

ספירימ

INDIAN RESTAURANTS

Introduction

In recent years restaurants serving Indian-style foods have become more popular in the general population. The menus of these restaurants are filled with foods made of fruits, vegetables, and dairy items, but are free of all meat and fish. This presents an opportunity to eat out for smaller Jewish communities which do not have enough members to support a traditional kosher restaurant. The lack of fish or meat in the restaurant presents a possibility of providing *hashgachah* without (the expense of) a *Mashgiach Temidi* and without (the hassle and expense of) severe restrictions regarding suppliers of raw materials. These factors, coupled with the restaurants' appeal to consumers who are not Jewish, have combined to make certification of Indian restaurants a viable option of which many communities have taken advantage.

The Chicagoland Jewish community is, *Baruch Hashem*, large enough to support numerous kosher restaurants which are overseen by a *Mashgiach Temidi*; therefore, the cRc does not feel the need to certify Indian restaurants which cannot meet that standard. At the same time, we have visited kosher Indian restaurants in a number of smaller communities and understand the decision of local *Va'adim* to certify those establishments without *hashgachah temidis*. In that context, this article will discuss some of the potential issues, pitfalls, and decisions¹ which must be made in granting this type of certification. This discussion will be divided into three sections (a) *Bishul Yisroel*, (b) Insects, and (c) Control.

A. Bishul Yisroel

Although Indian restaurants do not cook meat or fish, they do cook rice, potatoes and other foods which require *bishul Yisroel*. It would seem that an establishment that does not have a *Shomer Shabbos* on premises cannot have a rice cooker (and possibly not even a microwave), as there is no way to assure

that the food cooked in that device is *bishul Yisroel*.² Accordingly, the typical method of creating *bishul Yisroel* is via a Jew lighting the pilot lights for the stoves, ovens, woks, fryers and other cooking utensils.

This raises a number of halachic and practical considerations:

- *Rema* 113:7 says that if a non-Jew lights a fire from a fire which was lit by a Jew (**אש מאש**), then any food cooked on the non-Jew's fire is considered *bishul Yisroel*. There is some discussion in the *Poskim*³ as to whether *Rema's* ruling may be relied upon *l'chatchilah* or merely *b'dieved*.

Some larger *hashgochos* are *machmir* on this question as relates to food but *maikel* as relates to their industrial certifications; their logic is that since they insist on a *Mashgiach Temidi* for food service *hashgachah* there is no reason to have to rely on something which might only be permitted *b'dieved*. According to this line of reasoning, it would be perfectly acceptable for a smaller community to adopt the lenient position as relates to their food service establishments.

- The pilot light must be a continuously-burning "standing" pilot rather than one which turns off when the oven or other appliance is not in use (and merely comes as needed).
- There is so much spilling and busyness in a restaurant kitchen that pilot lights are bound to go off on a regular basis. If that occurs in a kitchen where there is no *Mashgiach*, the cooking staff not only has a tremendous incentive to relight the fire/pilot themselves rather than wait for the Rabbi to do it for them but also has very little chance of being "caught in the act".

Some suggestions to avoid this latter concern are (a) to make sure there are no matches or lighters in the kitchen, (b) have the *Mashgiach* light a "shivah candle" each week so the chef has an acceptable method of relighting the pilot, and (c) install a webcam in the kitchen so the staff can be

¹ This article will not discuss issues which are relevant to all restaurants (e.g. oversight on the use of kosher cheese), or other issues which are more specific to Indian restaurants (e.g. is there a *gevinas Yisroel* requirement for the paneer (Indian cheese) which they produce in-house).

² One way of avoiding *bishul akum* concerns on rice is to use parboiled rice which is already cooked **במאכלי בן דרוסאי** in a factory which is *bishul Yisroel*. If such rice was used then the status of foods which are a mixture of (a) *bishul Yisroel* rice and (b) other ingredients which are not *bishul Yisroel* but are edible raw, would depend on which of those ingredients is primary (as per *Shulchan Aruch* 113:2).

³ See *Chochmas Adam* 66:8 (who rules that it may only be relied upon *b'dieved*), *Mishnah Berurah* 603:1 (regarding *hashlachas kiserim*), and *Chelkas Binyamin* 113:79 (who cites many *Poskim* on the issue).



monitored remotely. It is also worthwhile for the *Mashgiach* to extinguish and relight the pilots at least once a week to minimize the "damage" of a pilot that was lit by a non-Jew.

In this context it is worth noting that *Shulchan Aruch / Rema*⁴ rule that *safek bishul akum* is permitted. Although most are loathe to set up a *hashgachah* system which relies on such a ruling, it does provide a modicum of comfort.

What if the restaurant uses an electric griddle which has no pilot light? On weekdays, a *Mashgiach* can come in early each morning to turn on the pilot. If the restaurant agrees to wait for the *Mashgiach* and not to turn off their griddle all day, the problem will be solved for most of the week. But what about for *Shabbos* when the *Mashgiach* cannot turn on the griddle? Is there anything to do so as to salvage the *bishul Yisroel* status of the food fried on *Shabbos* – which affects (a) people patronizing the store just after *Shabbos*, and (b) the status of the *kellim*?

