit, it is a fifty-fifty proposition.<sup>75</sup> For our purposes, that simple principle guarantees that we cannot use the biblical majority (*rov*) to consider the possibility that it is not kosher to be overridden. Add a second similarly equally weighted doubt to the possibility that it is unkosher,<sup>76</sup> and the probability that it is kosher rises to 75% and that it is unkosher lowers to 25%. In such a case the biblical majority principle steps in to permit leniency.

Conservatively, applying the cautionary principle that in the absence of pressing need it is always best to forbid, not everyone has been willing to adjudicate based upon *s'feik s'feika*. But it has clear roots in the gemara<sup>77</sup> and is used broadly by the poskim, with a clear example the Shakh cited above.<sup>78</sup> In a tribute to

<sup>73</sup> The phrase *מלתא דלא שכיחא - לא גזרו בה רבנן* / Of an uncommon matter the rabbis did not enact prohibition, is a phrase appearing in the Talmud on Beitza 18b, Gittin 44a and Bava Metzia 46b-47a. The broader designation that a matter is unworthy of halakhic attention because it is uncommon (*לא שכיחא*) is quite common.

<sup>74</sup> See the CJLS responsum by Elliot Dorff, Use of All Wines, YD 123.1.1985, pp. 210-212.

<sup>75</sup> I am inclined to connect this determination to the further principle *kol kavua k'mehtza al mehtza dami* (whatever unknown item is drawn from a static environment is to be treated as fifty-fifty), that is, if you have removed something from its native environment and no longer know what that environment was, in kashrut law, whether it was from a kosher environment or an unkosher one, one should treat those two possibilities as equally weighted. See

[https://he.wikipedia.org/wiki/%D7%9B%D7%9C\\_%D7%A7%D7%91%D7%95%D7%A2\\_%D7%9B%D7%9E%D7%97%D7%A6%D7%94\\_%D7%A2%D7%9C\\_%D7%9E%D7%97%D7%A6%D7%94\\_%D7%93%D7%9E%D7%99](https://he.wikipedia.org/wiki/%D7%9B%D7%9C_%D7%A7%D7%91%D7%95%D7%A2_%D7%9B%D7%9E%D7%97%D7%A6%D7%94_%D7%A2%D7%9C_%D7%9E%D7%97%D7%A6%D7%94_%D7%93%D7%9E%D7%99)

The rival principles *kol kavua k'mehtza al mehtza dami* (whatever unknown item is drawn from a static environment is to be treated as fifty-fifty), and *kol d'parish me-ruba parish* (whatever is separated is assumed to have separated from majority) are treated on Hullin 95a in the case of ten local butcher shops, nine kosher and one not, above note 66, when a piece is found it might have come from any of them, therefore judge by the majority, but when you yourself took it from one of those shops, at the point when you took it, the shop from which you took it could only be of one of two types. Also Pesahim 9b, Yoma 84b, Ketubot 15a-b, Kiddushin 73a, and Zevahim 73b. See Y.D. 110.3 for the statement of this halakhah.

<sup>76</sup> This second doubt must be unrelated and uncorrelated. More on this to follow.

<sup>77</sup> Mishnah Tohorot 6.4, Bavli Niddah 59b and Ketubot 14a, Yerushalmi Yevamot 16.1

<sup>78</sup> Footnote 64.

R. Ovadiah Yosef upon his death in 2013, R. Ethan Tucker singles out his prolific use of the principle of *s'feik s'feika* in our day. What we have called a double doubt, he terms a double axis of doubt, and explains:

I assess the fact of a given case and identify two axes of concern. If on both axes I can show that there is a reasonable possibility that no problem exists, then I need not worry about the prohibition in question... [O]ne simple way of thinking of it is that the first axis of doubt reduces my fear of a prohibition to 50% -- enough that I still act with caution -- whereas the second axis of doubt make[s] it more likely than not that there is no prohibition at all, and I can follow this statistical probability as a basis for being lenient.

Note that R. Tucker speaks of two doubts functioning on two different axes. It is important in assessing a double doubt that those doubts be independent and not related one to another. Otherwise we may have a single doubt masquerading as two.<sup>79</sup> He also speaks of there being a “reasonable possibility” that no prohibition is in play. While I see behind the principle of double doubt that a 25% possibility is sufficient to permit, I hesitate to marshal it to permit that level of uncertainty. But the notion that the *safeik* before us is considered an equally weighted doubt, to wit, that it is a fifty-fifty proposition, is not a determination of fact but of legal presumption.<sup>80</sup> Where one of the two doubts is strongly weighted toward the likelihood that no prohibition is present, then applying the double doubt seems warranted.<sup>81</sup> It is time, then, to apply these insights to our immediate problem.

### ***S'feik S'feikah* and the Vegan / Vegetarian Restaurant**

We are prepared to assert that a restaurant that advertises itself as vegan or vegetarian will not have obvious animal products in its kitchen, but we were initially stymied by the possibility of additives of meat derivation that might slip through the restaurateur's net.

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<sup>79</sup> Imagine a substance described as short and dark and another described as tall and light. If every item that was light was also tall and every item that was short was also dark, there would be only two permutations at play and not four. That said, it has been noted that one of the primary classic cases of *s'feik s'feika*, the one we have dealt with here, permitting food prepared in an unkosher pot that is not “of the day” can be seen as just such a double doubt regarding just one axis, for both the first doubt of *ben yomo* or not and the second doubt of whether any food prepared on that day imparted forbidden flavor or not are dealing with the same question, whether a forbidden flavor has been imparted. Yet this is one classic situation in which *s'feik s'feika* is permitted. In Shakh's *K'lalei Dinei S'feik S'feika* that appear after Shulhan Arukh, Y.D. 110 (and are formally part of his commentary there, Shakh, Y.D. 110.63) he explains (#12) that the two doubts might indeed be based on the same rule, but if one is additive, permitting more cases than the other, then that is a permissible double doubt.

<sup>80</sup> Put in the context proposed in footnote 75, the fact that the principle of *kol kavua k'mehtza al mehtza dami* (whatever unknown item is drawn from a static environment is to be treated as fifty-fifty) applies is a legal structure and not a factual assessment.

<sup>81</sup> Shakh, *K'lalei Dinei S'feik S'feika* #33, is one of many who warn that if the situations of doubt that make up the *s'feik s'feika* are not balanced, but are weighted toward prohibition, one should not consider them as parts of a *s'feik s'feika*. It is not unreasonable, and actually compelling, to consider the reverse case. Percents are case specific and impossible to determine, but, as a hypothetical, if a standard double doubt assumes evenly weighted doubts and the halakhah is prepared to permit at a 25% chance, in this type of case the 50% chance of unkosher food resulting from the analysis of the first doubt, tempered by the 80-20 odds of the second unevenly weighted doubt would yield a possibility of the presence of unkosher food of only 10%.

Here there is a *s'feik s'feika* that is available. Perhaps there is not any prohibited meat substance in use. In this instance, because the proprietor of the vegan / vegetarian restaurant has a strong interest in terms of business and liability and most probably personal commitment to avoid any meat product, and is consciously, conscientiously and actively policing the matter, and is most probably relying on vegan or vegetarian certifications as far as possible,<sup>82</sup> the first *safeik* is one that fits our description of a *safeik* that is formally fifty-fifty but that we are quite assured is heavily weighted toward permission.<sup>83</sup> This doubt functions **before** the product enters the restaurant, and is antecedent to our further calculation. There are several more that function **after** any potentially unkosher product enters the restaurant, counter to everyone's intent. The first of these is that the offending substance is not in your order, but only affected the utensils. Here *notein ta'am lifgam* asserts itself as a second doubt – that the taste leeching from the dishes in which the food was prepared may be a detrimental taste, in which case it does not negatively affect the kashrut of your order. And there are not one but two ways in which that may be true. The dishes may have been (were likely!) washed with soap before they were used again for your order. Detergent itself is considered by many to cause detrimental taste.<sup>84</sup> Moreover, perhaps the utensil was last used more than twenty-four hours prior to one's order. In that case any flavor would be detrimental for that reason, and not affect the kashrut of one's food.<sup>85</sup> Then there is yet another doubt that is applicable. Even if the offending substance was used in a utensil of the day, even had it only been rinsed and not with soap, and even if the offending substance were in

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<sup>82</sup> See footnote 56.

