

Pizza from a Non-Kosher Establishment
YD 108:1.2012a

Approved by the CJLS on May 30, 2012 by a vote of 14 in favor, seven opposed and one abstaining. In favor: Rabbis Aaron Alexander, Elliot Dorff, Baruch Frydman-Kohl, Susan Grossman, Joshua Heller, Adam Kligfeld, Jane Kanarek, Gail Labovitz, Jonathan Lubliner, Paul Plotkin, Avram Reisner, Barry Starr, Jay Stein and Loel Weiss. Opposed: Rabbis Pamela Barmash, David Booth, Reuven Hammer, David Hoffman, Jeremy Kalmanofsky, Elie Spitz and Steven Wernick. Abstaining: Rabbi Daniel Nevins.

Sheilah

Under what conditions may pizza from a non-Kosher establishment be considered Kosher for use by institutions of the Conservative movement

Teshuvah

Preface

On many questions of Jewish law there is often a halakhic continuum ranging from the *meikeel* (lenient) position, to the *makhmir* (stringent) position. Many people for their own personal reasons will choose a layer of personal non-halakhic compromises to their observance of various mitzvot. While these compromises are not halakhically valid, and may even be violations of halakha, they are better than those who observe nothing or are antagonistic to the very concept.

While a partial observance is better than no observance, we should never mistake the compromise as an acceptable alternative to the rules of Jewish Law. We should encourage the practitioners to see what they are doing as being transitional on the way to a fuller observance. Our movement has an obligation to help those making compromise decisions do so as informed choices. It is hoped this paper will aid in educating them on the many issues involved, so as to make a more informed decision as they ascend the ladder of holiness.

The same cannot be said, however, for our institutions. Whether at the synagogue level including the many arms of the synagogue, and their youth programs, or their regional and national organizations, the professional bodies and of course the Seminary, Camps Ramah and Schechter day schools; all our institutions set the bar for their followers. Since their practices will be emulated, they must always fully observe halakhic rulings.

Introduction

There is a history of misunderstanding about what the current halakhic rulings in the Conservative movement actually are as they pertain to eating hot dairy from a non-kosher

source. A surprising number of Conservative Jews believe it is permitted to eat hot dairy foods from non-kosher sources, based on a paper called the 'Arzt Teshuvah'. In reality, there is nothing in the history of the Committee on Jewish Law and Standards that adequately laid a foundation for this belief. In fact there is no Arzt Teshuvah.

There is a document titled: "Not for Publication: Is It Permissible to Eat Cooked Vegetables and Broiled Fish in Non-Kosher Restaurants?" by Dr. Max Arzt. By its title alone, it is apparent that the scope of this paper was very limited and would not address the broader issues being raised here. It also represents only one Rabbi's attempt to prod the CJLS to address this issue.

In fact there is a long record of the CJLS trying to deal with this issue. In the Proceedings of the Rabbinical Assembly 1940, 1 they state , " Studies on the question whether it is permissible to eat cooked vegetables and broiled fish in non-kosher restaurants were presented by Rabbis Arzt and Higger. It was decided that no general permission could be given for such a practice in view of the fact that it is prohibited to eat fish broiled on a grill upon which terefah fish or meat has been previously cooked. In case of emergency, one may eat in a Gentile restaurant after having previously ascertained that the fish was broiled upon a grill after it was heated to incandescence and the vegetables were steamed and contained no terefah ingredients. "

In 1952 the Committee went on record to say, "It is the opinion of the Committee that fish dinners in non-kosher eating places shall not be construed as a violation of the dietary laws."2 But this is not an official position of the CJLS. They also announced in the Report of the CJLS,1952 that, " A complete responsum is now being drawn up on this subject and will be presented to the next convention."

Until now no such paper on this subject has in fact been presented to the CJLS.

In 1968 in response to a question from the National Women's League asking whether dairy or fish meals are permissible in non-kosher restaurants or hotels in connection with regional conferences and national conventions, the committee agreed upon the following statement.

"Mindful of the importance of regional conferences and national conventions in the advancement of Judaism, whenever any hardships are encountered we deem dairy and fish meals permissible in non-kosher restaurants or hotels in connection with these events. All precautions should be taken that no non-kosher ingredients are included in the meals and that the utensils are cleansed and scoured before the preparation of the meal."

They also said, "We affirm, however , our previous position that wherever possible and feasible, such conferences and conventions should be held at places where kosher meals are available."3

These previous sources have recognized eating in kosher facilities is the preferred choice but in

1 P.30

2 Proceedings of the Rabbinical Assembly ,1952 , p49; Minutes of the CJLS,051352b; Correspondence of the Chair,081152. Not an official position of the CJLS

3 Report of the CJLS-1968, pages 585,586

case of “emergency” or “hardships” exceptions were made, but with the proviso that specific areas of concern from ingredients to equipment preparations needed to be implemented. It is the intention of this teshuvah to continue on this historical path and in cases of emergency or hardship offer very real and detailed steps to accomplish what has been the stated goal of previous rulings of the CJLS. This tshuvah will focus on pizza but if approved it is my intention to write similar guides for other menus and venues.

Ladder of holiness

It should first be stated and understood that in cases of food needs, eating food cooked in a non kosher facility should not be our first choice. Rabbi Paul Drazen writing in the Conservative Movement’s new publication on how to lead an observant life has prioritized a series of options to follow when eating out.⁴ ,

likely problematic from the perspective of kashrut."

⁴ *The Observant Life*, page 336,337. “ To be completely compliant with the system of kashrut, the only way to be certain that one will never inadvertently eat non- kosher food when dining out is not eat in non-kosher restaurants at all. However, this option will not always appeal to people still traveling up the ladder to the halakhic ideal. Unforeseen circumstances may also arise. What about traveling? What of long business meetings that include some food service? Is there an alternative between certified kosher food and no food at all? A number of accommodations have been developed over the years. None is perfect, but all are acceptable approaches for people who are trying to incorporate the principles of kashrut into their lives, but are not quite ready simply to abandon all foods in all unsupervised venues.

A first choice can be to search out of vegan or vegetarian restaurants. In these establishments, many of the problematic issues are solved almost ipso facto. When there are no meat products or meat byproducts of any kind in the restaurant, one can feel relatively confident that the food is acceptable, even if the establishment is not kosher certified or supervised.

The next best choice would be to eat only minimally processed foods when eating in unsupervised establishments. Breakfast, for instance, can be relatively simple. Many outlets serve some foods prepared under certification, such as pastries, bagels, cold cereal, and yogurts. These foods can be consumed with confidence, as can coffee, tea, juices, and other beverages. For other meals, the choices become a bit more limited, but eating only minimally processed cold food is always a reasonable option. Salad bars can provide many possibilities although it is always best to ask what ingredients pre-prepared salads (and salad dressings) actually contain, and also to pay special attention to mysterious items one cannot identify easily. One should always assume that ersatz meat products like bacon bits are at least partially made from meat products.

Less preferable than cold food is strictly vegetarian hot food. Many restaurants expect some clients to be vegans or vegetarians, and are eager to accommodate them and to make them feel welcome. An excellent source of information on which restaurant chains offer vegetarian food options is the Vegetarian Resource Group (located online at www.veg.org), which seeks out vegetarian restaurants and vegetarian options in chain restaurants. This organization also helps make vegetarian customers aware of hidden areas of concern in restaurant food, and that information can be valuable to the kosher diner in a non-kosher restaurant.

Eating hot and cooked foods in restaurants is a complex decision for the kosher consumer. Grilled and fried foods, for example, are usually made with utensils and on cooking surfaces that are rarely fully cleaned before cooking. And although waffle irons are rarely used for anything but waffles, pancakes are more than likely made on the same griddles as various meat products. Similarly, boiled eggs present fewer issues to resolve than fried or

He is writing about individual choices while we are focusing on arms of the movement which must maintain a higher level of kashruth, but his options and concerns are in harmony with this tsuvah which may in fact better inform individuals in making the choices he discusses.

Some have asked why we need a tsuvah at all on this subject since it is clear that no one's life will end from not having pizza, but in our communal lives there may be occasions when the ability to eat hot pizza will be of great assistance or enhancement to a constituent group within the Conservative Movement. USY'ers, or a group attending a regional men's club or sisterhood meeting for example, may find themselves on a trip with an unexpected delay and no access to hot food.

Perhaps the ability to serve hot pizza (or eventually other hot meal alternatives) at a USY program, or a regional meeting would contribute to the success of the event and the viability of the group itself. This was in fact the same motivation of our committee in 1952 in trying to find ways of helping Women's League in holding conventions. Finding a legitimate halakhic way to provide such pizza within the previous CJLS categories of emergency and/or hardship is the goal of this tshuvah.

Cautionary Note

While it is very much in vogue in today's Orthodox world to find new restrictions in many areas, adding *choomrot* (stringencies) that were often not observed in the past, so as to preserve a higher standard of kashrut; this *teshuvah* will travel in the opposite direction. We will explore all pertinent halakhic issues with the express desire to see how we can legitimately eat a slice of pizza from a non-kosher pizzeria.

Since (as we will show) many of the *koolot* (leniencies) rely on a *di-avad* (i.e. after the fact) approach in the law, we wish to state that everything in this *teshuvah* should be applied only when there are *no other hot kosher supervised alternatives*.

Defining di-Avad

scrambled eggs. Cooked foods must be truly vegetarian if even a minimal standard of kashrut is being maintained....

