

סימן צ"ח: דין איסור שנתערב בהיתר ואופן ביטולו

Siman 98: The Laws of Issur Mixing with Heter and their Nullification

- ❑ TASTING VS. 60
- ❑ SAFEK
- ❑ CHANA" N B'KEILIM
- ❑ 59, 60, OR 61
- ❑ POWERFUL INGREDIENTS

שלחן ערוך יורה דעה: הלכות תערובות סי' צ"ח

This *siman* is divided into three sections, each covering a different general topic:

- *Se'ifim* 1-3: How to measure a *ta'aruvos min beinnoi* vs. *min beshe'einoi minoi*.
- *Seifim* 4-5: When *heter* is cooked in a *keili* that has absorbed *issur* within it.
- *Seifim* 6-7: Different measurements (other than 60x) to nullify *issur*.

סעיף א'

INTRODUCTION #1: SIXTY OR NON-JEW?

- ❖ *Note: We will refer to ta'aruvos min beinnoi as "mb"m," and min beshe'einoi minoi as "mbs"m."*
- ❖ When dealing with a situation where *issur* got mixed with *heter*, we need to know if the *issur* is *botul* and the *ta'aruvos* is therefore *mutar*, or if it is not *botul*, and the *taaruvos* is therefore *assur*. There are, theoretically, two methods to ascertaining if it is *botul*:
 - a) Have a non-Jew taste the *taaruvos* to verify if it tastes like the *issur* food.
 - b) Ensure the *heter* is 60x more than the *issur*, whereby, we can safely assume that the *issur* can no longer be tasted.
- ❖ Now, where there is no non-Jew around, or it is a *ta'aruvos mb"m* so they taste the same, we for sure need 60x to nullify it. But, in cases of *mbs"m* and there is a non-Jew that could taste the *taaruvos*, the question becomes whether we need 60x or/and we could/must rely on the non-Jew.
- ❖ This is a *machlokes Rishonim*:¹
 - **Ri**² and **Rosh**³: If there is 60x, it's permitted, and we do not need a non-Jew to taste it. If there is less than 60x, then we ask a non-Jew to taste it.

¹ There are two other opinions brought in the **Tur** [105:1], but not mentioned in the **Mechaber**, **Rama**, **Shach**, or **Taz**.

1. **Rashi** [*Chullin* 98a s.v. *B'shishim*] holds that we need 60x and a non-Jew to taste. Even if we know we have 60x, if there is a non-Jew available, we still must have him taste it and tell us that there is *issur* taste. At the same time though, if there is less than 60x, even if the non-Jew says that there is no *issur* taste, it remains *assur*, because we need both. Only if there is no non-Jew available may we rely on 60x.
2. **Ramban** [*Chullin* 98a s.v. *Kol Issurin ShebaTorah*] holds that if the piece of *issur* is still inside the mixture, then we require 60x. We may only rely on a non-Jew in a case where the actual piece of *issur* was removed from the mixture, and there is just its taste left inside.

² See **Tosfos** *Chullin* 99a s.v. *Ela B'mai*.

³ *Chullin* ch. 7 *siman* 29.

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- **Rambam**⁴: If a non-Jew is available then we must have him taste it (regardless of 60x or not). If there is no non-Jew around then we rely on 60x.
- ❖ The **Mechaber** holds like the **Rambam**. We see this from the fact that he only mentions getting a non-Jew to taste, and does not mention 60x unless there is no non-Jew around or it is *mb"m*.⁵

