SAPPIRIM

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INSTANT COFFEE WHICH CONTAINS COFFEE GRINDS

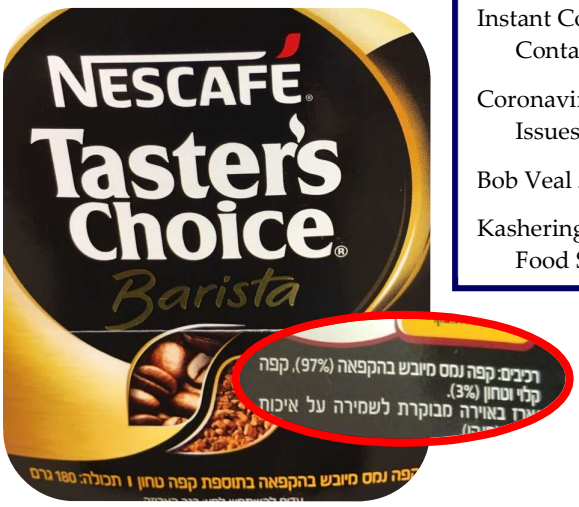
Can it be used on Shabbos?

Many people have raised a concern that certain brands of instant coffee include some raw coffee mixed in, such that it might be forbidden to use that coffee on *Shabbos*.

> One example is the Taster's Choice "Barista" variety sold in *Eretz Yisroel*, which states clearly on the label that it is 97% freeze-dried coffee and 3% ground coffee (i.e. roasted, but not cooked). Another example is the persistent rumor that Starbucks' Via instant coffee is made in a similar fashion.

That is to say that if every spoonful of instant coffee contains 97% cooked-coffee, and 3% raw coffee, then there may be an issue of *bishul* on the 3% put into each cup. The question we must consider is whether that is true. If a mixture is 97% cooked and 3% non-cooked, is it *assur* to "cook" that mixture on *Shabbos*?

When I spoke to Rav Schachter about this question a number of years ago in a different context, I remember him saying that in such a scenario there would be an *issur* of *bishul*, but Rabbi Chananel Herbsman recently told me that [when he was asked specifically about this coffee question] he said that it is permitted. Obviously, it would be helpful for us to clarify on our own what Rav Schachter thinks, but for now here are some thoughts, based on a set of *Pri Megadim's*[1] which I was directed to by Rabbi Herbsman.



He records that the *Elyah Rabbah*[2] is unsure about whether one can follow *rov* when determining if a food is liquid or solid (i.e. whether there is a concern of "re"cooking the food), but that many others including the *Beis Yosef*[3] are lenient.

He further explains the logic of this position, and implicitly answers the question as to why if 3% is not cooked (i.e. it is liquid), there is no *issur* to cook that 3%. He says that as relates to *melachos* on *Shabbos* we have a guiding principle of *meleches machsheves*, and, therefore, the person who warms up a piece of meat with a bit of gravy on it is focused on the meat rather than on the gravy. So, the truth is that he is cooking the gravy, but there is effectively no *issur* to do that on *Shabbos* since there is no *meleches machsheves*.[4]

This is a clear explanation but makes me wonder if it leads to a *chumrah* in our case. In our situation, the company is purposely putting in this uncooked portion so as to enhance the product, so might one say that in this case there is definite *kavanah* (*meleches machsheves*) to cook that portion? Is this maybe more like a case where someone took a piece of meat and poured gravy on it before putting the meat someplace where it will get to be *yad soledes bo*? In that case, it would be hard to say that there was no *kavanah* to cook the gravy, since he purposely put it on before putting this near the

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[1] *Pri Megadim* AA 253:41 and MZ 253:13.
[2] *Elyah Rabbah* 318:11.
[3] *Beis Yosef* (253) says:
ומ"ש רבינו כל זמן שהיא רותחת. כן משמע ודאי שאם שהה בידו עד שנצטנן התבשיל אסור להחזירה משום דהוה ליה כמבשל וכן כתב רבינו בסימן שי"ח, וכן כתב רבינו ירוחם בח"ג בשם ה"ר יונה דכל שרובו רוטב ומצטמק ויפה לו והוא צונן כשהחזירו על גבי כירה ומצטמק הוי מבשל גמור.