When asking about the food in the restaurant, it is important to know what questions need to be answered. It is, for example, essential to inquire what type of shortening was used for baking and treating pans. And the kosher diner will also have to establish clearly whether beef or chicken broth or stock has been added to soups or sauces or whether such products were used in flavorings in foods such as pilafs or mashed potatoes. It is also commonplace for beef or chicken stock or fat to be added to cream soups, cheese soups, or tomato sauce. Other questions are more basic. Are separate pans used for different foods? Are products cooked together on the grill? Is a separate grill used for cooking fish, or is fish prepared on the same grill as meat? If the server cannot answer these questions clearly or find out the answers in the kitchen, then the responsible kosher consumer has to assume that the food in question are likely problematic from the perspective of kashrut."

How, one may ask, is it considered to be *di-avad* to go into a non-supervised pizzeria and order food prepared for you? Literally, *di-avad* means “already occurred” and it is often used to permit something that should not have done from the beginning, if it was done unintentionally or accidentally. However, it is important to note that this is not the only application of the concept. This can be seen by a halakha stated by R. Jacob Moelin and codified in R. Moshe Isserles’s glosses on the *Shulchan Arukh* (YD 108:1).

ואם אפה פת עם בשר, אסור לאכלו
עם חלב, אם יש לו פת אחר. וכן אם
עובד כוכבים אפה פת עם איסור,
אסור לקנות אותו פת אם יש פת
אחר, דכל זה מקרי לכתחלה. אבל אם
אין לו פת אחר בריוח, מותר בשניהם,
דזה מקרי לענין זה דיעבד.

If one cooked bread [in the same oven] with meat, it is forbidden to eat it with milk, if he has other bread. Also, if a Gentile cooked bread with forbidden food, it is forbidden to purchase this bread from him if he has other bread, since all of this would be considered [permitting the problematic bread] *le-khatchila*. However if he does not have easy access to other bread, both [of the above] would be permitted, since for the purposes of this [halakha], this would be considered a situation of *di-avad*.

We see from this that bread cooked separately in the same oven with meat should not be eaten with milk, unless there is no other bread, in which case it is considered *di-avad* and permitted. Even more to the point, bread cooked by a Gentile separately in the same oven with forbidden food is not permitted unless it is the only bread, and then it is considered *di-avad* and permitted. If it was truly forbidden, calling it *di-avad* would not make it permitted. In these cases *le-khatchila* is actually a normative stringency that can be overruled by the lack of an alternative. In other words, one major application of the concept of *di-avad* in food issues is to remove the normative stringencies and permit otherwise rabbinically forbidden food when the desired “normatively kosher” option is not available.⁵ This is how we will use *di-avad* in this

⁵ A modern example of this use of the concept of *di-avad* in kashrut is in an article by R. Eli Gersten (*Daf Hakeshuv* of the OU, 19:7 201), the recorder of the OU Psak and Policy, discussing hagala (koshering) with liquids other than water:

There is a machlokes Rishonim as to whether one may perform hagalah only with water, or whether *sha'ar mashkim* (all other liquids) are acceptable as well. The Ramban (*Chulin 108b*) holds that only water has the ability to be *maflit ta'am* from a kli. *Sha'ar mashkim* are *mavlia* into a kli but are not necessarily *maflit*. The *Teshuvos HaRashba (Chalek 1:503)* disagrees and holds that all liquids are equally capable of accomplishing hagalah. The *Orchas Chaim (Hilchos Chametz 92)* says that *lichatchila* one should only kasher with water, but *bidieved sha'ar mashkim* are also permitted. The *Rama (O.C. 452:5)* paskens like the *Orchas Chaim* that *lichatchila* one should only kasher with plain water but *bidieved* other liquids are acceptable.

Once again we see the invoking of *di-avad* as permitting that which was originally forbidden. Anticipating the question of how can it be called *di-avad* and then permitted, Rabbi Gersten continues:

The *Mishna Berurah (O.C. 452:26)* explains that “*bidieved*” in this context means that if one has the ability to kasher again, they should do so, but if they can no longer do hagalah (e.g. if it is already Pesach) they may use the kli without any further kashering. Rebbi Akiva Eiger (*Teshuvos Kama:83*) adds that in situations of *shas hadchak*, one may *lichatchila* kasher with *sha'ar*

article as we investigate each aspect of the eating of non-hechshered pizza where no hechshered pizza is available.

Nevertheless, let me state clearly: It is the ruling of this *teshuvah* that if a kosher pizzeria restaurant is available, then cooked food may only be eaten in a kosher pizzeria. In a community where kosher restaurants exist, *groups affiliated with the Conservative Movement should eat cooked food exclusively in such facilities*. When living in communities where such alternatives are not available, or when traveling out of one's community, *groups may rely on the conclusions of this paper for guidance as to what and how to order*. Nevertheless, I wish to reiterate that this is not intended to be a *carte blanche* for eating in non-kosher restaurants, nor is it even considered to be the first level of default, but rather only a way of dealing with a need to eat cooked food in a specific facility when no supervised kosher alternative is available.

I would also like to add that in addition to the halakhic limitations acknowledged and accepted in this paper, there is a very tangible benefit to maintaining the standard of only eating in kosher facilities. First, it has a positive sociological effect on our community by establishing yet another institution (i.e. kosher restaurants), where Jews meet each other and interact as observant Jews. Furthermore, if more Conservative Jews did not have the easy option of eating anywhere, they would form a significant consumer base that would spur the opening of many more kosher restaurants. This would have an immeasurable effect on strengthening a Conservative Jewish community.

Halakhic Terms and Concepts Pertaining to Kashrut

While by no means exhaustive the following list of terms and concepts are essential for understanding the issues which determine the potential permissibility or prohibition of eating cooked food prepared in a non-kosher-supervised environment.⁶

It is axiomatic that all ingredients in and of themselves must be kosher to be eaten. The issues that we will discuss relate to the inadvertent mixing of milk and meat or the mixing of the taste of meat and milk, or the mixing of kosher and non-kosher, or the taste of kosher and non-kosher.

mashkim. He therefore allowed using milk for the kashering of a treif utensil in a situation where the utensil was needed for immediate use and water was not available.

Here again we see the issue of *di-avad* is actually permitting something from the beginning that would not have been permitted but for a lack of the usual normative product.

In this case there was a desire to cook something to eat and the only pot available was *treif* and there was no water. They did not accidentally use the milk, just as in the earlier cases the bread was not accidentally cooked with the *treif*. Furthermore in each case the "need" was nothing more serious than the desire to eat something not available that required cooking. The prohibited was permitted from *ab initio*, and they relied on the leniency of *di-avad*.

⁶ I am including more concepts than are needed for the pizza discussion because I hope to write additional guides to eating in different types of restaurants, that will be based on this information.

Biblical and Rabbinic Prohibitions of Meat and Milk

According to the Torah one may not cook milk and meat, one may not eat milk and meat, and one may not derive benefit from the mixture.⁷ To this list are added Rabbinic prohibitions.

The Rabbis forbade eating fowl and/or non-domesticated animals with milk. The Rabbis forbade eating meat and milk mixture even if the two were not cooked together. However, it is permitted to have the benefit from such a mixture.⁸

Absorption and Nullification

טעם כעיקר (*taam ke-iqqar*) means that the taste of food is considered its essence. If non-kosher food were cooked with kosher food, or if kosher food were cooked in a non-kosher pot, the kosher food would receive a noticeable taste from the non-kosher food and would become the equivalent of the non-kosher food itself.

There is a great amount of debate amongst the *Rishonim* whether this is prohibited from the Torah or from the Rabbis. The consensus opinion is to treat it as a Biblical prohibition.⁹

סתם כלים (Staam Kelim) – Ordinary Vessels

Vessels belonging to a Jew or to a Gentile, the most recent use of which we know nothing about – halakha assumes that they have not been used during the last 24 hours. Therefore, after the fact, if one has cooked in the vessel of the Gentile, even though he will tell you afterwards it was used on that date, even so the food is permissible.¹⁰

כבולעו כף פולטו (ke-bolo kach polto)

This means that the way in which something is absorbed is the way in which it is expelled.¹¹

With heat, or using other modalities such as salting or leaving a liquid in a container for 24 hours (Kavush), a food flavor is absorbed into the walls of the vessel, and may be expelled back into subsequent food in the same way. For example, milk cooked in a hot pot will cause the dairy flavor to be absorbed by the pot walls and will turn the pot into a dairy vessel. If beef soup were cooked later that day in that pot it will have the milk flavor expelled from the pot into the soup making the soup non-kosher. Flavor is considered to be uniformly absorbed within the walls rather than being present only on the surface of the pot's walls in contact with the food.

יד סולדת בו (Yad soledet bo)

This means that the item being touched or one's hands are immersed in is so hot that the

⁷ *Shulchan Arukh* (YD 87:1)

⁸ *Shulchan Arukh* (YD 87:2-3)

⁹ A comprehensive discussion of various positions can be found in *Minchat Kohen* II,1:2-6

¹⁰ *Chokhmat Adam, Hilkhos Taarovet* 55:8, Taz, Y.D. 108:4

¹¹ *Shulchan Arukh* (OCH 451:13)

hand will recoil from it.¹² This is the minimum temperature at which cooking takes place according to halakha and that taste is transferred.