<sup>83</sup> With regard to the universe of additives that **may** have an animal derived source, it is worth noting that even if such an additive slipped by the proprietor's filter, perhaps it was itself nullified as one part in sixty in its formulation (*batel b'shishim*), or in preparation became a *davar hadash* (a new substance, no longer related to its precursor) – see the *teshuvot* by Rabbi Klein cited in footnote 5. This appears to be another *safeik*, and it can certainly add to our comfort relying on the unlikelihood of unkosher additives, but I do not choose to formally count it as a separate *safeik* because it might reasonably be included in the primary *safeik* here – “perhaps there is not any prohibited meat substance in use.” (See footnote 79).

<sup>84</sup> See the discussion by Binyomin Forst, *The Laws of Kashrus*, pp. 83-6 and Yehuda Spitz, *Food: A Halachic Analysis*, pp. 66-70. CJLS has registered its willingness to consider detergent as causing *ta'am lifgam* (detrimental flavor) – see Loel Weiss, *On the Kashrut of Dishwashers* and Paul Plotkin, *Pizza from a Non-Kosher Establishment*.

<sup>85</sup> I had said, in footnote 4 that it was inappropriate to apply the rule of *stam keilim einam b'nei yoman* to a restaurant kitchen, and here, appear to be doing so. But while it is inappropriate to apply the **legal assumption** that a utensil has not been used recently in a restaurant, that does not preclude the possibility (*safeik*) that it may not have been used recently, so that doubt can add to other doubts – both of which we have assessed as likelier than not.

It might be objected that there is a provision whereby the twenty-four hour clock of ben yomo might be restarted if a utensil is reused even for a kosher food, so that the twenty-four hour period must be fully fallow, a situation less likely in a high turnover restaurant situation. But that provision is specifically about basar b'chalav (mixtures of kosher meat and dairy) and not about general unkosher foods (which cannot take on the added prohibitions of mixtures of meat and dairy -- Shulhan Arukh Y.D. 87.3), so it does not apply to our concern about unkosher additives penetrating the restaurant's filter. See Y.D. 103.7 and 122.4.

While Isserles (Y.D. 103.7) does apply this provision to general kosher prohibitions, Shakh 18 cites Sefer Mitzvot Katan offering one reason to be lenient, GRA 26 there offers a second, and see Responsa Radbaz (David ibn Abi Zimra, 1479-1573) 4.296 offering yet another. Isserles himself at the end of his comment writes: ובמקום הפסד [ביאור הגרא: ר"ל הפסד קצת] יש להתיר בכה[אין] ג[וונא] בשאר איסורים, בכל ענין רק שיהא מעת לעת מזמן ביטול האיסור. If it will cause a loss [comment of GRA: that is any small loss] one should permit in such a case with regard to general kosher prohibitions only making sure in every case that there is a twenty-four hour period from the time of the cooking of the initial prohibited substance.

Indeed, the central dogma of *stam kelim einam bnei yoman* assumes that no such restart of the clock applies in our case, for the second leg of that *s'feik s'feika* describes such a case. See footnote 64.

your specific menu item, perhaps it is *batel b'shishim* within your food. This *safeik*, too, is probably somewhat weighted toward *bittul b'shishim* precisely because we are dealing with additives that by their nature are used in only very small amounts. Thus to rely on a *s'feik s'feika* in this case seems unimpeachable.<sup>86</sup>

What about the possibility that the additive serves as a gelling agent, a *ma'amid*, or a colorant, in which case it might not be nullified because its effects are visible in the final product? Here the fact that we have a triple doubt serves, for even if the doubt of *bittul* falls out we have at least two operating doubts to serve as a *s'feik s'feika*.<sup>87</sup>

What about the possibility that the vegan / vegetarian restaurant is using vegetable products that are themselves forbidden as *kil'ayim* (the product of a field sown with vegetables and grape-vines) or *orlah* (the fruit of the first three years of a tree's growth)?<sup>88</sup> Neither of these prohibitions is subject to

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<sup>86</sup> In his *K'lalei Dinei S'feik S'feika* #13, Shakh proposes that as a test of a valid *s'feik s'feika*, one whose elements are altogether unrelated one to the other, one must be able to run either verification first and apply the second to either determination. A silly but clear modern illustration of a valid, reversible *s'feik s'feika* I picked up in one on-line attempt to find a clear explanation of *s'feik s'feika* -- upon entering a room one could assume that a telephone was not available. *S'feik s'feika*: it might not be hooked up, and it might be broken. Whether it is hooked up or not, it might be broken. Whether it is broken or not it might not be hooked up. (This example is silly because both formal doubts, which claim to be fifty-fifty, are in fact well weighted toward a functioning phone, so we would never apply such a *s'feik s'feika* – see footnote 81.) That limitation, that a *s'feik s'feika* must be reversible, is applied by many, though not all. If one were to apply that limitation to our situation, it would challenge this application since, if there is no unkosher substance in the restaurant at all – one side of the first doubt – then it is not possible to consider how that unkosher substance interacted with the elements in the restaurant. But Shakh himself realized the flaw, and that there are many documented classic *s'feik s'feika* applications where this is not possible, and in #15 carves out an exception where the latter doubt only comes into play given one determination of the other, first, uncertainty.

At the end of his monograph, in #36, he writes that *s'feik s'feika* is complicated, and that we should not be lenient in any case not exactly like a precedented case. Many have pointed out that rabbinic authorities opted not to accept that caution. (It was his willingness to apply *s'feik s'feika* in our day that moved Rabbi Tucker to laud Rabbi Ovadiah Yosef). But there is in the literature an exact analog of this reasoning. In Ovadiah Yosef's *Yabia Omer* (Vol. 10. Y.D. 58 in the section of notes to *Teshuvot Rav Po'olim*, comment #4) in seeking to explain why it was long accepted to buy gentile-made coffee or gentile baker's bread (and relevant to today's common concern about bugs), he cites a responsum of Moses Mazuz (1851-1915, Tunisia) who argued precisely that:

ראיתי בשו"ת יען משה (חיו"ד סי' כז) שכתב, שפשט המנהג להתיר הקפה ופת פלטר של גוים ואינם חוששים למים שאינם מסוננים, משום שיש ס"ס להיתרא, שמא לא היו תולעים במים, ושמא נימוחו, ופוק חזי מאי עמא דבר.  
I have seen in *Responso VaYa'an Moshe* that he reported that it has become customary to permit coffee and bakery bread of gentiles without concern about unfiltered water because there is a *s'feik s'feika* to permit: Perhaps there were no worms, and if there were, perhaps they have disintegrated. Go out and see what people do.. In fact, this very *s'feik s'feika* is cited by Shakh in *K'lalei Dinei S'feik S'feika* #15 as an example of such a case where the second safeik only comes into play given one side of the first safeik. So our *s'feik s'feika* is allowable even under this criterion because it is precisely precedented.

<sup>87</sup> Shakh, *K'lalei Dinei S'feik S'feika* #32. (The status of *notein ta'am lifgam* which results from preparation in a pot that is *aino ben yomo* can be overridden if the subsequent food is pungent, whereby the forbidden taste is renewed – see Forst, pp. 88-89. But the status of *notein ta'am lifgam* created by the use of detergent remains, so pungent foods do not undermine the *s'feik s'feikah* we are relying upon. And see the discussion in Ezra Melamed's *Peninei Halakhah* Vol. II, pp. 289-90 for other reasons to allay this concern.)

<sup>88</sup> There are two types of *kil'ayim*, *kil'ei z'ra'im* (the product of a field sown with a mixture of vegetables and grain) and *kil'ei ha-kerem* (the product of a field sown with vegetables and grape-vines). Only the latter are forbidden to eat, so only they are relevant here.



nullification one-to-sixty (both are nullified only one in two-hundred). The third doubt of *bittul* could possibly be applied, here at 200 rather than 60, but these are not additives but items of substance which are not likely to appear in such a small quantity. Thus the third doubt of *bittul* would likely not apply. Nevertheless, these are distant possibilities that would only rarely be present, and can be disregarded for that reason alone, as mentioned in passing on page 19, and this case too is subject to the double doubt of whether the unkosher product exists at all, and whether its effect, if it is present, is *notein taam lifgam*. Neither these nor the prohibition of *tevel*, untithed produce grown in Israel, need concern us further.

Thus, as we have said, absent *hashgahah*, while absolute certainty is not attainable (and even with *hashgahah* absolute certainty remains a pyrrhic goal) – this level of certainty qualifies to permit consumption by a kosher consumer.

