

Business with Non-kosher Food

Part 1

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The Mishnah in Sheviis¹ states that one may not do business with non-kosher food, such as bugs and *treif* animals. This prohibition is known as the *issur* of "*sechorah bidevarim assurim*" and is derived from pesukim in the Torah². Many *Rishonim* and *Acharonim* rule that doing so is forbidden *min haTorah*³.

However, the Torah allows one who discovers a *treif* animal in his herd (the term *treif* technically refers to a kosher animal that has suffered a specific critical injury that renders it non-kosher) to either sell it or give it away to an *akum*⁴. However, this allowance is limited to situations in which the non-kosher item came to him incidentally, or *nizdamnu*. To initiate purchasing non-kosher animals in order to sell them is forbidden.

There are numerous *shailos* that are associated with this *halacha*, such as:

- May one become a silent partner in a non-kosher restaurant?
- May non-kosher food be served at an office event?
- May a Jewish Amazon dealer purchase a pallet of non-kosher items from a warehouse across the country to be sold online?
- How may one operate a senior residence that serves non-kosher food?

FOODS INCLUDED IN THE ISSUR OF SECHORAH BIDEVARIM ASSURIM

This prohibition only applies to items that are non-kosher *min hatorah*. An item that is forbidden to be consumed on a rabbinical level, such as cheese manufactured by a non-Jew, is permitted⁵; one possible exception is non-kosher wines. Rema⁶ states that although it is forbidden to derive any benefit from wine touched by an *akum*, nowadays non-Jews do not engage in true idolatry, and one may benefit from these wines. Even so, he adds, that since this leniency

is not unanimous, it is best to rely on this ruling only in cases of financial loss, and one should avoid purchasing non-kosher wine for sale.

*Poskim*⁷ cite the *Rashba* who explains that the reason for the *issur* is to prevent one from eating non-kosher. Hence, the prohibition only includes animals primarily meant to be eaten, such as shrimp or *chazer*. Animals used for other purposes, such as horses, parrots, or hamsters, may be bought and sold. A case of an animal generally sold for food, yet it is being sold specifically for a non-food purpose, is discussed by *poskim*⁸.

Bugs are included in this *issur*. There is a discussion in the *poskim* if one may sell fruits and vegetables known to be infested with bugs. The *poskim* cite the *Beis Hillel* who posits that since it is certainly forbidden to eat such fruit, one may not do business with them, as one may come to eat them. However, other *poskim* permit the sale of such items, since the seller is not involved in the sale of bugs, but rather the food alone. This is demonstrated by the fact that presence of the bugs, do not change the market value. This seems to be the prevailing custom⁹.

A SILENT PARTNER IN A NON-KOSHER BUSINESS

Although the reason given for not doing business with non-kosher is in order to prevent one from eating such food, we do not use that reasoning for a leniency. Therefore, *poskim* point out that even if one will never even touch the food, it is still prohibited to purchase non-kosher food to sell. Taking ownership and having others perform the buying and selling is in itself forbidden¹⁰. Thus, one may not become even a silent partner in a non-kosher business¹¹.

One who seeks to partner with a non-Jew in such a business must structure the partnership in such a way that the Jew does not take any ownership of the *treif* whatsoever. His share in the profits must come solely from other aspects of the business such as billing, marketing, and from the food items that one is permitted to sell. One must be sure that such an arrangement is genuine, for the use of halachic trickery, referred to as *haarama*, is highly questionable, especially when facing an *issur d'oraysa*¹².

Although even partial ownership of a non-kosher business is not allowed, it is permitted to own stocks in a company that sells *treif*, even though he will share in the profits. Rav Moshe Feinstein zt"l explains that owning stock does not make him an owner of the product in any way. However, if the percentage

of ownership is significant enough to give the stock owner a voice in the running of the company, he is then viewed as a minority partner, which is forbidden¹³.

One may perform brokerage services for a non-kosher business owned by non-Jews, since he neither owns the food, nor has any hands on dealing with the food¹⁴.