Minchas Kohen (referenced in the coming text) points out that the critical word "שרובו" is an addition/explanation from *Beis Yosef* and not found in the earlier *Poskim* cited.
[4] The same point is made by *Iglei Tal*, *Meleches Ofeh*, note 55 (point 4) who says the following regarding *Beis Yosef*:
ואינו מובן דמה נ"מ אם רובו רוטב או מיעוטו. וצ"ל משום דעיקר כוונתו על הרוב והוי דבר שאין מתכוין על המיעוט דבתר עיקר כוונתו אזלינן

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fire. If this argument was true, then we would say that usually we follow *rov*, but in this case we cannot.

Another potential reason to be *machmir* is that *Iggeros Moshe*[5] cites the ruling of *Pri Megadim* (and other locations where *Pri Megadim* discusses similar questions) and questions the logic of the lenient ruling. He does not cite *Pri Megadim's* line of reasoning noted in the text, and concludes that one should be *machmir*, except in very extenuating circumstances (אין דין זה ברור ומהראוי להחמיר, ובשעת הדחק גדול אולי יש להתיר).

On the other hand, there are a few arguments to be lenient.

1. The company is the one who adds the uncooked coffee, rather than the person doing the *bishul*. Thus, it might be reasonable to say that we judge the consumer's "*kavanah*" based on the *rov*, as *Pri Megadim* said, and not based on the "truth" of whether there is *bishul* or not. This argument carries less weight in cases, such as the Taster's Choice Barista, where the company clearly notes that the product contains 3% un-cooked coffee and consumers are aware of its presence.
2. One of the sources that *Pri Megadim* cites in support of his position is *Minchas Kohen*.[6] *Minchas Kohen* does not say that the reason for the halacha is *meleches machsheves*, and instead ends his discussion by saying that וכל שרובו רוטב נידון לדבר לח דאם לא כן נתת דבריך לשיעורין, כן נראה לי. He seems to be addressing the same question noted above from *Pri Megadim* and giving a different answer that it's sort of "logical" to follow *rov*. Meaning, if a person is allowed to heat up a piece of meat, it's impossible that there won't be some liquid on it (as *Minchas Kohen* points out himself) so that's obviously not an issue. If so, it is נתת דבריך לשיעורין to say that 1% liquid is okay but 5% is not allowed. Therefore, we fall back on the general principle that we follow *rov*.

   If we take *Minchas Kohen* at face value, he is giving a different explanation than *Pri Megadim*, and according to him one can be lenient regarding the coffee even though the liquid was added intentionally. But I wonder if נתת דבריך לשיעורין can really be the whole explanation. That kind of answer would explain why there wouldn't be an *issur d'rabannan* to do *melachah* without *machsheves*, but surely doesn't seem like a principle that would explain why there is no *issur d'oraisah*. It makes me think that *Pri Megadim* (who cites *Minchas Kohen*, but not this line) is explaining the base reason why *Minchas Kohen* and others assumed/understood that there is no *melacha mid'oraisah*, and the explanation given by *Minchas Kohen* is just to deal with the secondary issue of why it isn't *assur* (*mid'rabannan*) even if there is no *meleches machsheves*. If that is true, then in our unusual case where *Pri Megadim's* logic doesn't apply, it may be that we cannot follow *rov*.
3. It is also worth bearing in mind that the "uncooked" coffee which is added to the instant coffee, was roasted, such that the most serious potential issue is בישול אחר אפייה.[7]

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Rav Reiss ruled as follows:

> I thought it should be *assur*. Even the *Iggeros Moshe* who says that maybe you could be *maikel* בשעת הדחק גדול was talking about לח שנצטנן since he holds that אין בישול אחר בישול אפי' בלח מעיקר הדין, but here we are talking about 3% raw coffee that has not been cooked at all. Even assuming that it was roasted, you still have the additional hurdle of whether יש בישול אחר אפיה. Also, this is different from the gravy case, because, as you noted, this 3% has been specifically and meticulously selected for this process, so it is hard to say it is בטל on any level. That said, the coffee can be made in a כלי שלישי.