### Should one attempt to verify the absence of issur?

*S'feik s'feika* is an immensely complicated matter, with views on all sides. It is generally understood that we are under no obligation of research, but may deal with the knowledge that presents itself only. (See, for instance, Shakh YD 122.4 in the name of Solomon Luria (Maharshal, 1510-1573) that the rule of *stam kelim einam bnei yoman* is predicated on there being no need to ask the owner about the status of the utensil). Shakh codifies this, with caveats, in his *K'lalei Dinei S'feik S'feika* #35:

במקום שיש ספק [ספיקא] גמור אין צריך לבדוק כלל אף על פי שיש לברר האיסור על ידי בדיקה.  
ויש חולקין. ויש להחמיר היכא דאפשר ואין הפסד בדבר.

Where there is an incontrovertible *s'feik s'feika*, one does not need to do any checking, even though it would be possible to clarify [the status of] the prohibition through inquiry. But some disagree. One should be strict [to undertake inquiry] where it is possible and nothing would be lost.

Would it be necessary, then, to question the waiter, proprietor or chef about any potential issues? In our case of eating in an unsupervised vegan / vegetarian restaurant, as we have said, it is our well-founded assumption that no animal product is knowingly being used, and no further information will be forthcoming about the provenance of any additives in use without substantial, not immediately available research. It is unnecessary to engage in this fruitless gesture.

### May one rely on a *s'feik s'feika*, a double doubt, *l'khat'hilah* (ab initio – to initiate an action)

There remains a question whether it is acceptable to rely on a *s'feik s'feika*, a double doubt, to initiate an action. Perhaps when offered a food that was kosher by its inputs but had been prepared in a gentile's pot it would be acceptable and proper, even laudable for reasons of social camaraderie (דרכי שלום – *dar'khei shalom* / the ways of peace), to accept and eat it. But there is generally no compulsion to eat at a vegan or vegetarian restaurant.<sup>89</sup> In fact, the Shulhan Arukh foresaw the desire to make more

<sup>89</sup> A reasonable rabbi, as *mara d'atra*, might wish to limit application of this *heter* (permission) to those instances where business or social contact with non-Jews generate an invitation to dine together and no appropriate restaurant under supervision is available. The argument would then be that *dar'khei shalom* yield the compulsion which, alone, triggers this *heter*. Rabbi Dror Fixler in his Hebrew language responsum (*Akhilah B'mis'adah Tiv'onit*

of the principle that *stam kelim einam b'nei yoman* (the pots of a gentile whose prior history of use is unknown may be considered not to have been used in the past twenty four hours), and seems to be looking squarely at this teshuvah and specifically forbidding entering a non-Jewish establishment and ordering.

Shulhan Arukh, Yoreh Deah 122.6 reads as follows:

סתם כלי עו"ג הם בחזקת שאינם בני יומן. לפיכך אם עבר ונשתמש בהם קודם הכשר, התבשיל מותר. אף על פי כן, אסור לומר לעובד כוכבים: בשל לי ירקות בקדרתך, וכן לא יאמר לו: עשה לי מרקחת, שכל האומר: בשל לי, הרי הוא כאלו בישל בידי.

The pots of a gentile whose prior history of use is unknown are considered not to have been used in the past twenty four hours. Therefore if one has transgressed and used them before they were kashered, the food is permissible. Nevertheless, it is prohibited to say to a non-Jew 'cook vegetables for me in your pot,' nor should he say to him 'formulate a pharmaceutical for me,' for anyone who says 'cook for me,' it is if one cooked with one's own hands.

Here, for the third time, the codified law seems on its face to bring this inquiry to a halt. But what appears evident on its face is readily recognized as not actually applicable to the situation we are discussing. That becomes immediately evident as one continues to read on in Shulhan Arukh.

ואפשר שעל ידי הרקחים (או שאר אומנים) מותר, שכל האומנים מיחדים כלים נקיים למלאכתם, כדי שלא יפגמו אומנותם.

But perhaps at the apothecary (or other artisans) it might be permitted, for all artisans set aside clean utensils for their work so that their artisanal product not be tainted.

What Karo is saying here is that the professional utensils of a non-Jew are not going to be those he uses at home, which pots and utensils will be used for all sorts of unkosher activity. "*It is possible*" that they may be exempt from this prohibition of intentional use since they would certainly be far removed (much more than twenty four hours removed) from any use at home – though they may have originally been brought from home – and in any event, though they may not have been kashered, they have certainly been rigorously cleaned such that there is no reasonable concern about vestiges of forbidden foods, and as such we might relax our vigilance and in fact allow that which I, Karo, the author of this section of Shulhan Arukh started by appearing to forbid, that is, instructing them to prepare in their own dishes. That is, then, the case to be made for ordering in a vegan / vegetarian restaurant. While the owner may him or herself not be vegan / vegetarian, and may have forbidden food they prepare at home, they consider themselves, and we should consider them, artisans in the world of food preparation who are

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*B'Hu[tz] L[a'aretz], Tehumin 39 (2019), pp. 490-502*), limited to vegan restaurants only, seems to intend this sort of limitation as well. He states as the rationale for seeking a *heter* that "In our generation, specifically, there are situations wherein there is a need to be lenient. Many of the citizens of Israel have frequent business meetings, Israeli researchers present their findings at international conferences, public figures have necessary diplomatic contacts on behalf of the security of the State of Israel... An atmosphere of trust and friendship between the sides is necessary to maintain foreign relations and might be harmed by refusal of a shared meal," (pp. 491-2) and he concludes, "A visitor who wishes to dine with a colleague on a one-time basis and a traveler who cannot easily find a kosher certified establishment, but just [a restaurant serving only] vegan food, may eat there." This teshuvah **does not** seek to emplace such a limitation.

offering meat-free foods and would not think to taint their products with the utensils they use for meat elsewhere.

“Perhaps”. This is an unusual formulation. Karo seems uncomfortable with taking this step, but clearly doesn’t rule it out. It is possible one might permit in such a situation. And he makes his discomfort clearer in the final clause of this section:

ובעל נפש יחוש, שדברים אלו מביאים לידי טהרה ונקיות.

But let a soulful person tread gingerly, for such matters are what lead to purity and taintlessness.

But he does not forbid. He cites the possibility of placing such an order, but warns that each and every individual needs decide if that level of leniency is acceptable to them, or, if, perhaps, they might seek greater distance.

It is helpful, in assessing where we wish to fall in this matter, to see Karo’s source. His language is lifted almost verbatim from the parallel paragraph in the Tur, who cites his source as Rashba. Indeed, in Rashba’s *Torat Habayit HaKatzar*, Bayit 4, Sha’ar 4, p. 38b one can find the nearly identical words which were subsequently reflected in the Tur and thereafter in *Shulhan Arukh*. But Rashba fleshes out his *Torat HaBayit HaKatzar* in a version known as *Torat HaBayit HaArokh* where a more illuminating presentation is found on p. 39a of that section. Rashba there writes:

ואפשר לומר שעל ידי (הפלטה) [הפלוטר] או על ידי הרקחים מותר. דכיון שהן אומנין, והכל לוקחין מהן, כלים הן מיחדין לאומנותן כדי שלא יפגמו בזליפת כליהם. ואולי על זה סמכו בדורות לנהוג היתר בזה. ואעפ"י שלא נראה לי מעיקר הגמרא.

It is possible one might say that [an order] at a [gentile] baker or pharmacists is permissible. Since they are artisans and all [people] buy from them, they designate utensils for their specialty so that [their products] shall not be tainted by an effusion from their pots. Perhaps that is what has been relied upon for generations to behave on the basis of this permission, although this does not appear correct to me based on the basic gemara.

“Let a soulful person tread gingerly” is Rashba’s own language in his shorter presentation for the situation he finds that “all people buy from them” and it has been that way for generations in the observant Jewish community, so he dare not rule it forbidden, but he remains uncomfortable, because he cannot find justification in the Talmud for such behavior.