A JOB THAT INVOLVES ACTUALLY HANDLING OF NON-KOSHER FOOD

Chasam Sofer¹⁵ delineates two distinct parts of the *issur of sechorah bidevarim assurim*. First, is the fact that the ownership of such a business is forbidden, and secondly is that one should not come to eat non-kosher food. One must be stringent in a situation where either concept exists. It is forbidden to run a business in which one owns and sells non-kosher food, even if he has no contact with the food whatsoever. In addition, even if one is not the owner, engaging in a business that puts one in constant contact with the food where he may come to eat it, is also problematic. This *halachah* is most relevant to one employed in a business that sells non-kosher items. Rav Moshe Feinstein *zt"l* allows one to provide freight service for non-kosher food. His leniency is based on two factors. One is that there is no concern that he would eat from the food, for if he was caught, he would surely be fired. In addition, engaging in business with *treif*, is limited to the act of buying or selling the food, even if the Jew will not be the owner. In this case he is merely delivering the food¹⁶. Being a waiter in a non-kosher establishment, where the rules for taking a bit of food in the kitchen are looser, may well not be included in this *heter*. Similarly, someone working for online food delivery services such as Grub Hub or Uber Eats would have a *shailah*. While some merely deliver the pre-packaged food, others offer a service that requires the employee to purchase the items in the store for the customer. It would be questionable if one may take such a job¹⁷. One looking into such employment should seek guidance from a Rav.

NON-KOSHER FOOD TO EMPLOYEES

Gifting a non-Jew with non-kosher food is called doing business with *treif*. Beis Yosef¹⁸ explains that one only gives a gift if one expects, or already received, something in return. Therefore, a gift is in reality a form of a sale, for it is exchanging the non-kosher item for a favor down the road and is not allowed¹⁹.

Rema²⁰ writes that purchasing non-kosher food to feed employees is considered doing business, for he is saving money by using cheaper food. The Taz and Gra²¹ follow this ruling. However, Shach²² disagrees, explaining that feeding workers in his home would be like a purchase for any other household need, such as feeding a pet, which is not considered "business";

rather it is a purchase for personal use, and is certainly permitted. Many *Poskim*²³ note that the prevalent *minhag* is to be lenient. However, even the lenient opinions are only for workers that the employer has a responsibility to feed, such as those who live in his home. If there is no obligation of any sort to provide nourishment, giving them non-kosher food would be a gift, which is forbidden according to all opinions²⁴.

At various times of the year, many offices host parties for their staff members, most of whom have no need to eat kosher food. The *shailah* is if employers are allowed to purchase non-kosher food for these gatherings. These parties are extraneous to the actual running of the office and are unrelated to the employees' personal needs. Rather, they are an investment by the employer to create good will, hopefully resulting in increased productivity. If so, it is similar to giving a gift of non-kosher food in anticipation of something in return. This is using non-kosher food to do business and is not allowed.

In Part 2 we will discuss some possible solutions and address other issues.