בענין "וויא קפה" וכדומה: לפי דעתי, יש בעיה לשים את הקפה בכלי שני וכ"ש שלא לערות עליו מכלי ראשון דהוי חשש איסור בישול מדאורייתא מפני שחלק מן הקפה אינו מבושל וזה בכוונה וא"כ מבשלין בכוונה את החלק שאינו מבושל (ואע"פ דהוי רק מיעוט, נעשה ע"י מחשבתו למלאכת מחשבת כמו שמשמע מדברי הפרי מגדים (מ"ז רנג:יג) וכדהביא כת"ר בדבריו), ולמרות שכבר נצלה מ"מ פסקינן לחומרא דיש בישול אחר צליה כדעת היראים (הובא במרדכי מס' שבת אות שב) עכ"פ ע"י עירוי כלי ראשון או אפילו בכלי שני מדרבנן (עיין שו"ע ורמ"א או"ח ס' שיח סע' ה).

אבל אין בעיה לענ"ד לשים את הקפה בתוך כלי שלישי דהנה על פי דעת הרבה פוסקים לא מצינו בישול בכלי שלישי כדאיתא באגרות משה או"ח ח"ד ס' ע"ד דיני בישול ס"ק טו. ואפילו לפי מה שכתב הרמ"א שיש להחמיר בענין בישול בכלי שני וכדנ"ל, יש להקל בכלי שלישי בצירוף השיטות דאין בישול אחר אפייה וצלי וכמו שפסק המשנה ברורה בס' שיח ס"ק מ"ז ע"פ הפרי מגדים (א"א ס"ק לה) דיש להקל בפת בכלי שלישי, וכן פסק מו"ר הרב צבי שכטר שליט"א בהערותיו לספר בישול בשבת מאת מו"ר רב מרדכי וויליג שליט"א).

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[5] *Iggeros Moshe* OC 4:74 *Bishul* #7.

[6] *Minchas Kohen*, *Mishmeres HaShabbos*, 2:2 s.v. *hatnai hasheini*.

[7] See *Shulchan Aruch* 318:5. If one puts the water into the cup before the coffee, the potential *bishul* of the coffee occurs in a *kli sheini*, where it is (only) a *chumrah* to assume that the coffee grinds are able to become cooked (see *Shulchan Aruch* 318:4-5 as per *Mishnah Berurah* 318:39 & 318:42).

אבל מכל מקום נראה שמוטב לשים את הקפה בתוך הכלי שלישי ולא לשפוך מן המים מכלי שני אל תוך הקפה שכבר הושם בכלי שלישי על פי מה שהערה בס' פסקי תשובות (שם אות מד) שהמ"ב רק הביא קולא של הפרי מגדים בענין כלי שלישי ולא מה שכתב הפרמ"ג להתיר ע"י עירוי מכלי שני (למרות שיש להשיב על זה) . ועיין עוד במ"ב בסימן שיח (ס"ק מה) שאפילו בענין כף שהושם לתוך כלי ראשון דהוי ספק כלי ראשון ספק כלי שני ספק הקיל לשים פת בתוך הקערה ששופכין לתוכה מן הכף ואם כך הקיל בענין בישול אחר אפיה בספק כלי שני ספק כלי שלישי כ"ש שיש להקל בכלי שלישי ממש ודו"ק.

אבל בכל זאת עדיין יש לדאוג שיבאו כמה אנשים לבשל את הקפה בכלי שני (או אפילו ע"י עירוי מכלי ראשון) שלא ידעו לחלק בין זה לקפה רגילה שכבר נתבשל כולו, וחשוב מאד להזהיר העולם על זה.