Now it is fair to ask, despite the *prima facie* prohibition reported in *Shulhan Arukh*, whether we wish to accept the acknowledged behavior of a medieval Jewish community as our practice (this time in Spain rather than in Ashkenaz as with gentile bread). Despite Rashba’s discomfort, there are strong indications that ordering from a restaurateur whose integrity is bound up in maintaining vegan / vegetarian standards has support in practice. And as elsewhere in this teshuvah, it will be the purview of the individual to decide the nature of his or her soulful demands.<sup>90</sup>

<sup>90</sup> Ran, Nissim ben Reuben Gerondi (1320-1376), commentary to the precis of the Talmud by Isaac ben Jacob HaKohen Alfasi (1013-1103), *Hullin* 1b, in reflecting on a somewhat different problem discussed on Talmud *Hullin* 6a of whether we can trust a non-observant artisan to care for the kosher status of an item left in their care, rules

But there is a deeper, less formal and possibly more compelling argument to permit this.<sup>91</sup>

**[Skip the following paragraphs (until the next subhead) if you are unwilling to go down a philosophical rabbit hole. The preceding is sufficient to motivate the leniency being suggested here.]**

Behind the ruling that *stam kelim einam b'nei yoman* is the underlying rule that נותן טעם לפגם (*notein ta'am lif'gam* / leaving a detrimental flavor) is not considered reason to prohibit a cooked food. The reason that food cooked in a pot that has not been used in twenty-four hours is permissible is that any non-kosher flavor imparted by the pot will no longer be desirable, but will be a taint, therefore it will not prohibit the food, whereas had the pot been used to cook unkosher food within the past twenty-four hours, the taste it leaves behind is assumed to be a positive addition to the food being prepared now and would prohibit the food. If we state that despite that, we do not allow using an unkaşhered pot even though it has lay fallow more than twenty four ours, we are saying in effect that even though use of the pot would not render any food prepared unkosher, we do not permit taking the action that will serve to produce permitted food in this case -- as a fine or to prevent abuse, or on the basis of the notion that אין מבטלין איסור לכתחילה (*ein m'vatlin issur l'khat'hilah* / we do not take action ab initio that will nullify a prohibited item). That is what the Shulhan Arukh indicates at the beginning of the relevant paragraph (Y.D. 122.1-2):

נותן טעם לפגם מותר. קדירה שאינה בת יומא, דהיינו ששהתה מעת לעת משנתבשל בה האיסור, הויה נותן טעם לפגם, ואפילו הכי אסרו חכמים לבשל בה לכתחילה, גזירה אטו בת יומא.

That which gives a flavor that taints is permitted. If a pot is not “of the day,” that is, that has passed twenty-four hours since a prohibited food was cooked in it, is considered one which gives a flavor that taints. Nevertheless the sages prohibited cooking in it *l'khat'hilah* (ab initio) as **a[n additional] decree treating that pot as if it was “of the day.”**

That rabbinic decree comes with a reason: גזירה אטו בת יומא, which I translated above as “a[n additional] decree treating that pot as if it was “of the day.” The translation is apt, but it hides information that would be known to any Talmudist. So to get at that, I want to offer a different, more cumbersome but fuller translation. “A[n additional] decree prohibiting [use of] a pot that is not “of the day” on account of [concern that permitting that might mistakenly lead to the use of] a pot “of the day.” The sentence “decree against Y on account of X” typically (perhaps always, but I have not done the research necessary to make that definitive claim) means that you prohibit Y because of concern that permitting Y might lead to the mistaken impression that X is also permitted.

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that we may, based on the Talmud’s ruling with regard to *tzitzit*, that they may be acquired from an expert (Menahot 42b). Inter alia, seeing it as a similar question, he notes in our case that Rashba understood it to be prohibited to ask a gentile to cook for you in their own pots, but that he himself recognized that others permitted it. It is unclear whether he intended his permissive ruling and Talmudic source to address Rashba’s issue or not.

<sup>91</sup> As with the matter of gentile cooking, above, there is a simple formal reason and a more complex, but more substantial reason to go beyond the face ruling of the texts before us.

The rabbis were speaking of a home kitchen where, were you to regularly use dishes that had become unkosher without bothering to kasher them, relying on the understanding that after twenty-four hours they could do no harm, or worse, were you regularly to use meat dishes for dairy after twenty-four hours,<sup>92</sup> well, it is easy to see how such a cavalier attitude toward the kashrut of one's pots could lead to using a pot that had become unkosher, or had been used for incompatible food, less than twenty-four hours before.

Now consider our situation. How would ordering food in a vegan / vegetarian restaurant, where you have no connection to the cooking pots (and the actual kitchen staff is not Jewish and not under our kashrut restrictions anyway) possibly lead to any effect on the way you maintain your kosher kitchen. To apply the rabbinic decree in this situation, a situation for which it was clearly not meant and has no relevance, is uncalled for. In the language of our classic texts *בהא לא גזרינן* (in this matter we do not apply the decree).<sup>93</sup> There is, here, sufficient distance to permit leniency.

And furthermore, when ordering from a vegan / vegetarian restaurant, their utensils would not have been in use for anything prohibited, not just for twenty-four hours, but quite possibly for years. Indeed, if the restaurant began its existence with new equipment, they might never have been used for prohibited substances, as in the case cited by Isserles in the last footnote, and even if the restaurant purchased used kitchen equipment from a jobber, as might well have been the case, that is long in the past, certainly not in the last twenty-four hours, and the initial, intentional use of that equipment was probably by a gentile, who was not subject to a rabbinic decree, and, at that, long before you entered with your order. *בהא לא גזרינן* (in this matter we do not apply the decree).

### **The matter of Tevilat Kelim (the immersion of dishes in a mikveh before use)**

The law of Tevilat Kelim, the requirement that a Jew who acquires a utensil from a gentile must immerse it in a mikveh does not apply here, as the utensil has not been acquired but is only for temporary use,

<sup>92</sup> Y.D. 122.2 states clearly that this applies to meat and milk as well as kosher and unkosher.

<sup>93</sup> I have found a source suggesting that Moses Isserles might himself consider this *kula* (leniency). In Y.D. 122.9 the Shulhan Arukh suggests that one should not leave one's own kosher utensils with a non-Jew lest, perhaps, he use them with a forbidden food. Isserles suggests that properly marking them as your kosher dishes should be sufficient to obviate this concern, but that, in the event that you left them with the gentile but did not mark them, it is appropriate to kasher them before use due to this concern. Isserles then comments that this is only applicable to using the pot within the first twenty-four hour period of its return. If twenty-four hours had passed since the dishes were reclaimed, he reasons, there is only one doubt – whether the dish had been used. But if it is clear that the dish is not *ben yomo* then, adding that certainty to the doubt, we may be lenient and permit.

(אבל אם... נשתהא ביד ישראל לאהר שלקחו מן העובד כוכבים מעת לעת, אזלינן לקולא, ואין חוששין בדיעבד.)

What he seems to be saying is that in this situation, where it is unclear if the dish had been used for forbidden food at all, it would be appropriate to act on the knowledge that the dish is not *ben yomo* despite the rabbinic decree that typically forbids that. His use of the additional caveat ואין חוששין בדיעבד (that we do not concern ourselves after the fact) seems odd, for we are addressing the use of the dish *ab initio* and not the propriety of using the food it prepares after the fact. Shakh 122.8 explains that Isserles cannot be referring to food prepared being permissible after the fact, for that is obvious, and who has even mentioned the status of food cooked in the pot? No, he says, we are discussing cooking intentionally in such a pot *l'khat'hilah* (*ab initio*), and what is referred to as after the fact is that he had left the dish with the gentile – but, of course, one should not do that *l'khat'hilah*. We see Isserles allowing use of a pot *l'khat'hilah* that would be prohibited if we applied the rabbinic decree. But the situation is different and, to his mind, the *gezeirah*, the decree, is not applicable in such a situation.

which is permitted (Shulhan Arukh, Yoreh Deah 120:8). Furthermore, food that has been prepared in a pot which requires immersion but has not been immersed is nonetheless permitted to be eaten (120:16).

### **Vegan / Vegetarian Restaurants that are decorated with an homage to idols<sup>94</sup>**

Our current reality presents a situation in which many vegan / vegetarian restaurants are under Hindu proprietorship and are decorated, as per their faith, with the images and idols of the many Hindu gods. Given Judaism's legal mandate for Jews to distance themselves from the trappings of idolatry, does this pose a barrier to dining at such venues?

Halakhah is fairly clear that it does not. In Maimonides's Laws of Idolatry (Hilkhot Avodat Kokhavim) 7.6, codified similarly in Shulhan Arukh, Yoreh Deah 141.1, he states clearly, based on the gemara on Avodah Zarah 40b-41a, as follows:

צורות שעשאום עובדי כוכבים לנוי מותרין בהנאה וצורות שעשאום לעבודת כוכבים אסורים.

Images made by idolaters for decoration are permitted to be enjoyed, whereas those made for idolatrous worship are forbidden.

