

Committee on Jewish Law and Standards

Supervision of Passover Food
Rabbi Paul Plotkin

OH 451.2011

This responsum was approved by the CJS on December 7, 2011 by a vote of eleven in favor, two opposed and two abstaining (11-2-2). Members voting in favor: Rabbis Elliot Dorff, Susan Grossman, Joshua Heller, Jeremy Kalmanofsky, Adam Kligfeld, Gail Labovitz, Amy Levin, Daniel Nevins, Paul Plotkin, Barry Starr and Loel Weiss.

Members opposed: Rabbis Kassel Abelson and Aaron Alexander.

Members abstaining: Rabbis Pamela Barmash and Avram Reisner.

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.

שאלה: What are the issues involved in permitting or forbidding manufactured foods without a Passover certification?

תשובה: Very few things are as dynamic and constantly changing as modern food production. The introduction of new ingredients, or complex shared equipment agreements in factories, constantly forces us to reassess some of our assumptions and therefore adjust rulings pertaining to kashrut in general and to Pesah specifically.

Products that in the past were pure and prepared on dedicated equipment now may use additives, enzymes, or shared equipment with non-kosher or חמץ (hametz) products. Because of these changes and, in particular, due to the strict nature of Pesah, it is always preferable to purchase products with a reliable certification for Pesah.

Because not everyone lives in reasonable proximity to a wide range of Pesah supplies, or because of limited financial resources, not all kosher observant Jews can maintain this standard. We therefore offer an alternative option so one can purchase before Pesah, certain foods without a Pesah certification. As will be explained below, these are liquid products, which, if in contact with a חמץ (hametz) product, or a חמץ (hametz) taste, and the חמץ (hametz) product was totally assimilated into the host, the חמץ (hametz) would be nullified if the חמץ (hametz) product were less than one in 60 of the Pesah product. The accepted halakhah is that לח בלח (lah be lah) (see glossary) whether it is מין במינו (min b'mino), or מין בשאינו מינו (min b'she'eino mino), is at least, in rabbinic terms, annulled in a ratio of 60 to 1. Thus, theoretically any liquid which contains חמץ (hametz) liquid or a totally dissolved solid before Pesah can become nullified if it is below the ratio of one to 60.¹

This applies only to mixtures in which the components of the mixture become blended together. If the mixture consists of solid pieces, for example, if one matzah which is חמץ (hametz) mixed with two Pesah matzot, the rule is different. It would ordinarily be בטל ברוב (batel b'rov) but we are more stringent. Since the piece of חמץ (hametz) remains intact as a separate entity, it cannot be considered nullified

¹ See Hekhmat Adam, Hilkhhot Ta'aroret, topic 51, section 21 for a definition of when a solid in a liquid is seen as lach be lach and when it is not.

during Pesah, because the prohibition of חמץ (hametz) is in place as soon as Pesah begins. This is ונעור חוזר (hozeir v'neior), i.e., its initial nature as חמץ (hametz) returns and it is awakened. As is the norm for all חמץ (hametz) on Pesah, it becomes forbidden in any amount.² (For a further discussion to make this point, read below.)³

Frozen vegetables:

The material above sets the foundation for why we must be strict about not permitting frozen vegetables.

In the past, frozen vegetables were permitted because no חמץ (hametz) was ever mixed with the vegetables. Today many plants produce products that mix pasta with vegetables. There is the potential, albeit minor, of pasta being found in the frozen vegetables. For example, if we bought frozen broccoli spears and there was a piece of pasta accidentally in its midst, since it was מין בשאינו מינו (min b'she'eino mino), and יבש ביבש (yavesh be yavesh), it probably could never have been annulled before

²Shulhan Arukh OH 447:2, Mishnah B'rurah 447, 100:16; Shulhan Arukh OH 447:4 see Ramah, and read P 135 of the Yad Adam commentary on the Hohmat Adam, by Dr. Yehoshua Cohen. See the middle of the additional note beginning, "it should be noted . . ." for further explanation.)

³ In the Hohmat Adam, 51:1, he writes: "the fundamental rule in this matter is as follows: a dry substance does not become nullified in a liquid, a liquid does not become nullified in a dry substance; for since they do not become mingled together it is as if the forbidden substance can be recognized. And even if the forbidden taste has already become nullified, if the forbidden substance is recognizable one must remove it." And even regarding mixtures of solid substances, if one is able to recognize the forbidden substance it does not become nullified even in 1000. For example, if sprouted wheat grains (which are חמץ -hametz) have become mixed with other wheat grains, nullification does not apply even at one in a 1000 (OH ch. 467). This is because one is able to recognize the forbidden substance and remove it, even though it may involve a great deal of trouble. And with regard to all of these issues there is no difference between Torah prohibitions and Rabbinical prohibitions."