CORONAVIRUS FINANCIAL ISSUES

Principles and Kashrus Applications

Rav Yonah Reiss **שליט"א, אב בית דין**

Principles

One of the questions that has arisen in connection with the Covid-19 virus is the effect of the pandemic upon contractual agreements and employment arrangements. To the extent that programs or *simchos* have been canceled, or workers are no longer needed, who bears the burden of prior commitments? With respect to some of these issues, there are differing views, which also complicates the question in terms of which position to adopt in terms of *halacha l'maaseh*. While a full discussion of these issues is not being presented here, some useful resources are the eighth volume of the *Sha'arei Zedek* journal, a responsum of Rav Asher Weiss in the second volume of *Minchas Asher*,[8] and a responsum of Rav Ovadia Yosef Toledano in the first volume of *Meishiv Mishpat* (*Siman* 47). The following is intended as a summary of some of the basic principles and parameters:

1. In an normal employment situation, when an unforeseen circumstance (*ones*) occurs that makes it impossible for the employment to continue, the worker bears the loss of not getting paid except in the case in which the employer could have foreseen that the event would occur but the employee would not have known about such a possible eventuality.[9]

2. In all events, the employee should be paid for work that was already performed.[10]

3. A plague such as the coronavirus is viewed by the *Poskim* as in the category of *makas medinah*, an "act of G-d",[11] since it affects the entire region where we live (and indeed, pretty much every region around the world), preventing the jobs of most people from being performed normally. The source text for *makas medinah* is in *Bava Metzia*,[12] in which the *Talmud* says that if a land tenant cannot till his land because it is overrun by floods or plagues that affect the entire region, he is exempt from having to pay his landlord the stipulated sum for being able to work on the field.

4. There is a difference of opinion regarding the effect that a *makas medinah* has on other types of employment agreements:

   a. According to the *Mordechai* as quoted by the *Rema*,[13] and as understood by the *Shach*,[14] it appears that the worker would have to be paid in full.[15]

   b. According to the understanding of the *Sema*,[16] when there is a *makas medinah*, both parties need to suffer (and this is the true meaning of the *Mordechai*) and therefore the employee gets paid half of his/her wages. The *Sema* analogizes this case, where circumstances prevent both parties from performance of the contract, to that of ספינה זו ויין זה or ספינה סתם ויין סתם, so that the one with the money would get to keep it (so that if the worker was prepaid, he/she would not have to return the funds), or, at the very least, each party would have to bear the loss equally.[17]

   c. According to the *Nesivos Hamishpat*,[18] there is no reason to treat this case differently than a normal employment arrangement, and therefore the worker bears the loss. [He explains that the case of the *Mordechai* was different because the *Torah* teacher gets paid for babysitting, which the teachers were still willing and able to do]. The *Vilna Gaon*[19] adopts a position similar to the *Nesivos Hamishpat*.

5. Each of the opinions cited in the previous paragraph must reckon with the apparently

[8] *Minchas Asher* 2:120; Rav Weiss has recently written more specifically about the coronavirus.
[9] See *Choshen Mishpat* 334:1.
[10] *Choshen Mishpat* 339:1.
[11] See, e.g., *Aruch HaShulchan*, *Even Haezer* 9:1; *Shach*, *Choshen Mishpat* 334:3.
[12] *Bava Metzia*, 105b, 103b-104a.
[13] *Rema* CM 321:1.
[14] *Shach* 321:11.
[15] His case was when the government decreed that *Torah* teachers could no longer teach *Torah* in the country; the *Mordechai* ruled that a teacher already retained would need to be paid in full for the contractual term.
[16] *Sema* 321:6.
[17] See *Choshen Mishpat*, 311:3-4.
[18] *Nesivos Hamishpat* 334:1.
[19] *Vilna Gaon* 333:25.

contradictory ruling of the *Rema*[20] that if a Torah teacher leaves town because the air quality was bad, he no longer gets paid. According to the *Shach*,[21] if everyone or most people leave, then he gets paid, but if only a minority of the population left, it's not a *makas medinah* so he doesn't get paid. According to the *Nesivos Hamishpat*, supra, this second ruling of the *Rema* proves his point that the worker doesn't get paid when there is an *ones* (unforeseeable circumstance) preventing him from working. In fact, the main distinction between the cases, in his opinion, is that the worker only gets paid when he/she is prepared to do the job but the employer is not interested. In a situation where the worker would not want to come in to work, and possibly even when a worker would not be allowed to come to work (such as in the *Mordechai's* case if even babysitting has been outlawed), then one could argue that the worker does not have the right to be paid.

