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Business with Non-kosher Food
Part 2

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In the previous article, we discussed the parameters of the *issur* of *sechorah bidevarim assurim*, doing business with non-kosher food. This prohibition applies not only when selling non-kosher as a formal business, but even when gifting such items. This creates a challenge when arranging events for non-Jews that involves purchasing non-kosher food, such as an office lunch or end of the year party.

HAVING OTHERS MAKE THE PURCHASE

There are *halachic* solutions to avoid this *issur* entirely. The Shulchan Aruch in *hilchos Pesach*[1] states that it is permitted to give a non-Jew a set amount of money with which to buy food, as long as there are no explicit instructions to purchase non-kosher food. This is true even if it is clear that the money will be used to buy non-kosher items[2]. Since Jewish involvement terminates with the giving of the money, no Jew is doing business with *treif*, for the subsequent purchase is that of the non-Jew alone. Therefore, for example, one can reward laborers of a moving company with money to buy themselves lunch[3]. A similar arrangement might be made when planning an office party. However, no specific instructions may be given as to purchase non-kosher items.

COVERING THE BILL AFTER THE PURCHASE

The Shulchan Aruch[4] discusses a case in which an employer instructs his employees to go eat at a certain place, and that he will cover the bill. Although the Shulchan Aruch cites conflicting viewpoints, the halacha follows those who permit such an arrangement[5]. Even the *poskim* who do not allow it, are only discussing a more severe case of paying for chometz on Pesach[6], in which it is forbidden to receive any benefit. However, as long as the Jew never purchases the non-kosher food, he may pay the bill afterward, for it is not called doing business with non-kosher food. For example, if a Jewish employer takes non-Jewish employees to a ballgame, he cannot purchase non-kosher food for them, but he may reimburse them for any non-kosher food they consume. Since the Jew didn't pay for the food in advance, he never purchased the food, but rather merely paid the debt. Similarly, when taking a non-Jewish client to a non-kosher restaurant and the Jew will order the non-kosher food and pay for it himself, he has purchased non-kosher for the client, which is forbidden. (The potential problem of maaris ayin and/or eating the assumed "kosher" products is another issue.) Rather, the Jew should allow the non-Jewish client to order himself, and the Jew will pick up the tab. Being that the Jewish involvement is only in paying the bill after the meal, he never actually owned the food nor was actively involved in any way.

A Jewish employer who would like to sponsor the non-kosher food for an event in the office, may follow the same procedure. Being that money must be paid before receiving the food, a non-Jewish employee should make the food purchases, and the Jewish boss can reimburse them for the cost[7]. (Ordering non-kosher food for an event attended by Jews who are not sensitive to kosher is a serious *shailah* that deserves its own lengthy discussion.) One should keep in mind that at no time should the Jewish employer himself have any hands-on dealings with the *treif*, such as by accepting the delivery or serving the attendees. As was explained in the previous article, any direct involvement with the food is *halachically* problematic[8].

USING THE COMPANY CREDIT CARD

Some *Poskim* permit the non-Jewish employees to use the company credit card to make purchases of non-kosher food, since a Jew is not involved in purchasing the food, but only in paying the credit card bill at a later date[9]. However, this hinges upon the complex *shailah* as to the status of a credit card purchase in halacha. While a credit card purchase may not be valid in the eyes of *halacha*, the Torah does recognize actions that are viewed as a bona-fide acquisition in the business world[10]. Therefore, items purchased via credit card may possibly be placing the non-kosher food in the possession of the credit card owner. Although there are those who are lenient, one may avoid the *shailah* entirely by having a non-Jewish employee make the purchase with their own card, and have the company reimburse any purchase made on behalf of the business.

USING GIFT CARDS FROM A NON-KOSHER ESTABLISHMENT

Purchasing a gift card for a non-kosher eatery is paying for the non-kosher food in advance. Even if it is possible that the card will be used to purchase kosher food, if it is likely that it will be used for non-kosher food, it should be avoided.[11]

FOOD IN A HEALTHCARE FACILITY

Healthcare facilities provide food to the residents as part of their services. For a facility without any Jews, buying non-kosher food would seem to be financially ideal. However, this would be an issue of *sechorah bedevarim assurim*. Although the minhag is to follow the opinions who allow one to feed employees non-kosher food, this does not apply to residents of a facility. Each resident is in fact a client, and the facility is a business that offers all-encompassing service and care, including supplying meals.[12] If so, serving non-kosher food would be a form of doing business with *treif*, and is not permitted.

Some operators have *halachic* contracts that allow operations at the facility to continue on Shabbos, and many are written in a manner that deals with the issue of non-kosher food as well. However, not every operating agreement that covers Shabbos issues will necessarily solve the issues of *sechorah bedevarim assurim*. In addition, there is much discussion by today's *poskim* about the validity of such *shtaros*. Being that in the opinion of most *poskim*, business with non-kosher food is an *issur min haTorah*, perhaps a more ironclad *halachic* solution is needed.