Based on the shiur at the H3 Summit in Schaumburg on 18 of Teves 5782

1. שביעית פרק ז משנה ג.
2. גמ' פסחים כג ע"א, הובא בשו"ע יו"ד סי' קיז.
3. תוס' פסחים שם, רא"ש ב"ק פ"ק סי' יג, ט"ז יו"ד סי' קיז ס"א, דרכי תשובה ס"ק כה כותב שרוב מנין של ראשונים ופוסקים סוברים שהיא איסור מה"ת. וכ"כ פ"ח ס"ק א ומשל"מ פ"ח מאכ"א. אבל נוב"ת יו"ד סי' סב מוכיח מראשונים שהיו מדברין, וע"ע כ"ף החיים שם אות טו שמביא משו"ת רשב"א (ח"ג סי' רכב) וראב"ד (שמיני פרשתא ב). אבל כמה אחרונים (פ"ח, פ"ג וכו') מביא דברי הרשב"א כסבר באיסור מה"ת.
4. שמות פרק כ כסוקל.
5. שו"ע שם.
6. ריש סי' קכג, ע' דרכי משה שביאור שיטתו.
7. ע' ט"ז שו"ע בשם שו"ת הרשב"א ח"ג סי' רכג. השו"ע מבאר שהאיסור רק בדברים המיוחדים לאכילה.
8. ע' ש"ך שם, דרכי"ט ס"ק יב בשם פרי תואר ס"ק א שהכל תלוי ברוב.
9. בית הלל סי' פד ס"ק ב, אבל פ"ח בהערה שם תמה עליו כמ"ש בפנים. ע' פ"ג סי' פד שפ"ד ס"ק יח שתמה על המיהתו. אבל לכו"ה המנהג הוא להקל בזה.
10. ת"ס יו"ד סי' קד בשם חות יאיר סי' קמב, וע"ע דרכי"ט ס"ק כא מקורות לזה. וע"ע מקורות בהערה הבאה.
11. ע' גליון מהרש"א יו"ד שם בשם שו"ת דבר שמואל סי' קמד, אג"מ יו"ד ח"א סי' נא בדעת חת"ס יו"ד סי' קד, ותלמידיו.
12. שו"ת אמרי יו"ד סי' ג, מהר"ם ש"ק סי' קלו, וכן דעת הגר"מ זצ"ל (מסורת משה ח"א יו"ד סי' יא, וכו"ש מדיון פירסט שלי"ט א, ע' רשומי אהרן אות ו). וע' בדרכי"ט ס"ק יז, כ"ף החיים שם ס"ק סט מבעל יביע אומר שמביא כמה מתירים לתת מעות לעובדים, אבל כותב שרוב האוסרים. בשו"ת נטע שורק יו"ד סי' מ/מא כותב שאם היהודי לעולם לא יקנה החזירים, אלא שיתנה שיקח הרווחים וגם האחריות, לא יהיה בכלל האיסור. ובמקום שכן יהיה לו איזה קנין, לא יהיה היתר זה.
13. ע' גמ' שבת דף קלט ואכמ"ל.
14. ע' פ"מ אג"מ אב"ע ח"א סי' ז ד"ה ובדבר ליקח, ע' קובץ תשובות ח"ג סי' קד בשאלה של בעלות במנויות של חברה "כבר הורה זקן באג"מ" וע"ע מנחת יצחק ח"ג סי' א אריכות בענין זה.
15. חת"ס שם, ערו"ה ס"ע א, ע' דרכי"ט ס"ק נא ובה"ח ס"ק עג. ועדיף לזי שנותן מעות לעובדים, שהסרסור אינו קונה. האוכל כלל בשו"ת אלף לך שלמה יו"ד סי' קפח מחלק בין סרסור ובעל הממון באופ"א, שהסרסור עיקר פרנסתו אינו אלא מהב' צדידים, משא"כ נתינת מעות לעובדים הפרנסה היא ממז"מ עם נט"ר עצמו.
16. שו"ת יו"ד סי' קד, קה קוק.
17. אג"מ יו"ד ח"א סי' נא, ע' כע"ז מהרש"ם ח"א סי' קכו.
18. ממבואר באג"מ שם, שמי ששוקק בעצם מכירה וקנין של אוכל, אע"פ שאינו שלו יהיה בכלל האיסור של החת"ס.
19. בשם ה"מ פ"ח הל' מאכ"א, הובא בש"ך ס"ק ג, פרי תואר שם.
20. ש"ך ס"ק ג ע"ה הב"י שמתנה כמכר.
21. ס"ע א.
22. ט"ז ס"ק ב, גר"א ס"ק ד.
23. שם.
24. ש"ך עצמו כותב שזוהו הנהגת רבנים מבני עמנו, וכ"כ להתייר מחנ"א על הרמב"ם פ"ג מאכ"א (הובא בדרכי"ט ס"ק כז), חכמ"א כלל סט, ערו"ה ס"ע יט, ודעת"ס סי' ס"ק ז. פ"ח ס"ק ג ביאור כוונת הרמ"א באופ"א ולכו"ה ע"י. אמנם מהר"ם ש"ק סי' קצו כותב שר"י ירחיק מזה.
25. לשון הש"ך שהם "פועלים שבבית", משמע פועלים שיש עליהם אחריות להאכילם, וכ"כ בחלקת בנימין שם סי' ק.



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