Interestingly, the *Aruch HaShulchan*[22] draws a similar distinction between the cases, indicating that the worker is only entitled to be paid if the worker is theoretically prepared to continue to do the job but circumstances simply do not permit it,[23] as opposed to a case where the worker left town prior to the work being outlawed or rendered impossible based on circumstances. One important distinction between these opinions emerges. According to the *Aruch HaShulchan* (as opposed to the *Nesivos Hamishpat*, as elucidated above), if the worker remains prepared to do the work, then even if the performance of the work became prohibited by law or otherwise impossible to perform, he or she would be entitled to be paid.

6. In rental agreement situations, there are more grounds to exempt a renter of property from having to pay, and even to also refund money that was already paid by the renter whenever an unforeseen *makas medinah* makes it impossible for the renter to continue to use the premises.[24] However, some authorities held that where the rental property remains intact, and someone could have conceivably still lived there, prepaid rent does not need to be returned (with perhaps a discount provided for the amount saved by the landlord on wear and tear by virtue of leaving the premises vacant), or that only 50% needs to be returned.[25]

7. Based on these principles, if it is clear that a catering hall would not have remained open even if the person had not canceled the contract or *simcha*, it is harder to justify the position that the caterer would be entitled to the money even if it had already been received.

8. Various authorities utilize these distinctions in the context of an employment arrangement, and are thus more likely to exempt an employer from having to pay the worker if the money wasn't paid yet, and less likely to award them their money back if the money was already paid.[26] In the specific case where an employee was prepaid and then is unable to work based on health reasons, the *Rema*[27] rules that the payment may be kept based on an analogy to עבד עברי, while the *Shach* disagrees.[28]

9. If a contract stipulates that a deposit (such as for a *simcha*) is non-refundable, or even that there is the obligation to pay a cancellation fee as liquidated damages, this will generally be enforceable (as Rabbi J. David Bleich writes in *Contemporary Halachic Problems*, volume IV) as long as the damages are reasonably calibrated to actual loss sustained by the party. However, when the contract has not been performed at all and there is a complete lockdown preventing others from utilizing the contract, this is a more difficult argument, because that might be a real *asmachta* (a type of conditional obligation that is not enforceable according to halacha) especially in the case of the cancellation fee as opposed to the case of the down payment that might be reasonably used to offset expenses or overhead.

10. If an employment term has not yet begun, there is more of an argument that the employer is off the hook when the job cannot be performed and the employee would not have been able to secure other employment

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[20] *Rema* CM 334:1.
[21] *Shach* 334:3.
[22] *Aruch HaShulchan* CM 334:10.
[23] His prooftext is from *Shulchan Aruch* 321:1 that if the work could be done ע"י טורח גדול, the worker bears the loss.
[24] See *Rema* 312:17, 334:1.
[25] See *Shach* 334:2, *Machaneh Ephraim* (*Hilchos Sechirus* 7), *Ketzos HaChoshen* 322:1. See also Rav Asher Weiss' *teshuva* (supra) regarding rental payments for properties that need to be abandoned in case of war, in which he is inclined to rule that prepaid rent should be returned, in contrast with Rav Toledano's teshuva (supra) in this regard, in which he is inclined to rule that the money need not be returned.
[26] See *Sema*, supra, and *Darchei Moshe* 334::1 citing the *Terumas HaDeshen* 329. However, one can argue that if it is clear that the money was only given based on an expectation that the work would be done, it is possible that it would have to be returned according to the opinions of the *Nesivos Hamishpat* and the Vilna Gaon cited in paragraph 4, supra.
[27] CM 333:5.
[28] *Shach*, CM 333:25.

for that period of time had they not depended on the contract. This would be true even in a non-duress situation of cancellation.[29]

11. If employment can continue, and the employer terminates it anyway, then the employer would generally be held responsible to pay at least the rate of *poel batel* (wages for a worker who is idle from work) which the *Taz* understand to be 50 percent of the promised wages.[30] There is a special exception for a *Torah* teacher who would never want to be idle and therefore is entitled to 100% of wages.