The discussion goes on to address how one might know by the appearance of the image what it was created for, with one suggestion being that if it is in the city it may be assumed to be just decoration, another being that if it is in the entrance that is an indication that it might be for worship, but in any event Shakh in his commentary to Shulhan Arukh, there, concludes that in our day every situation must be assessed on its own.

Worship, in our day, is not expected of visitors to a commercial establishment, nor is it usual for the workers or proprietor to worship at such an establishment, thus what appear to be decorations may be assumed to be simply that.<sup>95</sup> Furthermore, there have been increasing attempts to arrive at a determination that even Hindu worship to a named divinity should be understood as worship to an aspect of the One Supreme God, and does not lie afoul of the laws of Avodah Zarah.<sup>96</sup>

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<sup>94</sup> I appreciate Rabbi Evan Ravski calling this issue to my attention.

<sup>95</sup> I have heard anecdotal reports of more religious establishments dedicating an order to their god before bringing it out. I cannot assess if that is sometimes the case, but it is surely not common. Buddhist institutions often have a statue of Buddha, but he is a figure of enlightenment in the Buddhist faith, not a god, and a candle lit before it is taken as a symbol of that enlightenment ([https://en.wikipedia.org/wiki/Offering\\_\(Buddhism\)#:~:text=the%20lighting%20of%20a%20candle,the%20fragrant%20scent%20of%20morality.](https://en.wikipedia.org/wiki/Offering_(Buddhism)#:~:text=the%20lighting%20of%20a%20candle,the%20fragrant%20scent%20of%20morality.))

Each person should assess their level of comfort in determining where they dine.

<sup>96</sup> The Ashkenazic Chief Rabbi of Israel, Rabbi Yona Metzger, in 2007 and 2008, participated in a global summit between Jewish religious leaders and leaders of the Hindu religion that issued a declaration to which he was a signatory that Hindus should not be considered idol worshippers. The declaration reads as follows: "It is recognized that the One Supreme Being, both in its formless and manifest aspects, has been worshipped by Hindus over the millenia. This does not mean that Hindus worship 'gods' and 'idols'. The Hindu relates to only the One Supreme Being the One Supreme Being when he/she prays to a particular manifestation." The status of this declaration l'halakhah (as a matter of law) is unclear. The prior arguments are sufficient of themselves.

About the declaration, see in particular page 2 of the assemblage of press reports of the Jerusalem conference in 2008 -- [http://www.millenniumpeacesummit.org/Hindu-Jewish\\_Summit\\_Information.pdf](http://www.millenniumpeacesummit.org/Hindu-Jewish_Summit_Information.pdf). The complete text is found at -- [http://www.millenniumpeacesummit.org/2nd\\_Hindu-Jewish\\_Leadership\\_Summit\\_Declaration.pdf](http://www.millenniumpeacesummit.org/2nd_Hindu-Jewish_Leadership_Summit_Declaration.pdf). See also the article by Rabbi Alon Goshen-Gottstein entitled Hinduism and Judaism: An Overview that appeared in

## Cafes and Bakeries

Cafes and bakeries are not self-identified as vegan / vegetarian, but often are. How are we to consider whether to eat there or purchase their foods?

In the past, and to some extent and in some areas even today, baking was done with animal fats. Today many bakeries use only butter or vegetable oil, though lard remains in use particularly for pie crusts.<sup>97</sup> Since, even today, it is not possible to simply rely on such a shop being vegan or vegetarian, it is appropriate to ask. As Shakh had suggested, this is an easy ask and one which should elicit a ready response. With that assurance in mind,<sup>98</sup> it is possible to apply the findings of this teshuvah as appropriate. It must be emphasized that this heter applies in the first instance only to those institutions that have no animal products on their premises. Thus, though they do not advertise themselves as vegetarian, upon questioning you are able to determine that they are so in fact.

Many cafes or bakeries bake exclusively with vegetable fats and oils, but may have unkosher meat products on their menus. There is a case to be made, however, to permit eating their baked goods, in line with the general parameters of this teshuvah. Since baking is generally done separately from other food preparation, and on dedicated utensils, the unkosher food on their menus is unlikely to interact with the other goods they offer for sale. Though there may be some incidental contamination from one to the other in the kitchen, this would be cold and likely batel, or in the washing of the utensils, which is unlikely to have an effect of *notein ta'am li-sh'vah* (passing a beneficial taste) due to cleaning methods today which always use soap, which is considered *notein ta'am lifgam* (passing a detrimental taste)<sup>99</sup>

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Contemporary Jewry (2021) 41:595–616 (online at [https://www.academia.edu/80310217/Alon\\_Goshen\\_Gottstein\\_Hinduism\\_and\\_Judaism\\_An\\_Overview\\_Contemporary\\_Jewry\\_vol\\_41\\_2021\\_595\\_616](https://www.academia.edu/80310217/Alon_Goshen_Gottstein_Hinduism_and_Judaism_An_Overview_Contemporary_Jewry_vol_41_2021_595_616) and the review essay by Alan Brill on Goshen-Gottstein's 2016 book *Same God, Other God: Judaism, Hinduism and the Problem of Idolatry* at <https://kavvanah.blog/2019/03/>.

<sup>97</sup> <https://www.therecipe.com/cooking-tips-butter-shortening-lard/>

<sup>98</sup> Assurance is the key. One should not accept a wishy-washy response from a counter hand, but only a firm response from the baker or someone in the know. The classical halakhah tends to discount the word of a gentile altogether unless they are *meisiah l'fi tuman* (speaking unaware of the import of their words) [Shulhan Arukh, Even HaEzer 17.3, 14-15]. This is generally explained in one of two ways – a) that gentiles are formally forbidden to give testimony in court, but that the court may of its own authority choose to believe the report of a non-Jew if there is reason to accept it (see Nimukei Yosef to Yevamot 46a), or b) that gentiles may not give testimony because they will lie for their own benefit, but we can believe them where we feel they are not seeking a benefit [See an article by R. Yediyah Kahana in *Hemdat HaAretz* 3 (2008) at <https://asif.co.il/wpfb-file/hemdat-haaretz-3-14-pdf/> about this distinction]. In the Conservative world we are generally more willing to trust our gentile neighbors, so cannot accept the latter explanation, and we have reason to accept their word more broadly in non-judicial settings, and because of the movement away from the use of lard in baking in general, there is reason to accept such an assurance [See <https://draxe.com/nutrition/shortening/>].

Another matter of assurance comes to mind. When eating at a declared vegan / vegetarian venue, there is reason to assume that the proprietor has done his or her best to avoid ingredients with additives that are questionably of animal origin. That adds assurance when we then apply *s'feik s'feika*. Here we have no such assurance. It is best, in such circumstances, to limit one's choice to simple baked goods that do not have fancy candies and frills that might fall into that category.

<sup>99</sup> See the discussion on p. 27 and in footnote 84.

and the baked goods you purchase from their display cases have otherwise had no contact with these items. Thus the same consideration for the unlikelihood of contamination that motivates our reliance on *s'feik s'feika* can justify this extension.<sup>100</sup>

Other cafes and bakeries, however, though they may be using exclusively vegetable shortenings, incorporate clearly unkosher items in their baking, such as meat pies and the maple-bacon turnovers I've seen recently, such that the very ovens and utensils used for baking are implicated. Such establishments do not fall within the parameters permitted in this teshuvah.

### Is this a heter only bish'at ha-d'hak?

This is not a *heter* only *bish'at had'hak* or when one is traveling and has limited food options.<sup>101</sup> This heter is fully for all purposes, including for pleasure. The issue is what level of risk is acceptable to YOU.<sup>102</sup> This teshuvah determines that the level of risk in eating at any vegan / vegetarian restaurant is within the acceptable parameters of risk. If you choose to seek lesser risk, certainly eating only at a restaurant under *hashgahah* will be lesser risk, as it entertains simply the risk of error in *hashgahah* and not the additional risk of happenstance. And it is not unreasonable to determine that YOU will only accept the greater risk in the absence of the availability of *hashgahah* or, a greater *humra* (stringency), only *bi-sh'at had'hak*. But it is the finding of this teshuvah that the risk of happenstance is within the tolerance of *halakhah* for acceptable risk in all cases.