Because the authorities disagree over what that term means, there is quite a range of temperatures offered to qualify for this term. According to some it means the temperature is sufficient to cause immediate recoil even though the substance being touched would not immediately burn the skin. Others say it is the degree of heat that will scald the hand after sustained contact. If one is able to hold one's hand in hot water for a short while, the water is not yet *yad soledet bo*. Authorities have offered a range of 110° to 175°F.¹³

נותן טעם לפגום (Noten ta'am li-fgam)

This means that the item gives a distasteful flavor. According to halakha, flavor which is absorbed into the walls of the pot remains fresh for 24 hours. After that time, the flavor is considered distasteful and can no longer render food subsequently cooked in the pot as prohibited. The food merely absorbed a distasteful flavor which is not forbidden and the food cooked in that pot is permitted to be eaten.¹⁴

This principle applies only to flavor absorbed into the walls of the pot, it does not apply to flavor absorbed into food. Milk absorbed into a piece of meat remains prohibited even after 24 hours have elapsed. Also it is only flavor in the pot that turns bad after 24 hours. Any little piece of food remaining in the pot renders the pot continually non-kosher.

בן יומו (Ben-Yomo)

This term refers to a pot that was used for cooking within the last 24 hours. If the pot had not been used for 24 hours, it is referred to as *ayno ben-yomo* (אינו בן יומו).

Cooking milk in an *ayno ben-yomo* meat pot is not a violation of Torah law but is not approved by the Rabbis. *Be-di-avad*, milk cooked in a clean *ayno ben-yomo* meat pot is not prohibited, although that pot may not be used again until it is koshered.¹⁵

- סתם כלים אינן בני יומן – An important corollary to this rule is that any pot for which we have no knowledge of its most recent use is assumed to have been unused during the immediate 24 hour period.

נ"ט בר נ"ט (Nat bar nat)

¹² *Shulchan Arukh* (YD 105:2)

¹³ The definitions reduced to Fahrenheit degrees varied from a low of 110 (*Iggrot Moshe* OH 4:74) or 113 (Rav Shlomo Zalman Aurbach *Minchat Shlomo* 91:8) to others who have analyzed it and found it to be as high as 175 (Zushe Blech, *Kosher Food Production*, Blackwell Publishing, P 44, n54). In *Iggrot Moshe* above, he notes that 160 is "certainly *Yad soledet bo*". Having different definitions for *yad soledet bo* is common. For cheese making most authorities use 120 as the definition (*Kosher Food Production*, P 153 n8). In *Daf Hakashrus* (19:1), Rabbi Gersten writes: "but in cases of need above, *yad soldes* 175 is acceptable." Thus, most poskim apply the lower number but we could use a definition of as much as 140-160 and still be within a "safe range."

¹⁴ *Shulchan Arukh* YD 93:1

¹⁵ *Shulchan Arukh* YD 93:1

This is an acronym for **נותן טעם בר נותן טעם** (*noten ta'am bar noten ta'am*), and means that taste infused into a vessel can then be infused into another food.¹⁶

Food which is fried, roasted or baked in a pot or pan effects an infusion of taste into the pot. When another food is subsequently cooked in that same pot, some of the original taste is infused back into the second food. This infusion of taste from food to pot to food is *nat bar nat*.

The above applies when food taste is imparted into a pot, which weakens the taste, and thus when given over to a second food, the taste is weakened significantly.¹⁷ However, when two foods are cooked together the taste infused from one to another is primary not secondary, i.e. the taste is not considered to have been weakened.¹⁸

The overall concept of *nat bar nat* can be subdivided into two categories:

a. **נ"ט בר נ"ט דאיסורא** (*nat bar nat de-issura*) is when an infusion of forbidden taste is absorbed into a vessel and then that taste is infused into another food.

When forbidden foods impart their taste no difference is made between primary and secondary transfers. If non-kosher food was cooked in a pot, the pot becomes *treif*. Any Kosher food subsequently cooked in that pot within 24 hours becomes *treif*. Each time this food is cooked in another pot it makes a new pot *treif*. This is based on the belief that unlike a permitted food taste that weakens when transferred to a vessel, prohibited taste retains its strength.

b. **נ"ט בר נ"ט דהיתירא** (*nat bar nat de-heteira*) refers to the infusion of permissible taste into a vessel followed by that taste being infused into another food.

When the taste of the permitted food is cooked into a vessel and subsequently discharged into another food the secondary taste is not capable of producing a prohibited entity.

מסתמא לא אמרינן שומן דבוק בהן (*mi-stama lo amrinan shuman davuq ba-hen*)

This means that, in general, any pot used for cooking is assumed to be clean unless we know otherwise.¹⁹

חתיכה עצמה נעשית נבילה (*chaticha atzma naaset neveila*)

The term literally means that the piece upon which the problematic food falls becomes itself prohibited as if it were itself a carcass.

If a non-kosher taste is mixed into kosher food in a ratio that it cannot become *batel*, the entire mixture becomes a prohibited entity that generates non-kosher taste of its own. For example if one ounce of meat is cooked in 30 ounces of milk the entire mixture is prohibited,

¹⁶ *Shulchan Arukh* YD 95

¹⁷ This explains why *parve* food cooked in a clean dairy pot may be eaten after a meat meal; i.e. *DE* – dairy equipment. *Sefardim* are permitted to eat the food with the meat.

¹⁸ *Pri Migadim: Mishbetzot Zahav* 95:1

¹⁹ *Shakh* YD 95:1

and if later it is mixed with kosher food it would require 1860 ounces of kosher food to nullify the original 31 ounce mixture of meat and milk. Sephardim consider this to apply only to mixture of meat and milk. Ashkenazim apply it to all non-kosher mixtures, but non-meat and milk mixtures are prohibited by Rabbinic law only.²⁰ This does not apply to dry non-kosher food falling into dry kosher food.

ביטול (*bittul*)

The term means simply nullification.²¹

All issues of *kashrut* begin with the question of ingredients. If any of the ingredients in any of the foods are not kosher, the resulting cooked food will not be kosher. Also if meat and milk were to be cooked together the resulting food will be *treif*. The exception to this would be if the non-kosher food – or milk in meat – was mixed in with the kosher food in such a way that the non-kosher food would be nullified.

There are two kinds of nullification.

א. ביטול ברוב (*bitul be-rov*)

This refers to the when the problematic element is nullified by the majority.

Whenever two of the same kind of foods become mixed, (and they are cold, dry, foods that are not blended) the non-kosher food may become *batel* 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. The foods need not even be mixed together or even close to one another for *bitul be-rov* to apply. Indeed, even three unrecognizable pieces of meat in three different rooms or stories of one house, are still considered to be *batel be-rov*.²²

There is a debate as to whether the ratio for nullification is 2 to 1; but many poskim rule the simple majority is sufficient.²³

There is a further debate among rishonim about the underlying principle of *bitul be-rov*. According to Rashba, *bitul be-rov* is based on the logical premise that when any part of the mixture is removed, one may assume it has come from the majority.²⁴ According to some, this has some limitations as it pertains to the last piece of the nullified mixture.

Rosh and others argue that *bitul be-rov* brings about the complete transformation of the non-kosher food into kosher food.²⁵ The non-kosher food has been nullified and has completely lost its identity; therefore, the entire mix may be eaten without any restrictions.

ב. ביטול בששים (*bitul be-shishim*)

This refers to when the problematic element is nullified by a ratio of 60 to 1.

²⁰ *Shulchan Arukh* and Rama YD 92:4

²¹ *Shulchan Arukh* YD 109

²² Binyamin Forst, *The Laws of Kashrus*, 53 n. 8

²³ *Shakh* 109:6, *Chokhmat Adam* 51:4

²⁴ See Ran cited in *Beit Yosef* 109, and *Torat ha-Bayit* 4:1

²⁵ *Rosh Chulin* 7:37

*Bitul beshishim*²⁶ is required by Torah law only when:

- a. the foods are dissimilar in taste (min be-she-aino mino) and therefore the non-kosher taste is still noticeable
- b. the foods are either liquids or solids that are blended or cooked together.

Mi-de-oraitta, if the foods are the same or they remain discrete from each other, *bittul be-rov* will suffice. The rabbis, however, extended the requirement for *bitul beshishim* to cases that resemble the primary Biblical case in some aspect:

- a. Cases where the foods are the same but they are either mixed or cooked together.
- b. Cases where the foods are different but they remain discrete entities.

They did this because they were concerned that one may confuse the rules pertaining to similar tasting foods with those of dissimilar ones and transgress the Biblical prohibition.

Therefore, for all practical purposes, only when a mixture is similar tasting and not blended, can one rely on *bitul be-rov*.²⁷ However, similar tasting foods that are blended or cooked together, or uncooked dissimilar tasting foods, require *bitul be-shishim*.²⁸

אין מבטלין איסור לכתחילה (*ein mevatlin issur le-khatchilah*)

This principle means that one may not cause a nullification for the purpose of allowing a prohibited mixture.