12. Arguably, certain types of employment can be continued virtually. If a school, for example, continues to provide education virtually, and nobody asks for their money back or for a discount until after this service has been provided, there may have been a waiver of any kind of claim. However, to the extent that certain services are not provided (such as room and board) then the previous considerations would be applicable (it would seem difficult, for example, to justify charging for food when it is not even made theoretically available). If it is possible to provide services virtually and an employee chooses not to do so, arguably the employer has a stronger argument not to pay anything even in the case of a *makas medinah*.[31]

13. Because of the divergent views, what is generally recommended in these situations is a spirit of compassion and compromise given the reality that everyone is financially disadvantaged by a *makas medinah*. This seems to have been the approach followed by the *Chasam Sofer* (*Sefer HaZikaron*) when he dealt with the suspension of schools in the Franco-Austrian war. (He ruled that the teachers should be paid 50% of their wages). Some *Poskim* have suggested that at least with respect to employees other than *Torah* teachers when *poel batel* discounts are applicable for those who don't work, the 50% amount should be adjusted downward to account for the appropriate *poel batel* discount.

    Rav Asher Weiss had initially suggested that this should result in payments of 25% to 30% for playgroup leaders and the like, but then adjusted the amount to be closer to 45%, arguing for various reasons that the *poel batel* discount should not be so steep in addition to the initial 50% deduction from salary. However, certain Lakewood Batei Din, comprised of *Bais Havaad* Rabbinical Court and *Bais Din Maysharim*, in their recently published recommendations, seemed to be more inclined to rule along the lines of his initial suggestion.

14. If there is a clear *minhag hamedinah* (local custom) as to how these matters are treated, so that there is a reasonable expectation on that basis that in this type of scenario a worker would get paid in accordance with the general practice of the surrounding society, that would also need to be taken into account as a matter of halacha.[32] Similarly, if there are insurance or unemployment benefit payments that offset losses, it would appear to be inappropriate to "double dip" to demand additional reimbursement.[33]

Rav Mordechai Willig has observed that we should be guided by the aftermath of the battle of Avrohom and the Four Kings, when the king of *Sedom* said to him[34] **תן לי הנפש והרכוש קח לך** – "give me the live people, and you can keep the money." Our perspective, said Rav Willig, should similarly be on saving lives, and not worrying so much about the financial issues. Rav Hershel Schachter similarly writes (in connection with demanding full refunds for canceled *Pesach* programs where the organizers already incurred substantial costs)[35] that we should be mindful of the dictum that **וצדקה תציל ממות** and the Jewish law ideal of

[29] See CM 333:1-2.
[30] *Taz*, CM 333:1.
[31] Based on *Tosafot*, *Bava Metzia* 104a, *Rema* 321:1; see paragraph 5, supra.
[32] See CM 331:2.
[33] See, *e.g.*, Rav Yitzchak Zilberstein, *Vavei Ha'amudim*, *Simanim* 8-9.
[34] *Bereishis* 14:21.
[35] *Piskei Corona*, 27.

acting לפנים משורת הדין (*Bava Metzia* 30b) when dealing with these types of financial questions. In addition, the *Gemara* (*Bava Metzia* 83a) advocates acting בדרך טובים וארחות צדיקים in terms of paying workers in extenuating circumstances even when they do not successfully complete their work.

Kashrus Applications

The following are hashgachah-specific scenarios which arose due to coronavirus, with answers provided by Rav Reiss based on the principles noted above.

Please note that in any given dispute, in the event that parties are not able to reach a resolution (with the possible assistance of these guidelines), it would be necessary to convene a *Beit Din* to fully hear the claims of both sides and understand their specific circumstances before rendering a definitive ruling.

A. Should the *Mashgiach* be paid if he is a salaried employee of the *hashgachah* (rather than someone paid per visit to make monthly visits to a factory or restaurant) and:

   a. The factory is closed due to Covid-19?