Would it be enough for a Jew to set a timer on Friday which would turn on the griddle on *Shabbos* morning? It is generally assumed that if a Jew sets a timer which lights the fire that is not considered *bishul Yisroel* because the Jew's action is too indirectly related to the lighting of the fire.⁵ However, some suggest that this is only true when a Jew sets a timer to repeatedly turn on the fire. In that case, once the fire goes through an entire cycle of being on and then off, we consider the subsequent lighting of the fire to be too indirectly related to the Jew's original setting of the timer. If however, a Jew would set the timer on Friday afternoon to ignite the fire on *Shabbos* morning, that first lighting which occurs would be considered *bishul Yisroel*, as it is a direct result of the Jew's setting of the timer. This is something that each community's *Posek* would have to consider and decide.

⁴ *Shulchan Aruch / Rema* 113:11 says:

הניח ישראל על גבי האש והניח עובד כוכבים לשמרו והפך בו ואין ידוע עם סילוק העובד כוכבים עד שלא הגיע למאכל בן דרוסאי, מותר. הגה: דספק דבריהם להקל, וכן כל ספק בישולי עובדי כוכבים וכיוצא בו מותר.

Beis Yosef (113 page 179b) says that *safek bishul akum* is not permitted if it is "common" (עשוי) for the Jew's fire to blow out, but *Darchei Moshe* 113:5 says that מעוד החמיר בדבר זה לחוש לספק דרבנן. *Rema's* position may be hinted at by the word כולל in the *Rema* cited above.

⁵ *Rema* 112:9 rules that a Jew blowing on a fire is enough to create *bishul Yisroel*. The fact that *Responsa Maharil* 193 (221) (cited in *Beis Yosef* 113, page 179b, as the source for this halacha) is only willing to say this based on a proof from *Gemara, Bava Kama* 17b and 18b, which indicates that "blowing" is considered "gu'oh", indicates that there is a requirement that there must be a direct connection between the Jew and the lighting. Accordingly, it is assumed that setting a timer that will later turn on the fire is too indirect to qualify as *bishul Yisroel*.

On the other hand, Rav Schachter's understanding of when one must differentiate between *koach rishan* and *koach sheini* (*B'ikvei HaIzon* 7:6-12) lends support to those who hold that as relates to *bishul Yisroel* it would be sufficient for the Jew to merely set the timer. [Rav Schachter's line of reasoning, which seems to be mirrored in *Chazon Ish* OC 36:1 and CM *Bava Kamma* 2:2, is relied upon every time a Jew creates *bishul Yisroel* by lighting a commercial boiler, where the "pushing of the button" does not directly light the fire but rather sets into motion a chain of events that concludes with the boiler lighting up.]

One last question which is unique to Indian restaurants is whether "dosa" requires *bishul Yisroel*. [This question is intertwined with the previous one, because in some Indian restaurants the only item cooked on the electric griddle is dosa.] Dosa is made of a mixture of raw beans and/or rice which is ground, liquefied, and then fried into a very thin crepe. The crepe is then eaten with dips or filled with "anything". No one can remember ever seeing dosa served at *shulchan melachim* but caterers have said that they would definitely consider serving it at fancy events. Thus, as Rabbi Sholey Klein (of Dallas) said, "If a food is potentially fit for *shulchan melachim* but in practice it is an ethnic food which no one serves at *shulchan melachim*, does that food require *bishul Yisroel*?" [Although there may be caterers who serve crepes at *shulchan melachim*, there are probably none who use such thin and large crepes which are made of beans and rice.] This is another issue which a community's *Posek* would have to consider and decide.



Dosa – during and after frying

B. Insects

Although Indian restaurants do not use meat and fish, they definitely use another class of raw materials which have serious *kashrus* concerns – vegetables. A quick perusal of menus shows that fresh herbs, spinach, broccoli, and an assortment of lettuces and other insect-prone vegetables are used in Indian restaurants. Clearly, there must be Rabbinic oversight on the use of these vegetables, and in many situations this is the most difficult issue to overcome in the certification of an Indian restaurant.

The most workable solution seems to be for a *Mashgiach* to visit the restaurant every day or two and check/wash enough vegetables so that the restaurant will have more than enough produce to use until the *Mashgiach* returns.

The challenge of this type of system is to establish a clear and firm protocol that ensures that no vegetables are ever used without the *Mashgiach's* approval. Even if the *Mashgiach* provides the establishment with an ample supply of clearly marked "approved" vegetables and the staff is under strict orders to never use items which were not

checked, how will the *Rav HaMachshir* ensure that these orders are followed? What happens if the chef or *Mashgiach* underestimated how much of a specific vegetable was needed over *Shabbos*, or what if a batch of approved vegetables “goes bad”? Will the restaurant not serve Saag Paneer or will they bow to the pressure and use unapproved herbs? Is the threat of the store losing its certification if it violates these policies enough to rely upon? Should the *hashgachah* insist on a webcam which it uses to monitor vegetable use?