### Prohibition on Shabbat

Needless to say, it is not permitted to eat at a vegan / vegetarian restaurant on Shabbat even if arrangements were made to pay before or after Shabbat. Although the work of cooking is being done by non-Jews, work done by a non-Jew at the instruction of a Jew (and for his benefit) on Shabbat is prohibited until enough time has elapsed after Shabbat that the work could have been done after Shabbat.<sup>103</sup>

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<sup>100</sup> Some might well not wish to extend this heter that far. Since this is primarily a matter of the assessment of risk, one is encouraged to be as cautious as one's good sense demands.

<sup>101</sup> See the opinion of Dror Fixler, footnote 89.

The matter of defining what constitutes *sh'at had'hak* is a complicated one, and unnecessary to delve into given that this teshuvah is not relying on that situation. There is an interesting short discussion in the Talmud on Moed Katan 14a which distinguishes when one may claim the burden of travel to permit *giluah* (shaving) on *Hol HaMoed* and when one may not. The Talmud concludes that ONLY travel that is undertaken for the primary reason of sustenance may be considered *bir'shut*, for a compelling reason (a more capacious category than the more limited *sh'at had'hak*), whereas travel undertaken simply for pleasure is considered *shelo bir'shut*. The Talmud leaves travel for additional profit as a matter of dispute as to whether it qualifies as *bir'shut* or not.)

<sup>102</sup> Let me reiterate what I had written in footnote 6. This teshuvah is addressed to the individual who makes determinations about his or her own practice. It is my firm belief that we are each responsible for determination of our own level of practice, in consultation with our rabbis, dependent upon their advice but not their determination. The realm of *mara d'atra* (local authority) is squarely with regard to community wide (synagogue) practices. Thus the *mara d'atra* would be the proper source of a determination whether a synagogue function might meet at or be catered by the type of restaurant discussed here. See Avram Israel Reisner and Murray Singerman, *Balancing Rabbinic Authority and Personal Freedom in the Modern Age, Hakol Kol Yaakov: The Joel Roth Jubilee Volume*, pp. 278-302.

<sup>103</sup> *Shulhan Arukh, Orach Hayim* 307.20. This is intended to prevent the temptation to have a non-Jew begin the work during Shabbat so that it be ready for the Jew immediately after. Oddly, this stringency is not applied to



### Other significant provisos

We began with the significant difficulty of addressing the prohibition of *bishul goyim* absent which we could not contemplate eating at the majority of vegan / vegetarian restaurants. That difficulty evaporates if considering eating at a vegan / vegetarian restaurant known to be owned by a Jew. On the other hand, there are certain difficulties with regard to eating at a vegan / vegetarian restaurant owned by a Jew that do not apply to one owned by a gentile which need mentioning.

These are two – eating at a vegan / vegetarian restaurant on Saturday night, and eating there shortly after Pesah.

Shulhan Arukh, Orah Hayim 318.1 rules that one may not benefit from prohibited work done by a Jew on Shabbat until after Shabbat. Since it is not unlikely that some foods were partially pre-cooked, or par-cooked earlier, that is, on Shabbat, where a Jew owns the restaurant, that work is being done by a non-Jew at his behest, and although your order is placed after Shabbat, some of the food might be categorized as prohibited. Thus it is best not to eat on Saturday night at a Jewish owned vegan / vegetarian establishment.<sup>104</sup>

A similar problem concerns hametz she-avar alav hapesah (leavened foods that were prohibited during Pesah but were nonetheless held by a Jew in contravention of that law over that period). As a rabbinic fine, in order to motivate the elimination or sale of hametz for Pesah as required, this too was prohibited for a Jew to eat [Shulhan Arukh, O.H. 448.3]. If the restaurant owner is a gentile, this poses no concern, since he was not under this restriction. But where a Jew is owner of the restaurant, any hametz held during Passover, if it had not been sold, would be prohibited. This poses a potential problem in the days after Pesah. Minimally, the halakhah only requires avoiding known hametz she-avar alav hapesah – since the basic prohibition is of rabbinic origin, in cases of doubt whether there is any hametz she-avar alav hapesah it is permitted to eat.<sup>105</sup> So whereas eating immediately after Pesah could be permitted, common practice is to avoid situations of possible hametz she-avar alav hapesah for a period of time.<sup>106</sup> The Star-K certification, in its publication on the matter, notes that supermarkets typically turn over their stock in two weeks, that in mom and pop stores that might be four weeks, but

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something done illegally on Shabbat by a Jew, even at one's behest, because it is assumed that no Jew would do work for another on Shabbat (see Mishnah B'rurah [Yisrael Meir Kagan, 1838-1933] OH 318.5).

<sup>104</sup> I have tried to be careful here. Since the prohibition of benefiting from work done on Shabbat at the behest of Jew is only *derabbanan* (a rabbinic stringency), and you do not know that any such pre-cooking had occurred, there is sufficient reason to claim that in a case of doubt about a rabbinic ruling one may be lenient. And if the Jewish owner himself did the cooking on Shabbat, it would be his transgression, not done at your behest, and is permitted to you immediately after Shabbat. Still, it does not seem wise to rely on this leniency.

<sup>105</sup> Hok Ya'akov [Jacob ben Joseph Reischer, 1661-1733] to O.H. 449. But see the last sentence in the prior footnote.

<sup>106</sup> Though this is technically considered a fifty-fifty *safek*, either there is hametz she-avar alav hapesah or there is not, we realize that the chances there is are much greater than fifty percent. Thus the operant question becomes, when do we assess that the chances of hametz she-avar alav hapesah remaining have been reduced to a tolerable level. (Below 25% by the *sfek s'feika* measure). This is subject to a factual assessment. Or if you will this could be described as a true *sfek s'feika* – did the restaurant have hametz she-avar alav hapesah, and if it did, has it been depleted yet, or not?

that of liquor they recommend refraining from uncertain situations until after Shavuot, seven full weeks after Pesah.<sup>107</sup> This seems reasonable. Assessing that restaurants are most likely quick to turnover their foods, we would suggest treating them like supermarkets, and not eating in Jewish owned vegan / vegetarian restaurants for two weeks after Pesah (mnemonic: until after Yom haAtzmaut), but continuing to refrain from liquor there until after Shavuot.

## Conclusions

Despite the several times we needed to stop to seriously consider whether there existed any way to permit eating at a vegan or vegetarian restaurant without kashrut supervision, we have found no bar to doing so.

Eating without supervision entails a level of risk higher than would exist when under supervision. Eating under supervision we would each have the first order defense in the event of any instance of having eaten unkosher that we were relying on the certification provided by duly appointed authorities.<sup>108</sup> Absent such supervision we are left to repair to the lesser defense of גגוּג, that we acted appropriately and that we were unaware of the transgression.

The requirement to eat only kosher is not one of health or physical purity, but one of Godliness and the observance of mitzvot. While there are some levels of risk which the halakhah prohibits undertaking, we have argued that eating in an unsupervised vegan or vegetarian restaurant where government oversight exists and restaurants are generally concerned with their reputations does not overstep that boundary.

## P'sak

**Vote #1:** The prohibition of בִּישׁוּלֵי גוִים is not relevant to a restaurant.

*Vote Total: This option was approved on May 2, 2023, by a vote of nineteen in favor, none opposed, and one abstaining (19-0-1). Voting in favor: Rabbis Aaron Alexander, Jaymee Alpert, Pamela Barmash, Emily Barton, Suzanne Brody, Nate Crane, Elliot Dorff, David Fine, Judith Hauptman, Joshua Heller, Barry Leff, Amy Levin, Avram Reisner, Tracee Rosen, Rachel Safman, Miriam Spitzer, Mordecai Schwartz, Ariel Stofenmacher, Ellen S. Wolintz-Fields. Abstaining: Rabbi Robert Scheinberg.*

**Vote #2:** The prohibition of בִּישׁוּלֵי גוִים is no longer in force.

*Vote Total: This option was approved on May 2, 2023, by a vote of seventeen in favor, none opposed, and three abstaining (17-0-3). Voting in favor: Rabbis Aaron Alexander, Jaymee Alpert, Pamela Barmash, Emily Barton, Suzanne Brody, Nate Crane, Elliot Dorff, David Fine, Judith Hauptman, Barry Leff, Avram Reisner, Tracee Rosen, Rachel Safman, Miriam Spitzer, Ariel Stofenmacher, Ellen S. Wolintz-Fields. Abstaining: Rabbis Joshua Heller, Amy Levin, Mordecai Schwartz.*

**Vote #3:** Eating at an unsupervised vegan or vegetarian restaurant (or a café or bakery that assures you it uses no animal products) is within the halakhic parameters of the observance of kashrut in particular and of mitzvot more generally (as per the provisos discussed above and summarized below).