INTRODUCTION #2: WHEN DO WE TRUST A NON-JEW

- ❖ Now that we have established the opinions for when we must get a non-Jew to taste the food, the discussion turns to what are the conditions necessary to believe a non-Jew. In general, we are worried that the non-Jew will not say the truth,⁶ so we don't just believe them in all cases. Only where we have reason to assume they are telling the truth do we believe them.
- ❖ What those circumstances are, is a *machlokes Rishonim*.
 - **Rashba**⁷, **Ran**,⁸ and **Tosfos**⁹: There are two options:
 - 1) We believe a non-Jew when he is *maysiach lefi tumoi* (talking in a casual manner.)¹⁰ He doesn't know we are relying on him, and therefore we can assume that he will tell the truth.
 - 2) We believe a non-Jew who is a professional chef, and we may even ask him directly. Since his reputation as a taste-expert is on the line, he will not lie.
 - **Rashba (quoting a second opinion)**:¹¹ We believe a non-Jew who is both a professional chef and is *maysiach lefi tumoi*.
 - **Rambam**¹²: We believe any non-Jew even when he knows we are relying on him,¹³ and he need not be a professional chef either¹⁴.

⁴ *Hichos Ma'achalos Assuros* 15:30. Cf. *Beis Yosef siman 98 s.v. U'midivrei Harambam B'perek Tes Vov*.

⁵ **Shach** 98:4. See **Gr"a** [end of 98:7] who disagrees.

⁶ The *Minchas Kohen* [part 1 end of chap. 7] writes that the non-Jew will lie to make the Jew slip up and sin. However, see *Badei Hashulchan* [98:8] who writes that on the contrary, we are concerned that the non-Jew, wanting to help out the Jew, will say that there is no *issur* taste although he isn't positive.

⁷ *Toras Habayis Ha'aruch* 4:1 16a.

⁸ *Chullin* 34a.

⁹ *Chullin* 97a s.v. *Samchinan*.

¹⁰ The **Taz** [98:2] writes that even if the non-Jew thinks we are relying on him for other reasons (e.g. to decide a wager), he may be believed as long as he does not know that we are relying on him for *halachic* matters.

¹¹ *Ibid*.

¹² *Ibid*.

¹³ The **Rambam** holds that because the truth of the matter will eventually be found out (as the food can be readily tasted by others), therefore the non-Jew will always be afraid to lie [**Gr"a** 98:5].

¹⁴ See *Beis Yosef s.v. Umidivrei Harambam Nir'eh*.

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- ❖ The **Mechaber** rules like the **Rashba**, **Ran**, and **Tosfos**.
- ❖ The **Rama** holds that nowadays we never trust a non-Jew.

INTRODUCTION #3: NOISEN TA'AM LIFGAM

- ❖ If the *issur* taste in a dish is *noisen ta'am lifgam* (giving bad taste) then the dish is not forbidden. For example, if *issur* vinegar falls into *heter* ice cream, ruining the taste of the ice cream, the mixture will remain *mutar*.
- ❖ However, if the taste is only temporarily ruined, but will improve later, then the mixture remains forbidden.¹⁵

HALACHAH

- ❖ **Issur that mixed with heter**, spreading their flavors between each other, **מין בשאינו מינו** and the two foods are **min beshe'einoi minoi**, **כגון חלב שנתערב בבשר**, for example, **cheilev mixed with meat**: **The food should be given to a non-Jew to taste it.** **אם אומר שאין בו טעם חלב** or **he says, that it does have cheilev flavor**, but the cheilev flavor is ruining the meat; **מותר** the entire dish is **mutar**.

The *halachah* that we just mentioned, that when the *issur* is ruining the dish it does not make the dish *assur*, only applies in the following situation:

- ❖ **As long as the bad taste imparted by the cheilev will not ultimately improve** the flavor of the dish. However, if the taste is only temporarily ruined, but it will get better later, the mixture will be forbidden.

About the non-Jew.

- ❖ **It is necessary that the non-Jew does not know that we are relying on him.**

When do we use 60x.

- ❖ **If there is no non-Jew present that can taste the meat**, **משערינו**, **ואם אין שם עובד כוכבים לטועמו** **we measure** to see if the heter is 60x the *issur*, and if it is 60x, the entire dish is *mutar*.
- ❖ **Similarly**, **אם הוא מין במינו**, **אם דליכא למיקם אטעמא** **since we are unable to determine the flavor**, being that it is *min beminoi*, i.e., the *issur* and *heter* taste the same; **משערים בששים** **we measure** to see if the heter is 60x the *issur*.