Later, in Hohmat Adam 52:9, there is a discussion about nullifying forbidden matter. He writes, "and even if the presence of the forbidden substance is clear cut, the prohibition to nullify applies only in a situation where one intends to nullify the prohibition. However, in the case where one does not intend to do this for example . . . and similarly regarding wheat which has rootlets, if there is 60, it is permissible to grind them before Pesah."

In explaining this passage, the Yad Adam commentary says the following, "if the grains which are not hametz are at the least 60 times the amount of the grains with the rootlets, one may grind them before Pesah and one need not inspect every individual grain and discard those with the rootlets. Rather if 60 times these grains are present they may be left with the others and they may be ground together. The flour from these grains will then become nullified by the flour from the grains which are not hametz. If one desires to use this grain to bake matzah for Pesah it is necessary to grind the grain before Pesah begins." (See also Hayei Adam 126:5 where it is stated that is also preferable to make such flour into matzoh before the beginning of Pesah.) However, once Pesah begins the grains from this mixture may no longer be used to bake matzoh since grains which are חמץ (hametz) cannot become nullified during Pesah. (This is because the forbidden grains awaken, ונעור חוזר (hozeir v'neior) since they are considered to be solid pieces, whereas the flour is regarded as a mixture of liquid and liquid (see Hohmat Adam 51:23).

Pesah, but even if it was, the fact that it now is clearly identifiable, it would surely be hozeir v'neior and return to חמץ (hametz) during Pesah. If we then cooked the broccoli, the entire dish would be חמץ (hametz) and the pot would no longer be kosher for Pesah. The likelihood of this happening is not great but this possibility really does exist. In the summer of 2010, Professor Joe Regenstein e-mailed me a report of a case of a foreign food product found by a consumer in a commercially-produced frozen food product. Therefore, because of the seriousness of the offense on Pesah (כרת - karet) we have to rule strictly. קטניות (kitniyot) since they are not biblically prohibited, do not pose the concerns we have when חמץ (hametz) is the contaminant.

If a rabbi were to contact a specific manufacturer and could ascertain that their frozen food lines are only used for raw vegetables and never produce anything with חמץ (hametz) on those lines, then there would be reason to permit its use, and thus return us to the former position before pasta was a potential mixture with vegetables, and therefore vegetables would be permitted.

One **may** buy a bag of frozen vegetables before Passover and then inspect it for any hametz. (The easiest way to do this is to pour it from the original bag into a baggie while looking for any foreign product.) If hametz is found, one needs only to discard the hametz, and the remaining frozen vegetables would be permitted. If one discovers on Pesah that there was a piece of hametz that was missed on the examination, one may still use the vegetables after discarding the hametz.

Juices:

Fresh fruit juices such as orange and apple juice raise different concerns. There are potentially two issues of concern with these items. The first are additives and the second is shared equipment, especially pasteurization, because it involves heat and the potential for passing on חמץ (hametz) טעם (ta'am).

Apple juice is clarified or refined by adding different ingredients such as non-kosher gelatin. When small amounts are added, they act as a flocculent, i.e., a chemical that binds to the impurities and causes them to come together and settle to the bottom. In the case of gelatin, for example, the juice is considered kosher by many authorities (see *Kosher Food Production* by Zushe Blech, p. 373 and Noda B'yehudah M.K. Y.D. 26).

If treif or חמץ (hametz) was added to fine the juice, the amount is בטל (batel), and in any case an attempt is made to remove it through filtration.

For pure fruit juices there was a concern raised with pasteurization. If the equipment was used for many different products including some that contained either dairy or חמץ (hametz) ingredients, the pasteurizer would absorb (in this case) a חמץ טעם (hametz ta'am) which it would pass on to the subsequent liquid being pasteurized, and because of the size of the equipment would probably not be nullified. However since hametz before Erev Pesah is not forbidden, any absorbed taste of the hametz would be nat bar nat lehetera and would have no affect on the juice. **Thus, any pure fruit juice including orange juice purchased before erev Pesah would be permitted without a hechsher for Pesah.**

Cheese:

What issues do we need to be concerned with when using non-supervised for Passover cottage cheese, hard cheese, and butter?

For those who ordinarily follow the opinion that hard cheese, cottage cheese, and butter are acceptable without a hekhsher, what might be the issues of concern if buying the product pre-Pesah, and how may they be addressed?

Coagulant: It is possible that most coagulants today are actually acceptable for Pesah all year around. A few of the mold type cheeses (e.g. Roquefort and Blue) may use crackers for growing the mold, creating a real Pesah problem. Most hard cheeses today use microbial enzymes, many naturally-occurring and some genetically-engineered. Both need to be grown by consuming nutrients. The kosher status of the nutrients becomes the kosher status of the microbes. If there was חמץ (hametz) in the nutrients they are considered חמץ (hametz) and cannot be nullified in any amount. Coagulants whose function is to cause a change in the original product are called דבר המעמיד (davar hama'amid) and cannot be annulled in any ratio.