These are significant questions which confront a *Rav HaMachshir* who is considering certification of an Indian restaurant without a *Mashgiach Temidi*.

C. Control

General

In previous sections we discussed the difficulty of controlling *bishul Yisroel* and vegetables in a restaurant that does not have a *Mashgiach Temidi*. In addition, there are general issues of control/*hashgachah* due to the restaurant being open on *Shabbos*, when *Mashgichim* are less likely to visit. It seems that a *yotzeh v'nichnas* should be visiting the restaurant at least 1-2 times a day, seven days a week, and it may even be desirable to (a) have additional unannounced visits by community Rabbis (on a volunteer basis), and (b) install a webcam so as to provide added insurance that all is in order.

Outside Food

Kosher restaurants commonly restrict customers from bringing food into the store, so that the kosher status of the restaurant's dishes will be maintained. This is even more important in a restaurant whose clientele is primarily non-Jewish and likely knows nothing about *kashrus*. If there is no *shomer Shabbos Mashgiach* on the premises, who will enforce the “no outside food” policy? How will someone ensure that customers do not bring in their own bottle of wine, birthday cake or other food to eat with their dinner? This issue requires further consideration.



SAFEK ARLAH

Introduction

Fruits are forbidden as *arlah* if they grow during the first three years of a trees life.⁶ Although fruits which grow in *chutz la'aretz* are also subject to the prohibition of *arlah*,⁷ there is a significant halachic difference depending on whether the fruit did or did not grow in *Eretz Yisroel* as relates to cases when one

is unsure if a given fruit is *arlah* (*safek arlah*). If a fruit grew in *chutz la'aretz* and one is unsure if it is *arlah*, the fruit is permitted, but if the same *safek* applied to a fruit that grew in *Eretz Yisroel*, one must be *machmir* and not eat it.⁸

As a result of this *halacha*, most consumers in *chutz la'aretz* rarely have to consider the halachos of *arlah* since they may eat just about any fruit in the market, even if they do not know if it is or is not *arlah*. The only people who generally think about *arlah* in *chutz la'aretz* are those who have their own fruit-bearing trees, because they may know with certainty that a given fruit is from a tree which is less than three years old. However, in recent years Israeli farmers have begun exporting more of the fruit that they grow. This means that not only must American consumers be sure to be careful regarding *shemittah*, *terumos*, and *ma'asros* for the Israeli fruit, but they must also be sure that the fruit is not *safek arlah*.



Principles

The issue of *safek arlah* has been discussed at great length by Israeli *Poskim*,⁹ for whom the question is relevant on a daily basis.¹⁰ Before we note the basic opinions expressed by these *Poskim*, we will introduce some basic details of the halachic principles upon which the questions revolves.

Many issues of *safek* are decided based on the rule of *כּל דפּרִישׁ מְרֻבָּא פּרִישׁ*, which means that anything separated from a mixed group is assumed to have come whichever element of that group is the majority.¹¹ For example, in the collective group of all of the world's cows some cows are *teraifos* and most¹² are not. Therefore, milk from a cow whose *teraifah*-status is not known is kosher,¹³ because we

⁸ *Shulchan Aruch* 294:9-10.

⁹ In addition to an earlier *teshuvah* in *Responsa Radvaz* 1:580, the question is discussed in *Chazon Ish* YD 37:14 & *Dinei Arlah* #45 (printed after Chapter 12 of *Hilchos Arlah*), *Yabeah Omer* YD 6:24, *Minchas Yitzchok* 7:96, *Shevet HaLevi* 5:156:d, and *Minchas Shlomo* 1:71:12 & 3:156. Rav Elyashiv's opinion is quoted in an addendum to *Mishpatei Eretz (Arlah)* page 289-290 and elsewhere. [Many of these sources were brought to the author's attention by *Midarkai Hailanos* pages 43-45.] The positions of these *Poskim* will be noted below.

¹⁰ In fact, to avoid this issue, reputable *hashgachos* on fruit stores in *Eretz Yisroel* will not only be *mafrish terumos* and *ma'asros* from fruits and vegetables, but will also monitor the store's suppliers to assure that there is no (forbidden *shemittah* or) *arlah* fruit offered for sale.

¹¹ *Shulchan Aruch* 110:3.

¹² Does the *rov* noted in the text (which is based on *Gemara, Chullin* 11a and elsewhere) still apply nowadays when most dairy cows are *teraifos*? What if most animals might be considered kosher and are only considered *teraifos* as per the *chumros* with which we judge *sirchos*? See *Mishnah Berurah* 498:49 (and *Pischei Teshuvah* 81:4) who discusses this in a somewhat different context.

¹³ See *Shulchan Aruch* 81:2.

⁶ *Shulchan Aruch* YD 294:1.

⁷ *Shulchan Aruch* 294:8.

may assume that this milk comes from the majority of cows in the group who are not *teraifos*.