First proviso: It is not permitted to eat at a vegan / vegetarian restaurant on Shabbat.

<sup>107</sup> <https://www.star-k.org/articles/articles/seasonal/351/guide-to-purchasing-chometz-after-pesach/>

<sup>108</sup> Mishnah Horayot 1.1 -- פטור – בת"ד (One who relies of the court is considered blameless).

Second proviso: It is best not to eat in a Jewish-owned vegan / vegetarian restaurant on Saturday night lest advance food preparation had been done on Shabbat.

Third proviso: We suggest not eating in a Jewish-owned vegan / vegetarian restaurant for two weeks after Pesah (until Yom haAtzmaut) out of concern for possible hametz she-avar alav hapesah, and to refrain from ordering liquor there until Shavuot.

*Vote Total: This option was approved on May 2, 2023, by a vote of nineteen in favor, one opposed, and none abstaining (19-1-0). Rabbis Aaron Alexander, Jaymee Alpert, Pamela Barmash, Emily Barton, Suzanne Brody, Nate Crane, Elliot Dorff, David Fine, Judith Hauptman, Joshua Heller, Barry Leff, Amy Levin, Avram Reisner, Tracee Rosen, Rachel Safman, Rabbi Robert Scheinberg, Mordecai Schwartz, Ariel Stofenmacher, Ellen S. Wolintz-Fields. Voting against: Rabbi Miriam Spitzer.*

## Appendix

*Ovadiah Yosef, Yabia Omer 5, Yoreh Deah 9  
שו"ת יביע אומר חלק ה - יורה דעה סימן ט*

דלא פסיק שקיים חשש שנכבשים בשמנים טמאים, וכמ"ש קלא ישנו, דנ"ד ד. והנה גם בסרדינים של דגים קטנים ושמעתי ששלמים וכן רבים נמנעים מלאכול, 'שכ (מע' ד אות ד) אס"ד בשד"ח 'וע. (עג ס"ק קיג 'בדרכי תשובה (סי' ולפ"ז), לי, אם הוא מטעם שחוששים על הדגים עצמם נתברר הסרדינים של דגים קטנים הנכבשים בשמן זית, ולא אם ניכרים ע"י סנפיר וקשקשת מותרים), או מפני שחוששים לאיזה תערובת שמן טמא בשמן זית שלהם. ע"כ

גא). ע"ש ס"ק סוף קע (סי' א"ח נח). וכ"כ הרה"ג ר' יעקב סופר בכף החיים ס"ק וכו"ה בדרכי תשובה סי' פג).  
With regard to sardines (the little fish we are talking about), there is unceasing rumor that there exists a suspicion that they are packed in unkosher oils, as appears in Darkhei Teshuvah [YD] 113.73. See Sdei Hemed, aseifat dinim, section 4 number 4, who wrote: "I have heard that many pious people will not eat sardines, little fish packed in oil, but it is not clear to me if that is due to concern over the fish themselves (in which case if they were recognizable as having fins and scales they would be permitted) or if they are concerned about a mixture of unkosher oil in the olive oil in which they are packed." (Thus Darkhei Teshuvah [YD] 83.58, and thus wrote Yaakov Sofer in Kaf HaHayim OH 170.51 at the end).

גם בשו"ת לבושי מרדכי מהדו (בתרא) סי' קמח), אחר שהעיד על גאונים וצדיקים שהיו אוכלים מסרדינים של דגים קטנים, (ולא חששו לבשו"ג, (כתב, ושוב נשמע קול במכתבי העתים שמערבין בהן שומן טמא, וכמו שאמרו ג"כ על השמן זית הבא מאיטליא שמערבין בו שומן חזיר. ולכן נוהגים בו איסור כל יר"ש, וכן ראוי לנהוג בכל דבר שצריך השגחה על כשרותו. ע"כ. ולכאורה במקום שהסרדינים נעשים ע"י בעלי תעשייה מפורסמים, ומעידים על הקופסא שנעשה משמן זית, י"ל בכה"ג אומן לא מרע נפשיה. וכמ"ש מרן בש"ע) סי' קיד ס"ה), יין רמונים שמזכרים לרפואה מותר ללוקחו מתגר גוי, אף על פי שדמיו יקרים מן היין, ולא חיישינן שמערב בו יין, דכיון דאית ביה קפידא אומן לא מרע נפשיה. הגה: וכן כל דבר שקונים מן האומן שרי דלא מרע נפשיה. ע"כ.

Also in Responsa Levushei Mordecai, second edition #148, after reporting on learned righteous people who would eat sardines (small fish, and did not worry about gentile cooking), the author wrote: "and again there was heard the report in periodicals that they mix in unkosher fat, as was said about the olive oil from Italy that it was mixed with lard, therefore God-fearing people customarily prohibit it, and that is appropriate with regard to anything that needs supervision of kashrut." But it seems that wherever sardines are prepared by well-known factory owners, and they claim on the package that it is made with olive oil, one can say in such a case that 'an artisan would not taint himself'. As Isserles wrote in Shulchan Arukh [YD] 114.4: "[Karo]: Pomegranate wine sold as a medicinal may be purchased from a

gentile merchant, even though it is more expensive than wine, (and we do not concern ourselves that he might have mixed in [real] wine), since there is a particular interest [= in the medicinal pomegranate], an artisan would not taint himself. [Isserles]: Thus whatever you buy from an artisan is permitted, for he would not taint himself."

וכבר נודע מ"ש בתשו 'הרמ"א (סי' נד) לבטל הקול שיצא על השמן זית שמערבין בו שומן חזיר, כי טעמנו ממנו כמה פעמים ולא טעמנו בו טעם איסור כלל, ואין לומר שמא טעמן שוין, דהא בחולין (קט): אסר לן חזיר ושירי לן מוחא דשיבוטא, ולא אמר ושירי לן שמן זית, א"ו דליכא למיחש להכי, ועכ"פ בודאי שיש ס' נגדו, ועוד דאחזוקי איסורא לא מחזקינן לומר שנתערב בו איסור וכו'. 'ע"ש. וע"ע בשו"ת שערי דעה ח"א (סי' מו) שהעלה ג"כ שאין לחוש לקלא דלא פסיק שמערבים שומן חזיר בשמן הבא ממרחקים דאחזוקי איסורא לא מחזקינן וכו'. 'ע"ש. וכ"כ בשו"ת טוב טעם ודעת תליתאה) ח"ב סי' ט) להתיר שמן זית הבא ממרחקים וכפי הנשמע מכותבי העתים יש שמערבים בו שומן חזיר, והעלה שהבאים מערי טורקייא בודאי שאין לחוש בהם חששא זו, וגם הבאים מערי אירופא כיון שיש תגרים שאינם מערבים, אזלינן לקולא, שיש להם חזקת היתר דמעיקרא, וגם הוא גזירה שאין רוב הצבור יכול לעמוד בה. ובפרט בזה"ז שיש ע"ז אחריות גדולה מדינא דמלכותא שמקפידה ע"ז, בודאי דמרתת לזייף, ולכן אין לחוש לזיופא בכה"ג, לכן נ"ל להשקיט הדבר ושלא לחוש לאסור בזה. ע"כ .

It is well known that in Isserles' Responsa 54 he wrote to override the rumor concerning olive oil that they are mixing it with lard that we have tasted it several times and not tasted any prohibited substance at all. (And one cannot say – what if they taste alike? – for in Hullin 109b it reports that God forbade pork but permitted shabout brains (This is proposed as something tasting like pork. The shabout is a fish in the carp family). It did not say, but permitted us olive oil – so, clearly, there is no reason to have this concern). In any case, there is certainly sixty against it, and furthermore, we do not presume a prohibition and say it was mixed in... See there. And see further Responsa Sha'arei Dura 1.46 who argued also that one should not pay attention to a persistent rumor that they mix lard with oil that comes from afar, for we do not presume a prohibition. Similarly in Responsa Tuv T'am VaDa'at, third edition, II.9 The author wrote permitting olive oil that comes from afar because we do not presume a prohibition. He pointed out that with regard to those who come from Turkish towns there is certainly no reason to entertain that concern, and even those who come from towns in Europe, since there are merchants who would not mix, we rule leniently, for they have a presumption of permission, and [to forbid] would be a decree that the public cannot abide. And particularly today, when there is a responsible legal structure and the law of the land attends to this, certainly they [the merchants] would be afraid to adulterate, and there is no reason to fear adulteration in this matter. Therefore, it seems to (me) [him] that we can put this to rest and do not need to be concerned.