      This would be a dispute amongst the various opinions. According to the *Nesivos Hamishpat* and the *Vilna Gaon*, there would seem to be no obligation to pay. According to the *Shach*, there would appear to be an obligation to pay in full (with a possible *poel batel* discount according to some authorities). According to the *Sema*, it would seem appropriate to pay 50% of the regular salary (with a possible *poel batel* discount according to some authorities). According to the *Aruch HaShulchan*, if the *Mashgiach* would otherwise be willing to come, he would need to be paid as well (with a possible *poel batel* discount according to some authorities).

      If the *hashgachah* relies upon payments from the relevant factory or restaurant in order to pay the *Mashgichim*, and there are generally accepted guidelines of the government that the factory or restaurant follows with respect to all its employees, then payment may depend upon those customary practices. This would likely be true even though the payment to the *Mashgiach* is made by the *kashrus* organization, since it is generally understood that the *kashrus* organization relies upon payment by the factory, and the factory is not violating societal laws and norms.

      SEE PARAGRAPHS 4-5, AND 13-14 ABOVE

   b. The factory is open but will not let the *Mashgiach* visit?

      In this case, if the *Mashgiach* is willing to visit, but is simply prevented by the factory owner, then both the *Nesivos Hamishpat* and the *Aruch HaShulchan* would seem to require payment in such a case (subject to any appropriate *poel batel* discount), although the *Vilna Gaon* might still view this as an *ones* (unforeseen circumstance from the standpoint of the factory) that would exempt the factory owners from payment. As in the previous question, customary practices would also be a relevant factor in terms of liability.

      The *Sema*, consistent with his general approach, would likely analogize this type of case to the case of ספינה סתם ויין זה, where one party is willing and able to perform the contract, and the other party is not, whereby full payment is typically required[36] (subject, perhaps, to a *poel batel* discount). The *Shach*, as in the previous case, would require full payment (subject to any appropriate *poel batel* discount). As in the previous case, it would also be important to check if there is an accepted societal custom as to how to handle these cases, and whether the factory is complying with those mores.

      SEE PARAGRAPHS 4-5, 11, AND 13-14 ABOVE

   c. The factory is open and will let the *Mashgiach* visit, but he is unwilling to visit because he is immunocompromised, over 60, or just plain afraid to catch the virus?

      In this case, we would follow the normal principle that when a job can be performed by a worker due to his own personal circumstances is not able to perform it, then the employer is typically exempted from payment. If payment was already rendered, whether it would have to be reimbursed by the *Mashgiach* would likely depend on a dispute between the *Rema* and the *Shach* as to whether salary advances to a worker who subsequently becomes sick need to be returned by the employee.

[36] See *Sema*, supra, and *Choshen Mishpat* 311:3.

SEE PARAGRAPHS 1 AND 8 ABOVE

d. The factory is open and will let him visit, but it is impossible to travel to the plant location due to government restrictions or cancellation of all airline flights?

This situation would seem to be analogous to the case of the *Mordechai* where the government decreed that nobody is permitted to teach *Torah*, which is treated as a *makas medinah* based on the governmental restrictions. However, if the *Mashgiach* was near the plant locations but left on his own volition at the beginning of the outbreak of the coronavirus when it would have been reasonable to anticipate that he would be prohibited from returning, some have made the argument that this would not qualify as a *makas medinah* but as a normal calculated risk whereby the worker would have to bear the loss.

SEE PARAGRAPHS 1 AND 4 ABOVE

B. Would any of the answers to questions in "A" be different if:

a. The *Mashgiach* was paid per diem to make monthly visits to a factory or restaurant?

In this case, it would be difficult for the *Mashgiach* to demand payment for future visits, because each visit arguably constitutes a separate employment term which had not yet begun.

SEE PARAGRAPH 10 ABOVE

If the money had already been paid to the *hashgachah*, then it would seem that it has already been paid for the purpose of the *Mashgiach*, so he should get paid in such a case, especially if the factory or restaurant is not asking for the money back.

SEE PARAGRAPH 8 ABOVE

b. The certified facility will pay the *hashgachah* less since the Rabbi did not make his regular visit?