If however one slaughters a cow, he is required to check the cow's lungs to see if it has any *sirchos*, because a *miut hamatsui* (common minority) of cows exhibit *simanei teraifos* in their lungs.¹⁴ In such cases, where the likelihood of *issur* is reasonably common (generally assumed to mean there is more than a 10% chance of *issur*), and one can possibly confirm whether the item in question is forbidden or permitted, the person is Rabbinically required to make that confirmation. If, however, the likelihood of a given type of *teraifos* is uncommon (*miut she'aino matsui*) or is too difficult to discern or investigate, then one may rely on **כל דפריש מרובא פריש** and consume the meat.

The principle of **פריש מרובא פריש** only applies if the doubt as to the questionable item's status was raised after it was **פריש** (separated) from the group. If however, the questionable item's status came into question when it was still in its original location (**קבוע**), we treat it as *safek issur*, even if the vast majority of the group consists of permitted (or forbidden) items.¹⁵ This rule is known as **כל קבוע כמחצה על מחצה**. It is worth noting that the decision as to whether a given case qualifies as **פריש** or **קבוע** involves many halachic issues, and such decisions should only be made by one who is thoroughly versed in these issues.

In some cases, the situation is not **קבוע**, but the item is nonetheless forbidden even though the group contains more *heter* than *issur*. The most famous example of this is when a small amount of non-kosher food gets mixed into a large quantity of kosher food (or some milk gets mixed into meat), where the mixture is not permitted unless there is 60 times as much *heter* as *issur*.¹⁶ What is relevant to our discussion is that (*mid'rabannan*) a tree or fruit of *arlah* is not *batel* in non-*arlah* unless there is 200 times more non-*arlah* than *arlah*.¹⁷ An example¹⁸ of this would be if a farmer took a tree, replanted it in a manner that requires its three year *arlah* count to be restarted, and then does not remember which tree in his field is the "new" tree and which are the "old" ones. If the field has 200 "old" trees, then he may eat all of the fruit of that field; if the field has only 100 "old" trees then all of the fruit is forbidden (until the "new" tree is ensured to have been planted for three years).

To a great extent, the decision as to which of the aforementioned rules of *safek* applies to a given case depends on exactly how and where the *safek* occurred. As noted, these decisions often involve subtle differentiations based on numerous halachic issues, and should only be decided by someone well versed in this topic.

Opinions

As noted, reputable *hashgochos* in *Eretz Yisroel* ensure that all fruits (and fruit-containing products) do not contain any *arlah* whatsoever, and there is no question that it is best to purchase fruit which meets this standard. However, contemporary *Poskim* have expressed different opinions as to the status of fruit which is not guaranteed to be free of *arlah*. Those opinions are quite relevant to American consumers who are considering purchasing avocados, clementines, mangoes, persimmon, sweeties (Oro Blancos), or other fruit from Israel being sold in their local supermarket.

מיעוט המצוי and כל דפריש מרובא פריש

Almost all of the *Poskim* who wrote on this subject agree that in the standard case of a person purchasing fruit from a fruit store, the fruit is not judged by the stricter standard of **כל קבוע כמחצה על מחצה** or even by the rule that *arlah* requires 200 times its volume to be *batel*, but rather by the more lenient principle of **כל דפריש מרובא פריש**.¹⁹ [Rav Elyashiv's disagreement with this will be noted below, as will other reasons to be *machmir* which are suggested by the *Poskim*.] The simple reading of those *teshuvos* is that if, for example, 12% of starfruit (Carambola) grown in *Eretz Yisroel* are *arlah*,²⁰ one may purchase them from any fruit store and not be concerned with the possibility that they may be *arlah*, since less than 50% of that fruit is problematic.

¹⁹ The *Poskim* listed in footnote 4 each note that there are specific cases where the *safek* is considered **קבוע** or requires 200 times its volume to be *batel*, but they also note that these *halachos* do not apply (or one does not have to be concerned that they apply) in the standard case of a person purchasing fruit in a fruit store.

One issue which generated a considerable amount of discussion in the *Poskim* is that the halacha might be affected by the possibility that the person harvesting the fruit may have had specific knowledge about the status of the tree he was picking the fruit from (rendering it forbidden to him, giving it a status of **קבוע**, or demanding **במאתים** **ביטול**). In this context it is noteworthy that although *Minchas Shlomo* 3:156:b-c appears to adopt a strict approach to this question, the other *teshuvah* in 1:71:12 clarifies that in most cases one may be lenient. [The *teshuvah* in Volume 1 is undated and was printed during Rav Auerbach's lifetime; the *teshuvah* in Volume 3 is dated in 1967 and was printed posthumously.]

Other issues considered by the *Poskim* regarding the primary question discussed in the text are (a) the significance of the religious status of the storeowner, harvester, and farmer, (b) the position of some *Poskim* that *arlah* nowadays is only *d'rabannan*, and (c) relying on *sfeik sfeikah* for *safek arlah*.