ואף על פי שיש לדחות טעמו האחרון, שאין הממשלה מקפידה אלא עד לתערובת של אחוז מסויים, וכמ"ש הגרא"י קוק בשו"ת דעת כהן (סי' רכד) ע"ד מיני חמאה שיש בהן חשש תערובת איסור, שגם על אלה שכתוב: נקי, מעורב בהן שומן בע"ח טמאים, והממשלה מרשה לכתוב ע"ז נקי, מפני שהאחוזים של התערובת הם חוקיים. ע"ש. והרה"ג ר' ברוך עפשטיין בס' מקור ברוך ח"ד (דף תתקנז ע"ב) העתיק בזה מאמר הגאון המפו"ר יעקב באריט בעתון המגיד (שנת תרכ"ח גליון ל), שיצא בסופה ובשערה להזהיר מאד מלאכול השמן זית הבא מערי צרפת, כי נודע לו מתוך מכתבי העתים, שע"י חכמת אנשי המדע בצרפת הבקיאים בחימא, ידעו לערב (קרוב לשבעים אחוז) מן השומן החזיר לתוך השמן זית. ובהיות שכמעט כל השמנים באים מערי צרפת מצוה להודיע זאת ברבים שכל החרד לדבר ה' יזהר מאכילת שמן זית עד אשר יהיה עליו כתב הכשר מאיש אמונים. וכ"ע"ז הרב המחבר, שע"י מאמר הרב הנ"ל נמנעו מיד כל החרדים לדבר ה' מלאכול שמן, וכל הנעשה ממנו, כגון דגי סרדינים וכיו"ב. ויש שהתחילו לבחון הדברים ע"י הפרדה כימית, אך לא כל הבוחנים באו לעמק השוה בזה מפני שתכונה אחת לשמן זית ולשומן החזיר בכל טבעם, ולכן גם הפרידה הכימית לא הצליחה לבא אל חקר דבר ברור ומחלט. ע"כ). וראה עוד בס' נהר מצרים דף עג ע"ב, על מדת הצלחת הזיופים בזה בערי צרפת, עד שנכשלו אנשים לאכול שומן חזיר מהותך ומזוקק, בחשבם כי הוא חמאה זכה וברה. ע"ש .

Nonetheless, there is reason to contest his final reason, because the government is only particular about a certain percentage. As Rav Kuk said in Responsa Da'at Kohen 224 about types of butter about which

there is a suspicion of mixed in prohibited matter, yet they are marked “pure” – unkosher animal fat is mixed in, but the government allows the marking “pure” because that percentage is permitted. See there. Rabbi Barukh Epstein in Mekor Barukh IV, p. 957b transcribed an article by R. Jacob Barit in the paper HaMagid, 1868.30 who fulminated, warning not to consume olive oil coming from France, since it is known to him via periodicals that the scientists of France, using their knowledge of Chemistry, know how to mix lard (nearly 70%) into olive oil. And since most olive oil comes from France, it is a mitzvah to make this known so that anyone following God’s law will be careful not to consume olive oil that does not have a reliable hekshser. About this the author [Epstein] wrote that “based on that article all pious people refrained from consuming olive oil and those things made with it, like sardines. Thus there are those who have begun to test by chemical process. But not all those testers have agreed because olive oil and lard are similar, thus even the chemical tests have been inconclusive.” (And see further in the book N’har Mitzrayim p. 73b how successful were these frauds in French cities until people were misled into eating pure pig fat, convinced that it is pure butter. See there.)

אולם הגאון מר אביו של המקור ברוך הנ"ל, בספרו ערוך השלחן (סי' קיד ס"ק יח, כתב), והנה זה ערך כ"ה שנה שיצא קול רעש גדול על השמן זית המובא ממרחק שיש בו תערובת שומן חזיר, והקול היה הולך וחזק מאד, ונמנענו אז מלאוכלו במשך זמן רב. ואף שגם בזמן רבינו הרמ"א היה כזה, והשיב שהמחמיר בזה אינו אלא מן המתמיהין, וכמבואר בתשובותיו (סימן נד). מ"מ לקול המולה גדולה לא אכלנו ממנו, עד שישבו על מדוכה זו פרופיסורים מומחים הבקיאים בחכמת הכימיה ובחנו הדבר ע"י פירוד היסודות, והודיעו שלא נמצא בשמן זית שום דבר מאיזה בעלי חיים, ורק באיזה שמנים יש תערובת משמן זרעונים, ואז נפסק הקול, והתחלנו שוב לאכול. וכל המחמיר בזה אינו אלא מן המתמיהין, וכד' רבינו הרמ"א. עכת"ד. ובשו"ת דברי חיים מצאנז ח"ב) חיו"ד סי' נ) כ' ג"כ אודות השמן שיצא קול שמערבין בו שומן איסור, והשיב ג"כ להתיר מכח ס"ס, שמא לא נתערב בו, ושמא נטל"פ הוא, וכמ"ש בתשו' הרמ"א להתיר בזה. והוסיף עוד סניפים להתיר. ע"ש. גם בשו"ת מהר"ש ענגיל ח"א (סי' כז (נשאל על השמן שיצא קול שמערבין בו איסור, והתיר מטעם הס"ס הנ"ל, והוסיף, שאם נבדק קצת מהשמן ע"י מומחה לכימיה שמפריד חלקיו וקובע שאין בו תערובת ממין אחר שפיר נאמן דאומן לא מרע אומנותיה. ובודאי שיש לסמוך ע"ז להתיר. ע"ש. וכן העלה בשו"ת בית יצחק שמעלקים) ח"א מיו"ד סי' קמא). ע"ש. ומכיון שמצד הדין אחזוקי איסורא לא מחזקינן, וכמ"ש מרן הב"י א"ח) סי' תסז (בדין דבש של גוים לפסח, והש"ך יו"ד (ס"ס קיד) בדין הכרכום .

But the sage, the father of the aforementioned [author of] Mekor Barukh [= Yehiel Mikhel Epstein], in his book Arukh HaShulhan [YD] 114.18 wrote: It has been about 25 years since there was a great tumult about olive oil imported from afar that it has a mixture of pig fat, and the rumor was very loud. People then refrained from consuming it for a long time. Even though even in the time of our master Moses Isserles it was so, and he responded that one who is strict in such matters is a fool, as presented in his Responsa (#54), nevertheless, due to the loud tumult we did not eat it, until professors expert in chemistry dealt with the matter and tested through chemical analysis and concluded that there was no foreign animal substance in the olive oil, though some oils did have an admixture of other seed-oils. Then the rumor abated and we returned to eating it. Those who are strict in this matter are indeed fools, as Isserles thought. That is what he said. And in Responsa Divrei Hayim of Sanz, II, YD 50 he too wrote about oil about which it was rumored that they mix in forbidden fat, and he too responded permitting on the basis of double doubt, lest there was no admixture and lest it left a tainting taste, as is written in Isserles' Responsa to permit this. And he added other grounds to permit. See there. So, too, in Responsa of Samuel Engel, 1.27, he was asked about oil which was rumored to have a forbidden mixture and he permitted it on account of the double doubt, and added that if a bit of the oil was checked by a chemistry expert who analyzes and concludes that there is no mixture of any other kind, that expert should be believed because an expert does not taint his craft, and one can certainly rely on this to permit. See there. And that point was made as well in Responsa Bet Yitzhak (Schmelkes, YD 1.141). See there. And since as a matter of law we do not presume there to be a prohibited substance.

As our master Bet Yosef [= Karo] wrote in OH 467 in the matter of gentile honey on Pesah. And Shakh YD 114 in the matter of a crocus.

ויש לנו ס"ס לקולא, אין להחמי' בסרדינים הללו מחשש תערובת שמן טמא. ובפרט שהיום נמצא שמן טהור  
 מקטני, 'והוא זול מאד, ואין להם ריח בזיופו. ומ"מ הכל לפי המקום והזמן. וכיו"ב כ' הערו 'השלח) 'סי' קיד ס"ק  
 טו). ע"ש

We have a double doubt leading toward leniency. One should not be strict in the matter of these sardines out of concern about a mixture of unkosher oil. Especially since today there is kosher oil made of kitniyot which is very cheap, and there is no profit in counterfeiting it. But everything needs to be determined in its own time and place, as is made clear by Arukh HaShulhan [YD] 114.15. See there.