Practically, what this means is that one may not intentionally blend non-kosher ingredients into kosher food that remains sixty times greater than the non-kosher food just added.²⁹ Additionally, if non-kosher food fell into kosher food that was insufficient to affect a *bitul*, one may not add additional kosher food to increase the ratio.³⁰

One who intentionally causes *bitul* may not partake of that food nor sell it to another Jew or in any way derive benefit.³¹ Others may eat from the mixture unless it was specifically nullified for their sake.³²

There are some exceptions to this rule. In the event that the consumer on whose behalf the *bitul* was done was unaware of the *bitul*, some posqim permit him or her to eat the food.³³ Additionally, if one intentionally nullified the non-kosher food without realizing that it was forbidden to do so, he or she may eat from the mixture.³⁴

In any case, a gentile is not prohibited from nullifying food so that if a manufacturer for his own purposes produced a food product which contained a non-kosher ingredient which was

²⁶ See *Minhat Kohen* II 1:2 for more detail

²⁷ Forst, *Kashrus*, 58 n. 32 (based on *Minchat Kohen* 11:21)

²⁸ *Shulchan Arukh* YD 109:2, Rama 109:1

²⁹ *Shulchan Arukh* YD 99:5

³⁰ *Shulchan Arukh* YD 99:5

³¹ *Shulchan Arukh* YD 99:5, Rashba sited in *Beit Yosef* 99

³² *Shulchan Arukh* YD 99:5

³³ *Taz* 99:10

³⁴ *Shulchan Arukh* YD 99:5, and see *Taz* 7 *ad loc.*

less than 1/60th of the previous total volume of the product, a Jew may purchase that product and use it because it was not nullified for him. To the Jewish consumer it arrived as a new product, kosher from the beginning.³⁵

Finally there is a debate whether this is a prohibition from the Torah or the Rabbis and in fact the majority holds that it is Rabbinic.³⁶

³⁵ Forst, *Kashrus*, 61 (see appendix 3 for his *bittul* chart)

³⁶ *Chokhmat Adam* 52:6

Foods that are never batel

1. The Nature of the Prohibition Does Not Allow for Annulment

- A) דבר שיש לו מתירין (*davar she-yesh lo matirin*) - a food that will in time become permitted, or is not actually prohibited but merely restricted.
 - B) טבל (*tevel*) - Israeli produce before *trumah* and *maaser* have been taken
 - C) עבודה זרה (*avodah zara*) - anything used in idolatry.
 - D) יין נסך (*yayin nesech*) - wine used for idolatry.
 - E) שביעית (*shevi'it*) - fruits of the Sabbatical year
 - F) חמץ (*chametz*) – unleavened bread and its derivatives on Passover.
- None of these issues directly impact on our inquiry.³⁷

Foods Considered Significant Either in Size or Nature.

In Torah law, they would become *batel* either in *rov* or *shishim* but they are prohibited to be *batel* rabbinically.³⁸

Examples of this would be:

- A) בריה (*beriah*), a complete creature such as an insect as opposed to pieces of an insect which would be *batel*.³⁹
- B) חתיכה הראויה להתכבד (*chaticha ha-re'uyah le-hitkabad*) – i.e. a piece of meat of the size and condition fit to serve to company.⁴⁰
- C) דבר שבמנין (*davar she-be-minyan*) - an object that is sold solely by unit is considered prominent. It cannot become *battel* when mixed into its own type. For example, a whole egg of a non-kosher bird that was mixed into kosher eggs is not *battel be-rov*, since eggs are sold by a unit (i.e., a dozen).⁴¹
- D) דבר חשוב (*davar chashuv*) - certain other prominent foods cannot become *battel*.⁴²

When the Non-Kosher Food Remains Noticeable

A) אפשר לסנון (*efshar le-sanen*) – If the non-kosher food is removable, it cannot become *batel*. For example, non-kosher fat that became mixed with kosher food after it has been cooked and cooled and the fat is separate such that one can remove it, it must be removed and we cannot

³⁷ For a detailed discussion see *Shulchan Arukh* YD 102

³⁸ Rama 110:1

³⁹ *Shulchan Arukh* YD 100

⁴⁰ *Shulchan Arukh* YD 101

⁴¹ *Shulchan Arukh* YD 110:1

⁴² For all related issues see *Shulchan Arukh* YD 100-101 and YD 110:1.

rely on *bitul* to permit it.⁴³

B) Removable and non-removable food. When a non-kosher food cannot be taken out of a mixture but remains noticeable, it cannot be nullified.⁴⁴

C) חזותא (*chazuta*) - Non-kosher food was added for the purposes of giving color to the mixture, cannot become *batel*.⁴⁵ (We will discuss color in detail below).

D) דבר המעמיד (*davar ha-ma'amid*) - This is a non-kosher food which solidifies or gels the food with which it combines and therefore can never become *batel*.⁴⁶ The usual items in this category are gelatin and rennet. Most *posqim* consider this rule to be rabbinic in origin.⁴⁷ Both have been permitted by former Law committee decisions as being a *davar chadash* (new item) and, therefore, permitted.⁴⁸

Salads and Vegetables

Of all the exceptions to the laws of *bitul*, only *beriah* poses a real problem, as it affects the issue of insects in vegetables.

Since all the above are only prohibited from being nullified *mi-de-rabannan* and would otherwise be permitted to be *batel be-shishim mi-de-oriatta*, when we buy salad and/or fresh or cooked vegetables, we assume that the produce was washed and scanned for insects, and the most obvious insects removed. Since it is very difficult to find the bugs.⁴⁹ and we don't know if there are any whole bugs left in the food (i.e. *safeq*) and if there are bugs, we are uncertain (*safeq*) that they are whole, and if whole, they could have become *batel mi-de-oriatta*, and, therefore, are both *sfek sfeka* and *safeq de-rabbanan le-qulah*, we can rule that unseen bugs are not a problem.

Colorings

⁴³ *Chokhmat Adam* 51:3

⁴⁴ *Chokhmat Adam* 51:3

⁴⁵ *Minchat Kohen* II, 3:3

⁴⁶ According to Rambam this principle applies only to prohibited foods; not foods which when combined produce a prohibitive food, like meat and milk. Thus, kosher rennet, i.e., rennet produced from the stomach lining of a kosher cow, may be used in cheese making and does not subsequently present the problem of *basar be-chalav* [see YD 87:11 and *Shakh* 35].

⁴⁷ *Chok Yaakov* 442:16

⁴⁸ Rabbi Isaac Klein, "The Kashruth of Cheese"; even if one were to assume that they were *safeq davar chadash*, for the purposes of *bittul* they would still be nullified as we would argue *safeq de-rabbanan le-qula*.

⁴⁹ *Pri Megadim* (OH – Seder hanhagot ha-nishal im ha-shoel seder shlishi):

כ. ספק ספיקא לקולא וספק דרבנן לקולא דווקא שאי אפשר לברר כי אם על ידי טורח, הא כל היכא דאיכא לברורי בקל מבררין ואין סומכין על רובא וחזקה כהאי גוונא

Colorings come in 2 forms: artificial (government certified) or natural (exempt from certification). In general, there are no kashruth issues with artificial colors (e.g. yellow #5, or blue #1).⁵⁰ The only colorings I have come across where the source that is used has a kosher issue are Carmine derived from the Cochineal insect, and grape derived colors.

Carmine

Carmine comes from the desiccated bodies of female Cochineal also called the *Dactylopius Coccus Costa*, a small insect harvested mainly in Peru and the Canary Islands. The bug feeds on red cactus berries and the color from the berries accumulates in the females and their unhatched larvae. The insects are collected, dried, and ground into a pigment, which is used as one source of red dye. Certified kosher red dye is from beets.

Some Rabbis in the US and in Israel have made a cogent argument for permitting carmine as a byproduct of insects that have been dried and likened to a piece of wood and therefore are no longer considered to have the properties of the actual insect.⁵¹ Surely for those who accept this opinion there would be no problem with carmine and it would seem that even those who do not accept this position, would accept this ruling *be-di-avad*.

Grapes

Grapes pose no problem for those in our movement who accept the various leniencies we have

⁵⁰ *Ingredients for Dummies* (OU publications), 23

⁵¹ Sholem Fishbane - CRC Kashruth Administrator, on Understanding the Reliability of Kosher Agencies available on the web at

<http://www.crcweb.org/kosher/consumer/articles/F-agencies.html>. He writes:

Of the remaining agencies, nearly half are not recommended, partly because they do not follow the guidelines of the *Shulchan Arukh*, the Code of Jewish Law. However, the other half of the non-recommended agencies generally do follow the *Shulchan Arukh*, but still are not recommended due to the fact that they rely on certain leniencies that are not accepted by mainstream Kosher Law. Two of the most common leniencies relied on are carmine and gelatin, which come from non-kosher animals but which are processed in a way that some feel would be permissible for kosher use.

He thus acknowledges that there are opinions in conformity with Jewish Law that while not in the mainstream do have a foundation. Rav Ovadia Yosef in a responsum (*Yabiah Omer* 8, YD 11.4) permits dye that comes from the drying of insects which become dry as wood and lose their taste and are permitted to be added to other foods. He cites many posqim who are lenient on this subject and acknowledges that there are those who do not permit it.

The Cochineal undoubtedly falls into this category as well:

Cochineal, in turn, is extracted from dried female insects that feed on a cactus found in Peru, the Canary Islands, and other places. The pigment builds up in the insects' bodies; after the six-legged moms deposit their eggs on the cactus and die, their rotting carcasses, along with the eggs and hatched larvae, are brushed off the plants, crushed, and then baked, boiled, or steamed to produce cochineal. (David Stipp, *Fortune magazine*, July 21, 2003)

In the Summer issue of *Kashrus* magazine 2008, in the Consumer Alert section, there is a clarification that Libby's Fruit Cocktail is not under the OU as appears on the case, as it contains cherries colored by carmine. The product is under the supervision of Rabbi Yisroel Kellemer, Sephardic K. It is understandable that carmine would be accepted by Sephardic Jews since Rabbi Yosef is a major poseq for their community.

passed for use of *staam yayin*.⁵²

Flavorings

Some flavoring ingredients are absolutely treif.