The **Rama** argues regarding asking a non-Jew:

¹⁵ See *siman* 103 *se'if beis*, section "Ruined from beginning to end".

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- ❖ **Our minhag nowadays is not to rely on a non-Jew in any situation, rather we use the other method mentioned by the Mechaber, ומשערינן הכל בששים and we always measure to see if the heter was 60x the issur, whereby the ta'aruvos would be mutar.**

WHICH MEAT TASTES LIKE CHEILEV

- ❖ The opening case of the **Mechaber** is talking about *mb's"m*, where *cheilev*¹⁶ got mixed into meat. That indicates that meat and *cheilev* do not have the same taste.¹⁷
- ❖ The **Shach**¹⁸ asks that the **Ra'avan**¹⁹ writes that they do taste the same. He explains that the **Ra'avan** is talking about fatty meat which does taste like *cheilev*, whereas the **Mechaber** is referring to lean meat which has a different taste.

TONGUE TASTING

- ❖ The **Taz**²⁰ quotes the **Derishah**²¹ who writes that since the **Tur** (and **Mechaber**) do not mention the possibility of a Jew tasting the mixture, this tells us that a Jew may not taste food, even just by linking with his tongue, to see if it has the taste of *issur*. The **Derishah** therefore concludes that if someone bought meat from a butcher and is unsure if it was salted,²² he may not lick the meat to taste if it is salty.

¹⁶ The **Taz** (98:1) and **Shach** (98:1) [as explained by **Pri Megadim**] point out that the word חלב in the **Mechaber** should be read חֵלֵב ("cheilev," non-kosher fat) and not חֵלֶב ("cholov," milk). Although both are forbidden to be mixed with meat, the **Mechaber's** words, "*issur shenis'arev b'heter*" (*issur* mixed with *heter*) imply that we are dealing with a non kosher item (*issur*) that mixed with a kosher item (*heter*), as opposed to milk and meat which are both *heter* and only become *issur* once mixed.

¹⁷ **Shach** 98:1 and **Taz** 98:1.

¹⁸ **Shach** 98:1.

¹⁹ *Sefer Ra'avan, Teshuvos Siman 20.*

²⁰ 98:2.

²¹ 98:1.

²² For the meat to be kosher, it must be first salted to draw out the blood. Even though the meat must be washed after being salted, one would still be able to taste the salty flavor just by licking the meat.

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- ❖ However, the **Taz** disagrees with the **Derishah** and holds that we may tongue taste to see if the piece is salty or not.^{23 24} Why we cannot lick the mixture in our case is for a technical reason: to ascertain if there is *issur* taste or not, we would need to chew (and swallow)²⁵ a bit of the mixture, which is for sure *assur* to do.²⁶

COULD WE EVEN BELIEVE A NON-JEW?

- ❖ *The Shach and Taz both ask the same question on the Mechaber and give different answers. We will go through the question, and then present their answers. The question is as follows:*
- ❖ Regularly, regarding *issurim mide'oiraisa*, we do not believe non-Jews, even when they are *maysiach lefi tumoi*. The **Gemara**²⁷ says that the only exception is that we believe a non-Jew who informs us that a woman's husband died - which would allow her to remarry - if the non-Jew says it *maysiach lefi tumoi*.²⁸ In all other cases of *issurim mide'oiraisa*, we do not believe non-Jews, even *maysiach lefi tumoi*. Now, our case of *ta'aruvos issur ve'heter* is an *issur mide'oiraisa* as well, since the **Mechaber** holds that *ta'am ke'ikar* is *mie'doiraisa*. If so, how could we trust the non-Jew, even *maysiach lefi tumoi*, when he says that there is no forbidden taste?

For the *Rishonim* that hold *ta'am ke'ikar* is only *miderabanan*, e.g., **Rambam** and **Rashi**, the question would not begin, because regarding *issurim miderabanan* we do believe a non-Jew. But, the question remains on the **Mechaber**, since he holds that *ta'am ke'ikar* is *mide'oiraisa*. How could we trust the non-Jew here?