Soft Cheese: For most soft cheese the acid is generated by bacteria, i.e., lactic bacteria generating lactic acid. But some cheese might use vinegar as the precipitating agent – and that could be either חמץ (hametz) or קטניות (kitniyot). Again coagulants whose function is to cause a change in the original product are דבר המעמיד (davar hama'amid) and cannot be annulled in any ratio. As for enzymes, stabilizers, and emulsifiers of unknown origin, if purchased before Pesah they would be nullified because they are added to the milk but in quantities less than one in 60.

Shared Use of Equipment: A cheese vat can usually be used for most any cheese. Although most larger plants specialize in a range of cheeses, the basic vat works the same way for all. It is possible for different cheeses to be produced in one 24-hour period with only a rinse and not a full wash, and certainly not with soap in between. Theoretically, we could have cheese with a חמץ (hametz) starter or additive, and have חמץ טעם (hametz ta'am) absorbed into the vat if the previous cheese was heated to over יד סולדת בו (yad soledet bo). The next non-חמץ (hametz) milk to be made into cheese, if the heat is high enough (and it may or may not be, as some cheeses are produced at temperatures hotter than יד סולדת בו - yad soledet bo, many are not), would absorb the חמץ טעם (hametz ta'am). In order to annul the טעם (ta'am), the cheese would have to be 60 times greater than the volume of the sides and bottom of the equipment, which almost never happens. **But since the taam of the hametz absorbed is actually nat bar nat leheter, the cheese if made before erev Pesah would not have a problem from shared equipment.**

Butter: What might be the issues with butter?

Grade AA butter ingredients should be fine.

Other grades have whey added, causing residual חמץ (hametz) issues in the whey if the whey is a by-product of cheese made with חמץ (hametz) or קטניות (kitniyot) starter.

Whether it would be batel is a question of the percentage of whey to milk. The issue of equipment contamination from a lower grade butter used first before making a grade AA butter does not seem to be a problem as the temperature is not very high and any taam would be nat bar nat leheter. I assume the vat is washed between runs, but making assumptions is dangerous.

Since there are questions regarding coagulants that may not be annulled, if one were to eat cheese without a Pesah הכשר (hekhsher) a rabbi should at least inspect the plant before categorically approving the products for Pesah. The questions discussed above would serve as a guide to what

questions to ask. Without a **מרא דאתרא** (mara d'atra) inspecting a plant we are not comfortable in giving blanket permission for using non-certified for Pesah dairy products listed above.

It should also be pointed out that all products do not necessarily come from a local dairy. Experience has shown that a company spokesperson may answer without having the facts correct. Often the degree of technical information that is needed to answer the rabbinical questions requires an operational specialist who usually is not the one answering the phone. ⁴

P'sak: Frozen foods, when processed on shared equipment that uses **חמץ** (hametz), should have a **הכשר** (hekhsher) However, if it can be absolutely determined that the plant produces only frozen fruit and/or vegetables on its lines and never anything containing **חמץ** (hametz), it may be used. Alternatively one may buy bagged frozen vegetables and inspect them before Erev Pesah for any hametz. If found the hametz needs to be discarded but the vegetables remain permissible.

Orange juice and other pure fruit juices with no additives may be used for Pesah without **השגחה** (hashgachah).

Unsalted Grade AA butter is acceptable without a hekhsher. Cheeses and other non-grade AA butter, have issues that need to be addressed by an inspection before being permitted to be eaten without a **הכשר** (hekhsher).

GLOSSARY

בטל ברוב (batel b'rov) - nullified by a simple majority.

חוזר ונעור (hozeir v'neior) - returns and reawakens- something which was annulled comes back as forbidden. This can happen when forbidden food is first annulled in a ratio of 60 to 1, but then more prohibited food joins the mix and all of the prohibited food is now forbidden.

לה בלה (lah be lah) - liquid mixed with other liquid, and sometimes well ground food such as flour mix with flour.

מין במינו (min b'mino) - a homogeneous mixture, i.e., a piece of meat that is permitted becomes mixed up with forbidden pieces of meat.

מין בשאינו מינו (min b'she'eino mino) - a heterogeneous mixture, e.g., a vegetable that falls into a vessel with forbidden soup.

יד סולדת בו (yad soledet bo) - when a hand would jump out of a hot substance, the strictest definition especially for cheese, is that it is a temperature of 120 degrees Fahrenheit or higher.

בש ביבש (yavesh beyavesh) - a solid mixed with other solids.

דבר המעמיד (davar hama'amid) - an agent that makes a physical change in the product and since there is a discernable impact of the additive in the final product, the entire product assumes the halakhic status of the additive and cannot be nullified.

⁴ All of the technical information re cheese and butter manufacturing was supplied to me and reviewed by Dr. Regenstein.