- Castoreum, extracted from the anal musk gland of a beaver is a treif ingredient used in flavor compounds.
- Civet, a hormone secreted by Civet cats is used as part of complex mixture of flavors (in its pure form it is actually foul tasting).⁵³ Today, many but not all companies use a synthetic version that is kosher.
- Ambergris is also a treif ingredient, made from the intestines of sperm whales.

Although in and of themselves these ingredients are treif and we would not *mi-le-khatchila* ever eat them, they are so potent and expensive that they are used very sparingly in a formula of many ingredients that constitute the final product. Their own unique taste is long assimilated into the final flavor packet. They are almost certainly *battel be-shishim* in their own mix, but if not, when added to the final product they most certainly would be and since the flavor houses make these products and choose what ingredients to put in to it and at what percentages, and the same is true of the presumably non-Jewish owner of the final product, there is no issue of *eyn mevatlin issur mi-le-khatchila*. In addition since it is considered by most an *issur de-rabbanan* and there is a safeq if it was in fact done at all, it would be *safeq de-rabbanan le-qula*.

This argument can be buttressed by the claim put forward by Rabbi Dovid Bistricher, who states” “Some contend that non-kosher components should render a flavor non-kosher, while others contend that most flavors are kosher bedieved due to its complex chemistry.” In a footnote, he explains that the lenient position is based on the concept of *זה וזה גורם* (*zeh ve-zeh gorem* – this together with this is the cause). This means that if two things happen to a product to produce an affect, the first being prohibited and the second permitted, the product is permissible *be-di-avad*.⁵⁴

⁵² Elliot Dorff, "On the Use of All Wines" YD 123:1.1985; Israel Silverman, "a teshuva" 1964

⁵³ Frank Fischetti, a senior flavor chemist at Wynn Starr Specialty Foods & Flavors in Allendale, N.J. said: "When you taste concentrated civet, it reminds you of fecal matter ." He adds: "In the old days we got civet from Asia... It came packed in water buffalo horns. One of my jobs was to tell if it really was civet. You had to taste it to make sure." David Stipp, *Fortune Magazine*, July 21, 2003

⁵⁴ Dovid Bistricher, "The Kasruth Issues of Toothpaste," *Hamodia*, reprinted in Daf Hakashrus, summer 08.

Equipment used in manufacturing or transporting

As we have seen above, Halakha assumes that the use of unknown non-Jewish utensils leaves the utensils in the status of *ayno ben yomo*. Similarly, unknown Jewish owned utensils are considered to be *ayno ben yomo*.

Any equipment used for food manufacturing by a gentile, or any trucks hauling liquids where *kavush* would ordinarily apply may safely be said to be *ayno ben yomo* and so are not a cause for concern in deciding on unhechshered ingredients, under the definitions we are using for this paper.⁵⁵

Non-listed ingredients (e.g. release agents)

We may assume that if non-kosher products were used as release agents (e.g. a lubricant to release a product from its pan or vessel), when measured against the totality of the food product in the vessel, the release agent is *batel beshishim*, and probably added no positive taste.

General Principle: Heat

Non-kosher foods are prohibited at all times whether hot or cold. The temperature of the food becomes significant when we focus on eating foods which are in and of themselves kosher, but have picked up a non-kosher *taam* (taste).

The principle that a non-kosher taste imparted onto a neutral host makes that host non-kosher is called *taam ke-iqqar*. According to most Rishonim, eating food that has received taste from non-kosher food is a violation of Biblical law. Rashi, holds that it is a Rabbinic prohibition, when the non-kosher matter is liquid or a solid that has dissolved. Ran, Rambam, Rabbenu Tam, Rashba and the Raavad all have opinions that call it Biblical in certain circumstances.⁵⁶

It is primarily through the medium of heat (though as we shall see, not exclusively) at the minimum temperature of *yad soledet bo* (110-175 degrees Fahrenheit) that the *treif* taste is passed from itself to another utensil or food. Without heat or the physical mixing of a kosher and non-kosher product, so that they are indistinguishable from each other, there is no transfer of non-kosher *taam* to kosher food or vessels.⁵⁷

A piece of cold, non-kosher food sitting in a kosher vessel or dish does not transfer any *treif taam*. Merely rinsing the vessel clean is sufficient to eliminate the *treif* residue. When kosher food is stirred with a non-kosher spoon, and the spoon is totally clean and cold there is no adverse effect on the food. *Treif* food sitting next to a kosher product, but not touching, cannot impart its flavor into the kosher product or vessel.

⁵⁵ In YD 122:7 it clearly states that *stam kelehem shel oved kochavim ayno ben yomo*, utensils of gentiles of which we know nothing are deemed to be not used for over 24 hours.

⁵⁶ This is discussed in great detail in the *Minchat Kohen* II, 1:2-6, where each opinion is explained in detail and the Talmudic sources are given.

⁵⁷ However, there are a number of exceptions to this rule which we will look at in the next sections.

If treif cold food that is either damp or fatty touches cold kosher food, there are implications of transfer of actual treif residue onto the kosher food which may require washing or scrubbing⁵⁸ but this involves actual transfer of treif residue, not taam. According to the *Chokmat Adam*⁵⁹ after the fact this food is permitted without washing it. Thus if all the ingredients were kosher and uncooked and they were served on a plate in a non-kosher restaurant there would be no kosher issues.⁶⁰

Exception 1 – דוחקא דסכינא (*Duchkah de-Sakina*)

Duchkah de-sakina (the pressure of the knife) enhances, but does not transfer, taste from the food to the knife or from the knife to the food.

One hot, dry, piece of food (e.g. a cooked lean brisket) touching another hot dry piece (e.g. a hot pizza pie), transfers the prohibited taste, *k'dei netilah* (the thickness of approximately one inch only, which can be cut off and the rest eaten). When the hot food is then cut by a knife the combination of *duchka de-sakina* and heat, may cause the taste to transfer to the entire food even without liquid or a fatty medium being present.⁶¹

Another example of *duchka de-sakina* is when the pressure of the knife would render the usual rules of *תתאי גבר* (*tatai gavar*), i.e. the bottom overpowers, void.⁶² For example, a cold dairy knife cutting upwards into hot meat, would make all the meat (and not just the surface area) treif, because it is a knife.⁶³ However, a cold dairy plate underneath a hot piece of meat would only render the surface area of the meat *treif*. The dairy plate being on the bottom is considered the more powerful force and it would only be heated up and transfer its dairy taste to the bottom of the meat, and then the meat would have cooled under the influence of the bottom power and ceased to absorb the dairy taste. Thus only a thin surface layer of the bottom of the meat needs to be trimmed away and the rest of the meat is permitted.⁶⁴

If a *treif* knife is used to cut a *davar charif* (a sharp food – see immediately below) the

⁵⁸ Y.D.91:1

⁵⁹ 42:2

⁶⁰ See later discussion about *charif* (e.g. onions), and bugs for salad bar

⁶¹ Tur end of YD 94, as explained in *Sefer Issur ve-Heter* 36:7 and *Shach* YD 94:27; ordinarily two touching solids do not transfer taste unless there is liquid or fatty foods between them as an agent of transfer.

⁶² *Pes.* 76a; When kosher and non-kosher foods are placed one on top of the other, if both are hot they infuse each other, if one is cold and one hot they immediately affect one another. The one on the bottom is deemed to be stronger and affects the one on top more. When the bottom is hot and the top is cold the bottom heats the top and transfers its taste throughout the upper food, and back down again so the kosher food is now prohibited. For example, if cold cheese is placed on top of hot meat, both are discarded. If cold meat is on the bottom and hot cheese is on top the taste of the cheese is deemed not to have transferred, since the cold on the bottom governs. Nevertheless the Talmud rules that the hot on top prior to cooling under the effect of the cold food below imparts a taste into a thin layer of the cold bottom food which must be removed, but the rest of the meat is permitted.

⁶³ *Shach* 94:25

⁶⁴ YD 91:4

combination of *duchka de-sakina* and the *davar charif* causes a transfer of taste from the knife to the food and from the food to the knife even when both foods are cold. Nevertheless, R. Binyomin Forst writes that according to Rama (*Torat Chatat* 61:8) even when a non-kosher knife is used to cut foods that are *charif*, they may be eaten since the taste is transferred to the first or second pieces only and the knife will have depleted its taam by being cleaned from the cutting itself, and the first few cut pieces will be *battel be-rov* amongst the remaining cut pieces.⁶⁵

Duchka de-sakina is a result of pressure. A clean cold knife cutting soft or tender food does not exert much pressure and, therefore, there is no concern for the knife aiding in transferring taste. Cheese used for melting on pizza for example would be tender and not affected by a clean but un-kosher knife. Neither would non-spicy vegetables and fruit be affected by a clean knife.