²³ The **Taz** brings two proofs for his opinion that licking to check for *issur* is permitted:

- In the case of an animal that appears to be missing a gallbladder (which would make it a *treifah*), the **Mechaber** (*Siman* 42:3) writes that it is permitted to lick the liver to ascertain if there is a bitter taste, which would indicate that the gallbladder was absorbed inside it. Although this is a case of a questionable *issur* (if the gallbladder was actually missing), it is nevertheless permitted.
- Regarding a public fast day (other than Yom Kippur and Tisha B'av), the **Mechaber** and **Rama** [*Siman* 567:1] disagree whether a person is permitted to put food into mouth to taste it and then spit it out. Now, that ruling is a special leniency by a fast day. That implies that by a case of tasting a questionable *issur*, only licking would be permitted.

²⁴ Provided that the area licked is superficially clean from blood.

²⁵ The **P'ri Megadim** [*Mishbetzos Zahav* 98:2] rules that when tasting to check for an *issur*, the person must chew and swallow the food. The *Yad Yehudah* [98:2] rules that chewing well is enough.

²⁶ The *Yad Yehuda* [98:2] explains the **Taz's** opinion regarding tongue tasting: Tongue tasting is not eating, and is not inherently *assur*. However, the *halachah* is [91:2] that we should not have *heter* touch *issur* (when they are cold) because we *lechatchilah* require the *heter* to be rinsed (*hadachah*), and one may forget to do so. Here as well, the person's tongue is like any other *heter*, and we are afraid he may not rinse his tongue off, as is required *lechatchilah*. Therefore, a person may not lick a verified *issur*. However, by a *safek issur* (such as by the missing gallbladder) we can be lenient and trust that he will rinse his tongue afterwards.

²⁷ *Bava Kama* 114b.

²⁸ The reason is because the non-Jew is afraid to lie since the truth will eventually come out.

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- ❖ The **Taz**²⁹ and the **Shach**³⁰ quote the **Maharai**,³¹ who answers that according to the **Rashba**, (whom the **Mechaber** rules like,) who holds that we only require the non-Jew to be *maysiach lefi tumoi*, and do not require him to be a chef, we must say that he holds *ta'am ke'ikar* is *miderabanan*, and therefore we believe the non-Jew.
- ❖ The **Taz** and the **Shach** ask on this answer that we know that the **Rashba** clearly does not hold that *ta'am ke'ikar* is *miderabanan*, in fact he says several times it's *mide'oiraisa*!
- ❖ The **Taz** gives two answers:
 1. Although the **Rashba** in principle holds that we rule *ta'am ke'ikar* is *mide'oiraisa*, when it comes to believing a non-Jew, we rely on the opinions that hold it is *miderabanan*.³²
 - The **Shach** also brings this answer, but rejects it as being unsatisfactory.³³
 2. When we say that we do not believe non-Jews regarding *issurim mide'oiraisa*, that is only for cases that require *eidus* (testimony). However, in situations where we just need to know facts, we may rely on anything which proves to us that the truth is a certain way. Regarding the laws of *issur v'heter*, no *eidus* is required. Therefore, a non-Jew's unassuming telling is enough.³⁴

²⁹ 98:2

³⁰ 98:2

³¹ *Trumas Hadeshen Siman 79*. The **Maharai** first writes that according to the opinions that the non-Jew must be both *maysiach lefi tumoi* and a chef (see introduction #2), we have additional reason to believe him because he will not jeopardize his job. If he says that it doesn't taste like *issur*, someone else may taste it and prove him wrong, thereby showing that he isn't the expert chef he claims to be.

The **Shach** quotes **Rabbi Gershon Ashkenazi** who argues that the additional requirement to be a chef is only in regards to ensuring his expertise in tasting. If it was about his trustworthiness that he won't jeopardize his job, he would have to know that we are investigating this even to the point of having someone else taste it to double check. How then could he also be *maysiach lefi tumoi* - which means that he unassumingly tells us, not knowing that we are investigating this matter?