The creators of the "*arlah*-chart" clearly note that the percentages listed are estimates rather than true statistics, and this should be borne in mind by anyone who might consider ruling that fruit is not permitted unless there is 200 times as much *heter* as *arlah*. This fact – that there is little "known" *arlah* and the charts are based on estimates – is itself a reason why some hold that **ביטול במאתים** is not required.

²⁰ Percentages of *arlah* for starfruit (and others noted below) are from Appendix 1 of *Midarkai Hallanos*, which in turn is based on the research of the Israeli **מכון מחקר התקליאות על פי התורה**, as printed in their *Halichos Sadeh* journal.

¹⁴ *Shulchan Aruch* 39:1, as per *Tur* ad loc.

¹⁵ *Shulchan Aruch* 110:3.

¹⁶ *Shulchan Aruch* 98:1. In this case, the *issur* is technically *batel b'rov*, but *bitul b'shishim* is required due to the principle of *ta'am k'ikar*.

¹⁷ *Rambam, Hil. Ma'acholot Asuros* 15:14.

¹⁸ This example is from *Mishnah, Arlah* 1:6, cited in *Rambam* *ibid.* 16:25.

However, Rav Chaim Kanievsky²¹ says that since more than 10% of starfruit (for example – the example is not given by Rav Kanievsky) are *arlah* we should be forbidden from eating starfruit of unknown status since a *miut hamatsui* of that fruit are forbidden. His point seems so well-taken that one has to even wonder why there is no mention of this possibility in the other *Poskim*.²² A similar question can be asked as relates to the classic case of *כל דפריש מרובא פריש* – that of a town where nine stores sell kosher meat and one store sells non-kosher meat. In certain scenarios of that case, meat found in the street is presumed to be kosher based on *כל דפריש מרובא פריש*,²³ and no one suggests that we should forbid the meat because a *miut hamatsui* (10%) of the meat is non-kosher! Why is the concern for *miut hamatsui* not raised in that situation? It may be that with a better understanding of *miut hamatsui* we can answer these questions and then understand how and when to apply the ruling of the aforementioned *Poskim* regarding *arlah*.

The concern for *miut hamatsui* is primarily recorded as relates to checking animals for *terafos*²⁴ and vegetables for insect infestation.²⁵ In each of those cases, the *halacha* is clear that in (certain specific) cases where it is not possible to check the animal or vegetable the person may eat the food even without checking.²⁶ This clearly indicates that the concern for *miut hamatsui* is not a Rabbinic prohibition against eating the food but rather a Rabbinic requirement to investigate whether the food is permitted before eating it. Accordingly, in situations where it is not possible to investigate the status of the food, the food may be eaten.

If this is correct we understand that in the case of a piece of meat discovered in a town with nine kosher stores and one non-kosher store there is no need to be concerned about the *miut hamatsui* of non-kosher meat. *Miut hamatsui* would theoretically require the person to investigate the status of this meat before eating it, but in this case it is obviously impossible to investigate the source of this meat. Therefore the Rabbinic requirement is of no consequence, and the meat may be eaten.

The same applies to *safek arlah* offered for sale in a fruit store. The customer and storeowner have no

way of determining whether the fruit in front of them is from an *arlah* tree or an older tree. Therefore it makes sense that the fruit is permitted based on *כל דפריש מרובא פריש* and there is no need to be concerned with the *miut hamatsui* of forbidden starfruit.

This would explain most of the *Poskim* noted above, but it now makes us wonder why Rav Kanievsky takes a strict stand. The answer to that question appears to be based on a simple change in Israeli life. For many years fruit stores in Israel sold their wares with no oversight as to the *arlah* status of the fruit sold there, and it was only in approximately 1980 that *hashgachah* on fruit stores assured that the fruit sold there was *arlah*-free.²⁷ Thus, when *Chazon Ish* and others wrote their opinions on this issue the standard case of *safek arlah* did not offer consumers any way of purchasing *arlah*-free produce, and therefore one could ignore the concern of *miut hamatsui*. However, by the time *Derech Emunah* was written,²⁸ people had the simple option of avoiding the *miut hamatsui* of *arlah* by purchasing their starfruit in the certified fruit store rather than on the open market. In that case, Rav Kanievsky holds that just like a *miut hamatsui* of insects requires one to inspect the product, so too a *miut hamatsui* of *arlah* demands that the person buy his starfruit from a specific store so as to avoid the possible *issur*.^{29 30}

Thus, it turns out that the *Poskim* who wrote that one may eat any fruit if that type is less than 50% *arlah* are in perfect agreement with Rav Kanievsky's ruling that one may not eat types of fruit which have more than 10% *arlah*. Those *Poskim* gave their ruling for the situation

²⁷ Based on a conversation with Rav Avraham Friedman who learned in *Eretz Yisroel* for approximately a decade spanning 1969-1982.

²⁸ Volume 3 of *Derech Emunah* was printed in 1994/5754.