One such solution is to form a genuine partnership with a non-Jew, in which the non-Jew will take full ownership and control of the food. (The previous article touched on some of the details of this arrangement.) Another solution is to outsource the dietary department of the facility to a third-party vendor who is to assume full ownership and operations of the non-kosher food. Similarly, the company can create an independent corporation under control of a non-Jewish operator, who will take ownership of all of the dietary operations. Both of the aforementioned ideas involve minute details that need to be arranged properly. While each one of these solutions faces some technical, business-related challenges, each has been successfully implemented by a number of conscientious owners.

One should also keep in mind another concern: the possibility that some residents are Jewish and are forbidden from eating non-kosher food. While an operator of a facility far from a Jewish population can assume that there are no Jews residing there[13], if one discovers that in fact a resident is Jewish, serving non-kosher food would present a serious *halachic* challenge. Feeding non-kosher food to him would be in violation of *lifnei iver*, enabling another to sin[14]. The solutions mentioned above might assist in resolving this *shailah* as well.[15]

In addition, there are more complex issues regarding *basar bechalav*[16], as well as *chametz* on Pesach. These prohibitions have the additional challenge in that a Jew may not receive any benefit from them whatsoever. For example, serving bread in a facility on Pesach, even if the bread is owned by a non-Jew, still provides financial benefit to the Jewish owners. This issue cannot be resolved with the standard document used when selling the rest of his *chametz*. It requires a very specific *halachic* solution. Therefore, one must be in close consultation with his *rav*, who will guide him in setting up a *halachically* viable solution.

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Questions and Comments can be sent to MBHshtaros@gmail.com.

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מרדכי צבי בן יצחק אלימלך ז"ל
ת.נ.צ.ב.ה.
מידידיו ומוקיריו

1 או"ח סי' תנ סע' ו
2 ע' דרכ"ת יו"ד סי' קיז ס"ק כז שכתב עצה זו מכנסת הגדולה שם ס"ק ג
3 כ"ש מדיין פירסט שליט"א
4 או"ח שם
5 מג"א שם ס"ק ט, גר"א, פר"ח, משנ"ב ס"ק יז הכריעו מעיקר הדין כדעת המתירים.
6 כמבואר במשנ"ב שס"ק טז "הוי כאלו הוא מאכילו בידים.. נמצא שנהנה מן החמץ", רק מצד איסור הנאה ולא יותר.
7 ביאור ע"פ משנ"ב שם
8 ע"פ שו"ת חת"ס ועוד שטעם שמא אתי למיכל מיניה הוא טעם האיסור אפילו במקום שאין האוכל שלו, כגון פועל במקום שמוכרים דברים אסורים. עי' מש"כ בחלק א'.
9 ע' בספר הל' איסורי הנאה במסחר עמ' 251
10 משום סיטומתא. שמעתי מהגר"ש מילר שליט"א שאולי קנין ע"י כרטיס אשראי הוי כשט"ח של אחרים והוי משום כסף ואכ"מ.
11 ע"פ משנ"ב סי' תנ ס"ק יט, שער הציון שם ס"ק לג בשם הגר"ז שם. (אבל ע' פמ"ג שם).
12 בשו"ת מנחת חן ח"א יו"ד סי' ו ובספר שאילת יצחק ח"ב סי' קטו, האב ובן כתבו שנתינת אוכל בבתי אבות הוי כהאכלת פועליו, אבל צריך ראיה להנחה זו, עיי"ש אריכות בביאור הענין עם עוד צדדים להקל.
13 ע' תשובה מרן זצ"ל שנדפס בשו"ת חלקת יעקב ח"ג סי' נב ובהערות שם
14 ע' בספר הל' איסורי הנאה במסחר שם מש"כ בשם הגר"ש מילר שליט"א ע"פ מש"כ בקהילות יעקב ע"ז סי' ד בדעת הרא"ש, אבל ע' שערי חיים גיטין סי' ל שביאור כוונת הרא"ש באופ"א וכן מדויק בדברי הרא"ש, וא"כ לא יהיה היתר ויש לעיין
15 ע' בספר החדש "בתי אבות בהלכה" מפרק ה' עד פרק י.
16 יש מח' אחרונים אי אמרינן אין בישול אחר בישול לגבי בב"ח ע' שו"ע יו"ד סי' פז, ואו"ח ס' תרעג פמ"ג בשם שער אפרים. אבל אם הבשר וחלב או דבינה נתבשל כל א' לבדו, רוב פוסקים סברי שאם נתבשלו ביחד, יהיה