The **P'ri Megadim** [*Sifsei Da'as* 98:2] gives a couple answers to this question: Firstly, the non-Jewish chef could be asked in a way that two people who are having an argument regarding its taste come to him to resolve their fight. He knows we are investigating the matter, but can still be considered *maysiach lefi tumoi* because he doesn't know that we are relying on him regarding its status of being kosher or not (see end of **Taz** 98:2). Secondly, even if we don't come to him in such a way and he doesn't know that we are investigating, still, a chef will always be very careful how he answers about food-tasting. This is his expertise and he will never say how a food tastes - even if just telling a story about it - unless he is completely certain.

³² The *Zichron Avraham* (Lemberg, 1860 pg. 36) explains this answer as following: The *Trumas Hadeshen* held that *mide'oirasa*, a non-Jew *maysiach lefi tumoi* is believed regarding *issurim mide'oirasia* (because it is unlikely that he will lie). It is only *miderabanan* that he is not believed. Since the **Rashba's** ruling to follow **Rabbeinu Tam** that *ta'am ke'ikar* is *mide'oirasa* was only a stringency (as the **Rashba** writes [*Toras Habayis Ha'aruch Bayis 4 Sha'ar 1 11b*] "It is fitting to be stringent like this opinion regarding a matter that may be *mide'oirasia*"), to then be stringent regarding *maysiach lefi tumoi* would be a double stringency. Therefore we can be lenient to follow the opinions that hold *ta'am ke'ikar* is *miderabanan*. (The **Shach** is not satisfied by this answer, because he felt that the **Rashba** inherently ruled that *ta'am ke'ikar* is *mide'oirasia*, and therefore there is only one stringency being taken.)

³³ Especially because in *Toras Habayis Hakatzter*, the **Rashba** only brings the opinion that *ta'am ke'ikar* is *mide'oiraisa*.

³⁴ This idea is based on the following *halacha*: When it comes to buying a cow from a non-Jew, we need to know if it gave birth in the past to know if the next calf it births will be considered a *bechor* and need to be redeemed. The **Rosh** rules that (assuming the non-Jew has no motive to lie) we do trust a non-Jew *maysiach lefi tumoi*, even though the law of *bechor* is *mide'oiraisa*. The **Taz** explains that this is because we are not relying on his testimony; we are simply getting clarification of the facts from him. Similarly, the laws of *ta'aruvos* do not require *eidus*. All

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- The **Taz** concludes that although this answer can work for the **Rashba**, it won't work for the **Mechaber**. The **Mechaber** rules elsewhere³⁵ that even regarding a matter that does not require *eidus*, we do not believe a non-Jew *maysiach lefi tumoi*.
- ❖ The **Shach**³⁶ answers that regularly we don't believe a non-Jew *maysiach lefi tumoi* because it cannot be ascertained whether he is lying or not and therefore he will not be afraid to lie. In our case though, we can readily give the *ta'aruvos* to a non-Jewish chef to taste, and we'll find out if the first non-Jew was lying. He is therefore afraid to be caught lying and we can trust his word when he is *maysiach lefi tumoi*.³⁷

HAVING A JEW TASTE

- ❖ The **Rama** wrote that "nowadays we do not rely on the tasting of a non-Jew." The **Shach**³⁸ notes that implied is that we may rely on the tasting of a Jew. Now, certainly a Jew may not taste a *ta'aruvos* to verify if there is *issur* inside, but there are several cases where a Jew tasting would be relevant:

we need is factual clarification, and for that a non-Jew talking *maysiach lefi tumoi* is enough. Therefore, we may trust the non-Jew in our case. (A proof: We believe a non-jewish chef because he will not ruin his reputation by lying. If we needed *eidus*, that would never work.)