²⁹ The logic presented in the text might also explain why the first five pages of *Minchas Yitzchok* *ibid.* say that one may rely on *כל דפריש מרובא פריש* for *safek arlah*, and then in the final paragraph – printed in a different font – he notes that “nowadays” we must be more careful, and the *hechsherim* have started providing *arlah* information to the public. It may be that the original *teshuvah* was written before *arlah*-free produce was available, but then as the *hechsherim* began providing that service it was appropriate to amend the ruling. [The *teshuvah* is not dated, but that volume of *Minchas Yitzchok* was prepared for print in approximately 1980 (as evidenced by the introductory *מילי דהספידא*, which notes that the volume is being printed within the 12 month mourning period for the *Satmar Rebbe*, Rav Yoel Teitelbaum ז"ל, who died in August 1979).]

³⁰ One could argue with this logic and say that there is a simple difference between the cases. In the case of investigating vegetables for infestation, that inspection will determine whether the vegetable in question is permitted, but in our case of *safek arlah* there is no way to determine that *this* fruit is permitted, and the person is merely choosing to eat *other* fruit. It would seem that the question depends on the following: If the Rabbinic requirement is to *check* whether the food is permitted, it would seem that this would not apply to our case of *safek arlah* since this fruit cannot be “checked” (while the possibly infested vegetable can be checked), but if the requirement of *miut hamatsui* is to be extra *careful* about *issurim* (i.e. and not merely rely on *rov*) then that would require the person to buy his starfruit from the certified *arlah*-free store. These two ways of understanding the Rabbinic requirement of *miut hamatsui* appear, in fact, to be the two different approaches suggested by *Rashba*, *Chullin* 9a (towards the end), and it may be that the requirement is to be *machmir* when either of the two apply. [See *Tur* 39 who appears to cite the first approach (have to check), and *Pri Megadim* (Introduction to 39), *Minchas Yaakov* 59:8, and *Iggeros Moshe* YD 1:19 who stress the latter one (have to be more careful).]

It is also noteworthy that the explanation provided in the text is the author's conjecture and there is no indication in *Derech Emunah* that his ruling is based on this line of reasoning or limited to these cases.

²¹ *Derech Emunah*, *Hilchos Ma'aser Sheini v'Netah Revai*, Chapter 9 *Tziun Halacha* #48 makes this point after quoting and accepting *Chazon Ish* *ibid.*

²² *Shevet HaLevi* does mention the possibility of considering *miut hamatzui* regarding *arlah*. He discusses it in the context of how *miut hamatzui* would be calculated (which he holds is not calculated using percentages) rather than as a ruling that one is required to be *machmir* for that possibility.

²³ *Shulchan Aruch* 110:3.

²⁴ See above in footnote 9.

²⁵ See *Shulchan Aruch* 84:8-9 and commentaries *ad loc.*

²⁶ See *Shulchan Aruch/Rema* 39:2 and *Shach* 39:8 regarding *terafos*, and *Shulchan Aruch* 84:9 and *Shach* 84:29 regarding insects in vegetables. For more elaboration on this topic see *Sappir* 21.

they faced – a market where guaranteed *arlah*-free produce was not available – and Rav Kanievsky's ruling was given in a later generation where the presence of a *miut hamatsui* of *arlah* became significant.

This explanation not only provides a method of reconciling the different *Poskim*, but has a meaningful practical application for consumers in *chutz la'aretz*. If we notice an Israeli-grown starfruit in an American fruit store, and we know that that 12% of that fruit is *arlah*, can we buy the fruit? It would seem that it depends on the following:

- If starfruit grown in Hawaii (i.e. *chutz la'aretz*) are available in other local stores, then the fact that a *miut hamatsui* of the Israeli produce is *arlah* would require that the person buy the *arlah*-free (i.e. non-Israeli) version from the other store.³¹
- If, however, that type of fruit is not available from non-Israeli sources, then since there are no “certified *arlah*-free fruit stores” in the United States the *halacha* reverts to the way it is stated by *Chazon Ish* and others that one may rely on **כל דפריש מרובא פריש** (assuming the percentage of that type of fruit which is *arlah* is less than 50%), and the Israeli starfruit is permitted.

Thus far, we have discussed the question as relates to the primary halachic position that judges the question of *safek arlah* using the principle of **כל דפריש מרובא פריש**. In the following sections we will see alternate ways of evaluating this situation and will evaluate how they apply to produce purchased in *chutz la'aretz*.

ספק קבוע

One prominent *Posek* who disagrees with the application of **כל דפריש מרובא פריש** to the case of *safek arlah* is Rav Elyashiv.³² He is quoted as saying that if some of a given type of fruit is *arlah* then (a) the *safek* on that fruit is treated as a form of *קבוע* which is known as “ספק קבוע”, and (b) if the percentage of *arlah* / *issur* is higher than 5%, one should be *machmir* regarding *ספק קבוע* and apply the principle of **כל קבוע כמחצה על מחצה**. [While this opinion is considerably stricter than the one which follows **כל דפריש מרובא פריש**,]

³¹ This is a somewhat unusual case where (presumably) the likelihood of the person eating *arlah* when purchasing an Israeli starfruit or a Hawaiian starfruit is equal, but the halacha says that any *safek* about *arlah* from *chutz la'aretz* is permitted. Thus, the choice of a Hawaiian starfruit does not minimize the chance that the person is eating *arlah* but does guarantee that he will not violate any *issur* for eating the *safek arlah*.