We will assume that in modern America and especially in public restaurants with all the health and hygienic standards in place, knives or slicers used for vegetables at a salad bar, for example, would in most cases be totally cleaned before use, to prevent microbial cross-contamination. Using the principle of *rov tashmisho* (we rule according to the most common usage), we can assume that knives in circumstances like this are clean.⁶⁶

An additional issue of concern for knives is that they are sometimes deemed to retain unnoticeable fatty residue on their surface, which may require scrubbing to clean.⁶⁷ The *Shulchan Arukh* YD 96:1 seems to indicate if we thoroughly wipe the knife clean it is considered free of any residue. The wording of the *Shakh* 10:6 implies that a mere visual inspection of the knife is sufficient to determine if it is clean of residue. Rabbi Akiva Eger on a gloss to the *Shakh* 96:3 cites a method for determining the cleanliness of the knife, whereby in washing it, if the water flows from the top of the knife to the bottom and vice versa without anything impeding it, it may be assumed to be clean. A similar method is mentioned in *Issur ve-Heter* 58:4 and we will follow these lenient opinions.⁶⁸

It should not be forgotten that a knife used for non-kosher within the previous 24 hours even if totally cleaned, will when used on hot food, transfer its non-kosher taam to the hot food. A clean knife not used for 24 hours cannot transfer taste even into hot food. A knife is assumed to be *aino ben yomo* unless it is known to have been used in the last 24 hours.⁶⁹

Exception 2 – דבר חריף (Davar Charif)

Sharp foods have the ability to revitalize a stale taste absorbed in a vessel. Therefore, if a sharp food is cooked in an *aino ben yomo* non-kosher pot, the food may not be eaten, as it absorbs the treif taam from the pot.⁷⁰

⁶⁵ Binyomin Forst, *The Laws of Kashrus* (Mesorah Publications, 1993), 311 n47

⁶⁶ *Shulchan Arukh* O.C. 451:6,25

⁶⁷ *Taz* YD 94:13 and *Shakh* YD 94:29

⁶⁸ This will have significance if there is a subsequent paper written on sushi.

⁶⁹ YD 94:7, 122:7

⁷⁰ Rama YD 95.2

Exception 3 – כבוש כמבושל (Kavush ke-Mevushal)

Food soaked in liquid for 24 consecutive hours affects the same transfer of taste as if the two were cooked together.⁷¹ Similarly, vessels can absorb or transmit taste through this principle.

Cooking in an Oven

ריחא (Reicha)

Foods in an oven are subject to a number of kashrut concerns. The first is *reicha* (aroma). When two foods are baked simultaneously in an oven, there is a possibility of aroma being imparted from one to the other. The Talmud refers to this as, *reicha milta* (aroma is considered substantial).

There is a great debate about this principle.⁷² The consensus of opinion among *Rishonim* and in the *Shulchan Arukh* is that *le-khatchilah* (a priori) one should avoid any possibility of aroma being imparted from non-kosher to kosher foods.⁷³ However, *be-di-avad* (ex post facto) in the event that kosher food did absorb aroma from non-kosher food and there is no other food available or a financial loss is involved, we say, *reicha lav milta* (the aroma is insignificant and the food may be eaten).

As a reminder at home where we are not dealing in the dieved model, one would advise against cooking meat and dairy items in the oven at the same time, because of the issue of *reicha*, nevertheless it is likely that this would not make either the food or the utensils non-kosher.

Touching

For reasons not pertaining to *reicha*, foods cooked in the oven at the same time, either dairy and meat, or kosher and non-kosher, must not touch one another.⁷⁴ This is because foods that are roasting at the same time which touch transfer taste and could make part or all of the food prohibited.

Spillage

Food in the oven must be situated in such a way that liquid that may spill over, such as gravy, is not sitting above or higher than another food, which would then be contaminated by the spillage.⁷⁵

⁷¹ *Chul.* 97b, 111b *Pes.* 76a *Shulchan Arukh* YD 105:1,2

⁷² *Pes.* 76b

⁷³ YD 108:1

⁷⁴ YD 108:1

⁷⁵ The issue of spillage in general is of particular importance later when we discuss pizza, where food is placed directly onto the oven floor, and we are concerned with any prior spillage that may have occurred.

Oven Size

The size of an oven affects the imparting of taste from one item to another. Two foods baked in a confined area are more likely to influence each other's tastes, whereas a large and/or well ventilated oven would eliminate the tastes entirely.

What constitutes a large oven? Some authorities define a large oven as that with a surface area of approximately 68 square cubits (approximately 272 square feet). Others contend that the area is measured in total cubic volume of the oven and, in that opinion, an oven of 600 cubic *tefachim*, approximately 22 cubic feet, is considered a large oven.⁷⁶ By all definitions, household ovens do not qualify as large ovens; however, they are vented.

According to the *Shulchan Arukh* (YD 108:3) and the *Chakhmat Adam* (62:1) a large oven is one that has the capacity to hold 12 *esronim*. Additionally, if it has a partial opening or a vent that allows for the smoke to leave then there is no *reicha* concern even for those who hold *reicha milta*.

If an oven is completely open at the top, any aromas coming from the foods are considered to have dissipated. For example, a barbeque with the lid off would constitute an open oven.⁷⁷

An oven without any vent or outlet has a significant problem with *reicha*. All foods that are covered, even loosely, would eliminate issues of giving off *reicha*. Even covering the food with a layer of dough, like pie for example, is enough to eliminate *reicha*.

Another variable of *reicha* is the fact that aroma is transferred through fatty meats and fatty foods, *davar shamein*. Lean foods, according to the Rabbis, have no significant aroma.⁷⁸ Therefore, according to many authorities,⁷⁹ if two lean meats, one kosher and one not, were roasted concurrently, the kosher meat is permissible. However, since it is hard to determine what constitutes a “lean” meat, one should refrain from doing this *mi-de-khatchila*.

Of a greater interest for our purposes is that one may bake kosher bread in the oven, together with non-kosher bread, since breads have no fatty aroma.⁸⁰

While *reicha* is permitted primarily *di-avad*, Rama lists being strict as the minhag. However, when ruling, Rama is lenient permitting *reicha* even when it involves a small oven and he permits bread baked by a non-Jew simultaneously with non-kosher meat, which he would ordinarily forbid *le-khatchilah*, if no other bread is easily available. Since the presumption of this teshuvah is the non-availability of kosher alternatives, this approach becomes significant for our position, since we are in a *di-avad* situation (see above).

Since the approach of this *teshuvah* is to apply all potential leniencies to the issue of eating out, it will suffice for our purposes, to say that *reicha lav milta* and assume that in all

⁷⁶ See both opinions in *Binat Adam* 62 (81)

⁷⁷ We will discuss vented ovens in greater detail below when we discuss *zeiah*.

⁷⁸ Taz 108:1

⁷⁹ Taz 108:1

⁸⁰ *Sifte De'ah* 108:1

(74)Y.D. 92:8 and Teshuvot Harosh 20:26

circumstances, *reicha* will not be a difficulty for us.⁸¹

Nevertheless many of the rules of *reicha* are pertinent to *zeiah*, an important issue for us which we will now consider.

זיעה (Zeiah)

Zeiah, which literally means sweat, is the term used to refer to taste transferred through steam. This occurs when food is cooked uncovered in an oven and the food contains a significant amount of liquid.⁸² The concept of *zeiah* is derived from the Mishnah (*Makhshirin* 2:2), which rules that the steam of a *tameh* (unclean) bath-house transmits the *tumah* (impurity) to the entire house.

All liquids, and many foods, emit steam when cooked or baked. Halakha considers the steam of any liquid to have the status of the food or the liquid from which it emanates. The steam of non-kosher liquids is *treif* and will impart its non-kosher taste to anything it penetrates.

Zeiah is dependent upon a number of factors. The source must be liquid as opposed to a solid.⁸³ Thus, steam emitted by solid foods or even solid foods that have become liquid, such as melted butter or chicken gravy or cheese, is considered plain water and does not have the status of food. Though others disagree, they concede that solid foods produce only tiny amounts of steam, and therefore we need not be concerned about *zeiah* when cooking solid foods,⁸⁴ unless the steam is visibly rising from the food.⁸⁵

In addition to steam rising and imbuing its taste to the surface directly above it, there is also concern over the possibility of condensed steam falling back onto food below. For example, in theory, kosher steam in a non-kosher oven can rise, condense on the surface, absorb the non-kosher taste, and then fall back onto kosher food, making the food *treif*. The latter concern is not universal as a responsa of *Beit Yaakov* cited in *Minchat Yitzchak* 5: 20:8 contends that steam usually escapes and dissipates. Our ovens, to a greater or lesser degree are vented, which would probably not allow the vapor to condense.

Rosh, in *Teshuvot Harosh* 20:26, raises doubt that the oven roof will be able to absorb any taste due to its extreme heat, and the responsa *Mishkanot Yaakov* 34, maintains that steam cannot carry the taste of food. While these opinions are rejected by most posqim, they do open the door to greater leniency regarding *zeiah*.

In addition, there is considerable doubt if steam ever drips from the oven top onto any food.⁸⁶ If droplets do fall they would surely be *battel be-shishim*. Also the *Minchat Yitzchak* 5 20:10 cites opinions that *zeiah* is a Rabbinic prohibition.

The ability of steam to impart taste or absorb taste from the surface above depends upon

⁸¹ Rama, Y.D. 108:1

⁸² YD 92:8 and *Teshuvot ha-Rosh* 20:26

⁸³ *Pitchei Teshuvah* 92:6 citing the *Pri Megadim* who in turn bases his ruling on Rambam

⁸⁴ Rama, *Torat Chatat* 35:6 and *Minchat Yaaakov* 35:21

⁸⁵ *Iggrot Moshe* YD 1:40

⁸⁶ *Iggrot Moshe* YD 1:40

whether the steam is in an open or restricted area. Steam rising in an open area easily dissipates and is less likely to reach the upper surface in a volume and intensity of heat necessary to cause a transfer of taste. Additionally, if the food is cooked in a closed pot, there is no issue of *zeiah*, as it cannot escape into the oven.⁸⁷

A closed but vented oven is one which allows steam to escape, but there are questions raised about whether the venting is sufficient.