³⁵ In *Yoreh Dei'ah Siman* 316:1 the **Mechaber** disagrees with the **Rosh** in the *bechor* case and holds that we do not trust a non-Jew even *maysiach lefi tumoi*, even though we only need factual clarification.

³⁶ The **Shach** first brings "those who want to answer" differently: When the **Gemara** [*Bava Kama* 114b] said that we never believe a non-Jew by *issurim mide'oiraisa* (except for *eidus islah*), that is only when there is a status-quo of *issur*. If we would trust the non-Jew that it is *mutar*, we would be relying on him to change the status into one of *heter*, and he is not believed to do so. However, if there is a status-quo of *heter*, just that we have a question on that status, then we may believe a non-Jew. If he tells us it is *mutar*, he is not changing the status-quo, just upholding it. In our case, the pot was permitted, and *issur* fell inside. The status-quo is *heter*, and the question is if the *issur* made the pot *assur*. Therefore, we may believe the non-Jew.

The **Shach** disproves this by saying that if in cases where the status-quo is *heter*, we do believe a non-Jew, then that **Gemara** is difficult to understand. Right after saying that we don't believe someone that is *maysiach lefi tumoi* (except for *eidus islah*), the **Gemara** asks that we find a case where someone that is *maysiach lefi tumoi* is believed. The case is of a *shevuyah*, a girl that was taken captive, and there is a doubt if she was violated and thus forbidden to marry a *kohen*. There, we could rely on testimony of a child that is *maysiach lefi tumoi* that she was not violated. The **Shach** asks: In this case the woman has a status-quo of *heter* (being permitted to marry a *kohen*) and we have a doubt regarding if that status was removed. According to "those who want to answer", the **Gemara** should never have asked this question - it's a completely different case from the **Gemara's** original statement that when the status-quo is *issur* we don't believe someone who is *maysiach lefi tumoi*?

Therefore, the **Gemara's** statement that we do not believe a non-Jew *maysiach lefi tumoi* obviously applies even to cases where the status-quo is *heter*, and thus our question returns.

³⁷ The **P'ri Megadim** [end of *Sifsei Da'as* 98:2] asks that this answer directly contradicts the words of **Rabbi Gershon** that the **Shach** brought earlier; namely, that when being *maysiach lefi tumoi* the non-jew can not expect that we investigating this issue and be afraid that we'll give it to a chef to verify if it tastes like *issur* or not. How can the **Shach** give this answer when just several lines before he refuted this concept?! See *Zichron Avraham* (Lemberg, 1860 pg. 36-7) for an answer to defend the **Shach**.

³⁸ **Shach** 98:5.

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- If *terumah* falls into *chullin*, we may get a *kohen* to taste it. If he says it does not taste like *terumah*, then a regular Jew may eat it.
 - If someone makes a vow against eating a certain food, and that food falls into a dish, he could have another Jew taste the dish to ascertain whether the taste of the prohibited food is there.
 - If an onion was cut with a meat knife, a Jew may taste the onion to see if it has meat taste, which will determine whether it may be eaten with cheese. Or any similar case where we want to verify if *pareve* food has a meat or dairy taste.
- ❖ This argues against the **Levush**, who writes³⁹ that “we do not rely on a *Kohen* or a non-Jew.”⁴⁰
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³⁹ *Ateres Zahav* 98:1.

⁴⁰ The argument between the **Shach** and **Levush** is based on why a non-Jew is not believed nowadays. It seems that the **Shach** holds like the *Minchas Kohen* [part 1 end of chap.7] that nowadays, the non-Jew's are more familiar with the Jewish customs and it is more common that they will lie to make the Jew slip up and transgress. This reason obviously only applies to non-Jews. The **Levush** holds that nowadays, we (even the professional chefs) are not as expert in tasting as people were once upon a time. Therefore, Jews and non-Jews are equally disqualified. [See *Badei Hashulchan* 98:14.] There are many later *poskim* who also take sides in this argument, some ruling like **Shach** and some like the **Levush**. See *Piskei Hora'ah* pg. 6-7.