³² See footnote 4. *Minchas Shlomo* 1:62:3 appears to agree with Rav Elyashiv's logic but it is not clear how this is reconciled with the other rulings from *Minchas Shlomo*.

there are many fruits³³ that are nonetheless permitted because the percentage of *arlah* is less than 5%.]



A detailed discussion of **ספק קבוע** is beyond the scope of this work,³⁴ but as relates to our discussion it is noteworthy that *Chazon Ish* states clearly that one should not be concerned with **ספק קבוע** and others who apply the principle of **כל דפריש מרובא פריש** to this situation are implicitly

rejecting this possibility.

Other Reasons to be Machmir

Some of the *Poskim* cited earlier as holding that the *safek arlah* is permitted based on **כל דפריש מרובא פריש** nonetheless recommend that one not be lenient due to the following similar reasons:

- People do not take the *issur* of *arlah* seriously, and to help change this attitude we should make it known that we will not purchase any fruit unless it is not known to be free of *arlah* (*Chazon Ish*).³⁵
- *Chazal* discourage publicizing lenient opinions that relate to *issurim* which people tend to not be careful about, as that type of publicity encourages people to continue taking that *issur* lightly (*Minchas Yitzchok*).³⁶

The strict positions of these *Poskim* coupled with the related advent of stores selling *arlah*-free produce, has apparently had the desired affect, as those who track *arlah* produce in *Eretz Yisroel* note that the overall percentage of *arlah* in *Eretz Yisroel* is declining.³⁷ [Farmers who want their orchards to qualify as *arlah*-free use specially-transported saplings to “save” years of *arlah* and spray their young trees in a manner that prevents fruit from growing. Thus, the more demand there is for *arlah*-free fruit, the less *arlah* is harvested each year.] As such, in hindsight it is easy to see the wisdom of the strict rulings of these *Poskim*.

³³ For example apricots (1.25%), dates (0.03%), grapefruit (2.4%), lemon (0.6%), lime (3.2%), mango (1.4%), and persimmon (0.3%).

³⁴ For more details on this topic see the *teshuvah* from Rav Elyashiv referenced in footnote #4 (and also printed in *Kovetz Teshuvos* 145), *Mishpitei Eretz (Arlah)* pages 110-112, and *Badei HaShulchan* 110:45 (with *Blurim* ad loc., and see also *Badei HaShulchan* 110:68 with *Blurim* ad loc.), who quote extensive discussion and proofs from the *Rishonim* and *Acharonim*. [*Kovetz Teshuvos* and *Badei HaShulchan* are not discussing *arlah*.]

³⁵ *Chazon Ish*, in a letter printed as an appendix to *Derech Emunah* volume 3 (letter #26), in the midst of a brief explanation as to why the letter of the law is that one may apply the principle of **כל דפריש מרובא פריש**, notes that “מ”מ נאן שישראל אין נזהרין בזה ראוי לעשות סייג שלא לקנות רק הידועות כדי לפרסם איסוריהו”. See also the bracketed comments (which may have been inserted by others) in *Chazon Ish, Dinei Arlah* #45 *ibid*.

³⁶ *Minchas Yitzchok* in the concluding paragraphs of his *teshuvah*, based on *Gemara, Kiddushin* 39a.

³⁷ See for example *Halichos Sadeh* 113 (page 20), which reports that in 1999 [due to public demand for *arlah*-free fruits] there were 900,000 (!) Israeli saplings (including 65-70% of the citrus saplings) that were transplanted under the direction and supervision of the התורה ע”פ החקלאות in a manner that “saved” years of *arlah*.

One could question whether these reasons to be strict apply to produce sold in a non-Jewish fruit store in *chutz la'aretz*. Therefore there may well be reason to be lenient on *safek arlah* for Israeli produce sold in *chutz la'aretz* if all three of the following conditions are true: (a) less than 50% of that type of fruit is *arlah*, (b) the percentage of *arlah* is either less than 10% or that fruit is not available from non-Israeli sources (as noted above), and (c) either one does not follow the opinion of Rav Elyashiv or less than 5% of that fruit is *arlah*.



ACETIC COMPOUNDS

Acetic acid can either be fermented from ethyl alcohol or produced from petroleum. The latter variety has no *kashrus* concerns,³⁸ but the former has the general concerns of ethyl alcohol – namely, it might be fermented from *stam yayin* or dairy – and the additional concern that it may have been produced on non-kosher equipment (as kosher and *stam yayin* vinegar/acetic-acid are often produced in the same plants). [In fact, leftover wine in France and leftover lactose in New Zealand and Ireland are commonly converted into alcohol which is sold as “ethanol” (although it is not clear whether such ethanol is used for consumption in/as food).]