In *Iggrot Moshe* (YD 1:40) Rabbi Feinstein discusses these issues of *reicha* and *zeiah* in gas ovens of his day. Describing home ovens, he begins by saying: “I have never seen a gas oven that had an opening that would permit the steam to escape.” He goes on to say that it wouldn’t matter if there were such a vented oven because the essence of the laws of *zeiah* are derived from a bath-house, and the spread of the *zeiah*-laden flavor is from the ceiling and walls that commingle, and all bath-houses have moisture showing.

I believe Rabbi Feinstein is arguing that even if ovens were somewhat vented it would not change the essence of the food taste being spread throughout the oven just as the bath-house always has moisture staying on the walls and ceiling. Nevertheless, I would argue, in today’s commercial ovens the venting is significantly greater than Rabbi Feinstein could have imagined, and condensation on the ceiling or walls of hot commercial ovens does not occur.

The *Chokhmat Adam* (section 62), while admittedly speaking about *reicha*, discusses the issues of transfer of taste from A to B in the same oven at the same time, and shows ample examples of permissibility. Even when quoting the strictest positions, such as the position of the Rama,⁸⁸ who prohibits *le-khatchila* foods that “contaminated” each other in the same big oven, nonetheless allows for the food to be eaten after the fact if the door was open a little at the side or above (פתוח קצת) so there is a chance for the smoke to escape.

In cases of *hefsed merubeh* (great financial loss) Rama even permits food that was cooked in the same oven with something forbidden even in a totally closed oven and even if it is a small oven, and all this for roasted food (צלי). Concerning cooked food (מבושל), i.e. food cooked in liquid in a pot in the oven, Rama says there is no real *reicha* concern, and is even more lenient and would allow it from the beginning.

In paragraph 4, the *Chokhmat Adam* goes so far as to say that if bread and meat were cooked in the same oven at the same time, the bread should not be eaten with milk, but only when there is other bread available. Bread cooked by a Gentile with non-kosher food in the oven at the same time should not be purchased unless there is no other option available. In the case of no other option or *hefsed merubeh*, both are considered *di-avad* and can be eaten even if baked in a small oven.

This could only be possible if it is not truly forbidden but only a Rabbinic caution. Thus, when there is no alternative, it is permissible.

The premise of this paper is that the food is either not prepared directly for us, or, if prepared as a specific request, is ordered when there are no other options. In both cases, the issue of *reicha* and *zeiah* would not limit us. Concerning *zeiah*, even if some steam were to

⁸⁷ Rama YD 92

⁸⁸ Rama YD 108:1

condense and drip down, one could assume that the host food had sixty times the volume of the *zeiah*,⁸⁹ and since according to some Rabbis, *zeiah* is *de-rabbanan*,⁹⁰ any drippings which may have occurred would be *safeq*, and we would rule leniently (לקולא).

Oven Racks

It is possible that if there is spillage, actual food (בעיין) would fall onto oven racks. However, in the opinion of some contemporary authorities, since the oven is hot the food would burn off immediately and be dried to the point that it could no longer impart taste and would not be considered food. *Iggrot Moshe* (YD 1:40), for instance, cites such opinions although he himself disagrees.

In either case, all agree there would be absorption of the *taam* (taste) into the racks which if food were placed directly onto the rack, would transfer the taste back into the food. If the first *taam* is treif or would cause a milk and meat mixture of taste, the transfer of taste would be *nat bar nat de-issura* and would make the food put on the rack treif. Therefore, no food should be put directly onto an oven rack to cook.

The *taam* would not be able to transfer to any subsequent pots placed on the rack since there is no transfer of *taam* from vessel to vessel without the medium of liquid.⁹¹

Actual food is always considered to retain its taste and can transfer that taste into any subsequent food it is cooked into, or to any hot pot it touches. Thus, if a pot is not clean and has non-kosher food *be-ein* in it, any food subsequently cooked in it is treif.

If a clean pot is not used for 24 hours, the food cooked in it would be kosher because the taste in the pot has deteriorated into *pegam* (inedible and therefore no longer a viable taste). *Be-ein* in an oven would give off *reicha*, which we are not concerned with, and since the *be-ein* would be solid, there would probably be no *zeiah*.

Staam Kelim

When we don't know whether utensils of either Jews or Gentiles were used within the last 24 hours, they are considered in the category of "ayno ben yomo" (i.e., as having not been used in the previous 24 hours). According to some⁹², if utensils owned by Gentiles were not used from sunset to dawn, that would be enough to be considered *ayno ben yomo*. Thus, dishes used for breakfast in a non-kosher restaurant may fall into this second category, while all other dishes fall into the former.⁹³

The explanation for this ruling, according to the *Chokhmat Adam*,⁹⁴ is that the dishes are a case of a *safeq* on a *safeq*. Why? First of all, we are not certain whether they have been used in the last 24 hours. Even if they have been, perhaps they have been rendered *pagum* because

⁸⁹ *Iggrot Moshe* YD 1:40

⁹⁰ *Minchat Yitzchak* 5 20:10

⁹¹ Rama YD 92:8; אין בלוע יוצא מחתיכה לחתיכה בלא רוטב

⁹² Rashi as interpreted in Tosafot Avodah Zarah 76a, and Ran cited in Tur 103

⁹³ *Chokhmat Adam* 55:4,5,8

⁹⁴ *Chokhmat Adam* 55:8

they have been immersed in or washed with a substance that renders them *pagum*, like detergent. Therefore, by putting these two “doubts” together, we have a case of *s’feq s’feqa*, and can consider them as *ayno ben yomo*.

It follows that food cooked in such pots or food placed on such dishes would still be kosher, even if hot. Even if we are unsure if they had hot *treif* food on them in the first case, if there was a *davar pagum* introduced (as would be the case with soap), *staam kelim* would be considered *ayno ben yomo*, because of the *s’feq s’feqa*, and can be used.

Limitation of these Rulings: Ingredients

The above outline of issues is provided for the purpose of recognizing the complexities of issues involved in determining if a product prepared in a non-kosher facility may be acceptable in the *di-avad* rubric that we are suggesting here. It must be emphasized that those choosing to use this teshuvah are still duty-bound to investigate all products used in the food they are eating and if real *treif* is used and not certainly annulled, nothing in this paper should be deemed to permit that particular product.

For example, up until a few years ago, many people assumed they were “safe” eating a cheese pizza at Pizza Hut, because all they were eating was tomato sauce, cheese and dough. They were shocked to discover that there was a meat base in the sauce. Similarly, there was the famous scandal of McDonald’s french fries, which people assumed were potatoes cooked in vegetable oil. They did not know that the vegetable oil was flavored with meat seasoning. Some restaurants fry their French fries in the same fryers as they fry chicken or not kosher fish. *I recently was informed of three upscale pizzerias in Chicago that used lard in their dough.*

Pizza

On February 25, 2008 I met with the owner-operator of a neighborhood pizza restaurant. It was a large operation that specialized in New York style pizza. The pizza was hand-made. The dough was made from flour, sugar, yeast and water, although he said that some put eggs, and some use what he called “vegetable lard” i.e. vegetable shortening in their dough.

His sauce was made by mixing product from two cans. One was called, “Pizza Sauce with Basil” which contained only tomatoes, salt and basil and the other can was chopped up tomatoes. Ironically both cans had the OU symbol on them. His cheese contained rennet. For those who accept cheese made with rennet, this was beginning to look possible.

I then checked the ovens which had multiple holes on the inside walls for air circulation and which were well vented with a 10”-12” vent opening. I asked him if he ever saw steam or smoke coming from the oven or directly from the cheese. This was intended to eliminate any consideration of *zeiah*. His answer introduced several issues that would not permit pizza to be eaten under these conditions. He said that “the only time he sees smoke is if a piece of sausage falls off the pizza onto the pizza oven floor. Then it smokes a lot.” Although this could be construed as *zeiah*, the venting would eliminate it as a problem. Unfortunately, it introduced a new issue.

I realized that he did not use a pizza screen and that the pizza was placed directly on the oven floor. I asked him what cleaning, if any, took place after meat fell onto the oven floor. He indicated that in a busy time one pie would be going in after another and that it was very possible for a pie to be put next to if not right on a piece of meat.

Furthermore, the oven floor becomes a hot absorbing vessel which has now absorbed the treif taam without the time to consider the *taam* to be burned out (ליבון גמור). In addition we have reason to assume the presence of *be-ein* and therefore the possibility of it being attached to a vegetable pie.

I also asked to see the pizza knife and it was covered with sauce. I asked if there was ever a time when the knife could have pieces of meat on it and he said “all the time”. The possibility that a piece of actual treif meat could be transferred to a vegetarian pizza was a very real concern.

I concluded that a pizza made in a non-kosher pizzeria that puts the pie directly on the oven floor without a complete kashering process, could never be considered kosher, and the pies made there may never be used by any segment of the Movement.

I then turned my attention to a pizzeria that used pizza screens exclusively, to see if there was a way to make a kosher pie in their facility. Here the problem was obvious. Every raw pie is placed onto a metal disc called a screen, and then baked in the oven. Taken out hot it is immediately cut up with the pizza roller knife and served. The screens are not cleaned at all between uses and therefore can be presumed to be both filled with treif taam that is transferred to the next pizza cooked on them, and also contain pieces of *be-ein* which are transferred onto the pizza. Therefore, a vegetarian pizza put on a screen that had just had a sausage pizza on it, could theoretically transfer both *treif taam* and *be-ein* to the vegetarian pizza. After being cut with the knife there would be another opportunity to have *taam* and *be-ein* transferred. This is a treif pizza.