Non-kosher ethyl alcohol is so uncommon that the letter of the Halacha allows us to ignore the concern that the ethyl alcohol is inherently non-kosher,³⁹ but *hashgachos* have traditionally not considered it a Group 1. As relates to the equipment, any non-kosher *b'lios* are likely *batel b'shishim*⁴⁰ into the vinegar/acetic-acid, and are definitely *batel* in any finished product containing acetic acid.

Thus, glacial acetic acid is a Group 1, and natural acetic acid is not. The name “acetic acid” is too ambiguous to determine whether it is a Group 1 (as glacial acetic acid) or not (as natural acetic acid), and, therefore, “acetic acid” is not a Group 1 unless we can confirm that the ingredient is actually glacial acetic acid.

³⁸ A few years ago, Dr. Avraham Meyer reported that a company recovered glacial acetic acid from DATEM productions, purified it, and resold it to others, which raised concerns that some glacial acetic acid might not be kosher. Based on this report, the OU investigated the glacial acetic acid suppliers used by companies it certifies in Europe (where Dr. Meyer made his discovery) and could not find any other examples of this practice. As such, this company's practice was considered an aberration, and the status of glacial acetic acid was not changed.

³⁹ See *Rema* 114:10 as explained by *Shach* 114:21.

⁴⁰ *Bitul b'shishah* is not appropriate in this case, as here the *stam yayin* is in the form of vinegar and therefore cannot be *batel b'shishah* into other vinegar.

The following paragraph is from the minutes of the June 2008 AKO Ingredient Meeting:

When alcohol is fermented into vinegar, it is a 12% acetic acid mixture, and commercially it is sometimes concentrated to 20-30% acetic acid. Theoretically, “vinegar” could be concentrated to 100% acetic acid and used in reactions⁴¹ but experience has shown (and logic dictates) that glacial acetic acid (which is 100% acetic acid) is always used for these reactions.

Therefore, acetates (i.e. compounds such as benzyl acetate which contain acetic acid as a component) are acceptable without *hashgachah* assuming (a) all other components are innocuous and (b) they are not labeled “natural” (which would indicate that glacial acetic acid was not used).



A CAPPELLA MUSIC

One may not have excess *simcha* during the days of *sefirah* and the “Three Weeks” (between the 17th of *Tammuz* and *Tisha B'Av*); this includes a prohibition against getting married,⁴² and earlier *Poskim*⁴³ note that dancing is likewise forbidden. Contemporary *Poskim*⁴⁴ suggest that as part of this prohibition one may not listen to music during these times, and the common custom is to accept this strict ruling. Accordingly, during these time periods the cRc does not allow music to be playing in certified restaurants, and the hold music at the cRc office is replaced with something non-musical.

Although dancing and listening to music are forbidden, it has always been assumed that one may sing or listen to other people singing. In recent years, people have taken advantage of this leniency to use a genre of music known as “a cappella” (a.k.a. “*sefirah* music”). A cappella music is a recording of one or more people singing, who are sometimes accompanied by other individuals who use their voices to mimic the sounds produced by musical instruments. Thus, there is no traditional “music” or instruments on the recording, but rather the entire a cappella performance is produced by vocal sounds – with some people singing and others producing an assortment of musical sounds.

Poskim have taken differing views on whether a cappella music is permitted or forbidden during *sefirah* and the Three Weeks. Some suggest that

⁴¹ Rabbi A. Juravel reported that he once came across a Chinese company producing 100% acetic acid from “vinegar”, but was not convinced this was not an aberration.

⁴² *Shulchan Aruch* 493:1 (*sefirah*) & 551:2 (Three Weeks).

⁴³ *Magen Avraham* 493:1 (*sefirah*) & 551:10 (Three Weeks).

⁴⁴ See for example *Iggeros Moshe* OC 1:166 (end) (*sefirah*) & OC 4:21:4 (Three Weeks).

there is no need to further extend the prohibition of listening to music to include this all-vocal form of entertainment, and they, therefore, permit one to listen to a cappella music. Rav Shlomo Miller⁴⁵ takes an exact opposite approach: the primary prohibition during those times of the year is to have (excessive) *simcha*; therefore anything which sounds like music is deemed capable of creating *simcha* and is forbidden. Rav Yisroel Belsky is reported to have adopted a middle-ground: a cappella music is only forbidden if the accompaniments were digitally altered to the point that they do not sound like anything that a human can possibly vocalize.

Rav Schwartz has instructed us that the letter of law is that all forms of a cappella music are permitted, but it is not in the spirit of *sefirah* and the Three Weeks for people to listen to those recordings which sound like traditional recorded music.

⁴⁵ In a public letter dated 7 Av 5763 written by Rav Miller he wrote: להלכה אין שום דבר אלא כל שיר של שמחה אסור ובפרט בפרהסיא שנעשה לשמח... השומעים. The letter was also signed by Rav Yaakov Forscheimer.