Is there any way that one can make a kosher pizza in such a facility when no kosher pizzeria exists? The answer, I believe is yes, if adequate precautions are taken.

Let us analyze two different scenarios. The first is a pizzeria in a city with a Conservative congregation and no kosher pizzeria, and the other is for travelers, i.e. USYers on a trip, who find themselves in a town with no kosher restaurants. In the first scenario we would hold to a higher standard of caution, because the Rabbi has the time and the opportunity to do so. In the latter case there is less time and control, so more of the *qulot* (leniencies) described above may be used.

The Town Pizzeria

A Rabbi in a city with no kosher pizzeria may search out a pizzeria that is interested in cooperating. The Rabbi is required to go through the list of ingredients and ascertain that all ingredients essential for the preparation of a vegetarian pizza are kosher supervised. If the *mara de-atra* accepts all cheeses as kosher then the cheese is deemed to be a kosher product. Of course, if the proprietor were to use either hechshered or *animal* rennet-less cheese,, which is rapidly replacing rennet in many cheeses, he or she could increase the number of people

who could eat the pizza. If any of the usual ingredients contain *treif*, the proprietor should be encouraged to have a special formulation for the synagogue, using kosher products which he would use when given a reasonable sized kosher order.

If this is impossible in practice, the Rabbi should check with the companies to find out that no known meat products are in the ingredients. If accepting rennet as kosher, the proprietor could use all cheeses. The Rabbi must then arrange for the synagogue or other Jewish community organizations to have stored, segregated screens that are only used for kosher runs. There should also be a special pizza knife used for this purpose.

Prior to baking the pizzas, the oven should be brushed down to remove any *be-ein*, or if the oven is brushed down every evening the kosher pies could be cooked on the first run of the day on kosher screens. Every time a kosher run is done, someone should be on premises to see that the above process is followed. The segregated screens and knife should generally be washed and cleaned separately from the other equipment and then put away, segregated from the other equipment.

Travelers

A group travelling under the aegis of the movement such as a USY group or a regional delegation on the way to a conference, who arrive in a town may contact a pizzeria that uses a screen and ask for a clean screen (no be-ein) and verify that it is clean⁹⁵ They may assume it is ayno ben yomo. They should ask about the tomato sauce recipe to assure there is no meat ingredients. (Even though natural flavors could be from meat, we can assume they are battel). They need to ask that the knife be cleaned first or cut it themselves with a clean disposable knife. If using the pizzeria's now cleaned knife they should let the pizza cool for a few minutes before cutting, to bring the temperature of the pie down to below yad soledet bo. The floor of the oven must be brushed before inserting the pizza on the screen.

There is no *zeiah* because of the venting even if there are *treif* pizzas cooking at the same time. If all of these precautions are followed then a traveler may feel comfortable that they are not eating *treif*.

Caveat

I wish to conclude with yet another statement of caution. All that is permitted in this teshuvah is *di-avad*, and when there are no other options for kosher cooked food out. With a little planning most *travelling groups* and certainly any of our Movement's arms, such as the RA, Camps Ramah or USY should not have difficulty bringing or arranging for kosher food to be provided almost anywhere. Kosher food can be ordered on the internet and shipped to almost any North American location within 24-48 hours. For our Movement, which sees eating kosher not only as following God's command, but as a way of bringing a spiritual holiness into our bodies, a little planning can eliminate the need for any compromise, even if permitted. Only when the unexpected and non-foreseeable happens should a traveler ever have to rely on

⁹⁵ It is advisable that the Rabbi make these inquiries in advance.

this paper.

Summary

In circumstances where there is a desire to eat in a pizzeria and no supervised alternative exists, we must make sure that all the halakhic concerns are addressed. Using legitimate *qulot* based on the rules of *bittul*, many problematic ingredients are in fact nullified by the time they come to us in our food. Since they were not nullified for us, we are permitted to eat them. Because of the venting of the ovens and the fact that all *treif* ingredients are not liquid, we do not have a problem with *zeiah*. No food should be put directly on the oven floor or the oven racks. If we use all clean instruments and vessels so there is no *be-ein*, we can rely on the dishes and equipment being *ayno ben yomo*.

P'saq Halakha

*Groups eating under the aegis of the Conservative Movement should only eat pizza from a kosher restaurant. In a location where we have congregations, and there are no kosher pizzerias available, the mara de-atra may arrange for dedicated equipment and investigate the ingredients used to make sure they meet his/her standards of kashruth within the RA's definition of kosher laws. He/she should follow the procedures outlined in this paper. When a Conservative group is traveling and desirous of pizza and there are no kosher restaurants available, one may go to a non-kosher pizzeria, under the conditions outlined in this tshuva. Ingredients need to be verified so that there are no known non-kosher ingredients. One must then arrange for a clean pizza screen to be used and it must be cut with a clean kosher knife or a clean knife after the pizza has cooled to below yad soledet bo.*⁹⁶

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⁹⁶ I would like to thank my sub-committee, and especially Dr. Joe Regenstein for their comments and suggestions as well as Rabbi Zev Farber whose help in formatting was exceeded only by his insightful comments and challenging questions that only helped strengthen this teshuvah. As always the final responsibility for what is written is mine alone.

Appendix 1 – Description of authorities quoted in the paper

Binat Adam- Notes to Chochmat Adam by its author R. Avraham Danzig of Vilna (1748-1820)

Beit Yosef- Commentary on the Tur (see Shulchan Aruch below)

Chochmat Adam- Laws contained in the Shulchan Aruch, Yoreh Deah, R. Avraham Danzig

Chok Yaakov- Commentary on the Shulchan Aruch, Orech Chayim by R. Yaakov Reisher of Worms and Metz (1670-1733)

Igrot Moshe- Responsa by R. Moshe Feinstein, New York (1895-1986)

Issur V’heter- Halakhic compendium by R. Yonah Ben Yisrael focusing on dietary laws, which has become authoritative for the Ashkenazic tradition (late 15th century)

Maharil- Rabbi Jacob Moelin, who established the customs of the Jews of Germany that later influenced the Rema (1365-1427)

Minchat Kohen- An analysis of opinions of the Rishonim on the laws of mixtures of meat and milk, and Shabbat by R. Avraham Hakohen Pimental of Amsterdam and then of Hamburg (mid 17th century)

Minchat Shlomo- Responsa of R. Shlomo Zalman Auerbach, Jerusalem (contemporary)

Minchat Yaakov- Commentary to Torat Chatat of Rema by R. Yaakov Reisher (see above Chok Yaakov)

Minchat Yitzchak- Responsa of R. Yitzchak Yaakov Weiss of Manchester and later Jerusalem (d. 1989)

Mishbetzot Zahav- See Pri Migadim

Mishnah Brurah- Commentary on the Shulchan Aruch, Orech Chayim by R. Yisrael Meirkagan of Radun Poland (1839-1933) known best by his classic work the Chafetz Chayim

Pitchei Teshuvah- By R. Binyomin Forst, New York, 1984. Rabbi Forst is also the author of The Laws of Kashrus, Pitchei Halacha, an ArtScroll publication and a major source for this paper

Pri Migadim- A two part commentary on the Shulchan Aruch on Yoreh Deah. It is called the Mishbetot Zahav, a commentary on the Taz (Turei Zahav) and Siftei Deah, a commentary on the

Pizza from a Non-Kosher Establishment – Rabbi Paul Plotkin

Schach (Siftei Kohen) by R. Yosef Teomim of Lvov and later Frankfurt on the Oder (1727-1792)

R. Akiva Eiger- Author of Halachic works and responsa, Rabbi of Posen (1761-1857)

Raavad- Talmudist and Halachist, R. Avraham Ben David of Posquieres (1120-1197)

Rabbeinu-Tam- R. Yaakov ben Meir, grandson of Rashi and one of the earliest and most famous Tosafists (1100-1171)

Rambam- R. Moses Ben Maimon author of the Mishneh Torah (1135-1204)

Ran- R. Nissim, Halachist and Talmudic commentator (1290-1375)

Rashba- R. Shlomo Ibn Aderet, of Barcelona, author of responsa and a Talmudic commentary (1235-1310)

Rashi- R. Shlomo Yitzchaki, commentator on the Torah and the Talmud

Rema- R. Moshe Isserles of Cracow, annotator to the Shulchan Aruch and authority for Ashkenazic Jewry

Rosh- R. Asher Ben Yechiel, commentator on the Talmud and author of a Halakhic compendium (1250-1327)

R. Ovadia Yosef- Former Sephardic Chief Rabbi and a major Halakhic authority for Sephardic Jewry (born 1920)

Shach- R. Shabtai Hakohen of Vilna who authored the Siftei Kohen (Shach), a commentary to the Shulchan Aruch, Yoreh Deah (1622-1633)

Shulchan Aruch- Authored by R. Josef Caro, the major Halakhic codifier and a mystic in Safed (1488-1575)

Siftei Deah- (See Pri Migadim above)

Taz- Turei Zahav, a commentary on the Shulchan Aruch by R. David Halevi of Ostroh and later Lemberg (1586-1667)

Torat Habayit- A Halakhic compendium primarily on Kashruth by the Rashba.