See previous answer. If the certified facility refuses to pay for a pre diem worker for jobs that have not yet taken place, it would seem that the *hashgachah* would not have a separate obligation, provided that the arrangement with the *hashgachah* is also on a per diem basis as opposed to on a salaried basis.

SEE PARAGRAPHS 10 AND A(a) ABOVE

c. The *hashgachah* was given money by the government to help them manage through the crisis?

Any money given by the government to enable the *hashgachah* to pay for expenses should be utilized for expenses that the *hashgachah* is obligated to pay according to government guidelines. It would certainly be inappropriate for the *hashgachah* to hold on to any monies that are intended to be paid to employees.

SEE PARAGRAPH 14 ABOVE[37]

C. A factory will not allow the *Mashgiach* to visit their facility but agreed to let him do a "virtual visit". [A virtual visit is where a plant employee walks around the facility with a smartphone and the *Mashgiach* watches live, directing him where to point the camera]. Does the *Mashgiach* earn his full per-visit payment if…

a. The visit is much shorter than a standard walk-through visit?

In light of the fact that the obligation according to halacha is that a worker do whatever is possible ע"י טורח ותחבולות, through creative and resourceful exertion, and the worker has exercised that standard, it would seem that the *Mashgiach* should be entitled to be paid, particularly when the *Mashgiach* would have been willing to perform the longer visit if it were possible.

SEE PARAGRAPHS 5 AND 12 ABOVE

b. Part of the payment is to compensate him for the time and expense of travelling to the facility, and those elements do not apply when performing a virtual visit?

If there are payments that are not salary based but are particularly calibrated to recovering certain set expenses, there is a plausible argument for not paying those amounts, particularly when they are usually accompanied by travel receipts and the like. However, if it was never stipulated that part of the salary was

[37] See also *Rema*, CM 369:11.

meant to cover these costs, it would seem improper to "nickel and dime" the worker by only claiming after the fact that a certain sum was meant to cover the time and expense of travel. In such a case, a *peshara* (compromise) would be appropriate with respect to any such imputed amounts.

SEE PARAGRAPHS 12 AND 13 ABOVE

D. The *hashgachah* closed their office, and the office staff is working remotely which means that staff members are physically unable to accomplish certain tasks. Furthermore, many facilities (factories, restaurants) are closed, and *Mashgichim* not making as many visits as they usually do. As a result of all the above, a particular RC or administrative assistant is doing everything they are "supposed" to in just 4 hours per day. Should the *hashgachah* pay him his full salary?

   If the staff member is being productive each day, and working a substantial amount of time, and is willing to work the full amount of time that would normally encompass his or her work schedule, it seems that it would be certainly בדרך טובים וארחות צדיקים to pay the staff member his or her full salary. If the amount that is worked is negligible, then different considerations may apply, as set forth in paragraphs 4 and 5 above.

May we be granted by *Hakadosh Baruch Hu* with the *Siyata Dishmaya* to successfully navigate the myriad of *dinei nefashot* questions that have been occupying our attention, and may all those afflicted have a speedy *refuah shlemah*, so that we will have the luxury of only dealing with the *dinei mamonos* issues. This summary is intended to give us a sense of basic guidelines so that we can use them for the purpose of resolving any disputes amicably, harmoniously, and charitably.

BOB VEAL

Unusual disqualification

An animal which is born prematurely and is not healthy enough to survive, is considered a נפל which has the halachic status of being "dead" (even when alive), and may not be eaten even if it has שחיטה.[38] Although this is an *issur d'oraisah*, in practice most animals are not נפלים and therefore from a *d'oraisah* perspective one may assume any given animal is not a נפל and is permitted. However, since נפלים are somewhat common, there is an *issur d'rabannan* to eat any animal which had *shechitah* before its 8th day of life.[39] In this context, the animal's "1st day" is the day it was born, the 2nd day begins at nightfall (even though 24 hours have not passed since the calf was born, and the "8th day" begins at nightfall 6 days later.[40] Thus, an animal becomes permitted when it enters its halachic 8th day even though it is not yet 168 hours old.

This halacha rarely applies in a commercial שחיטה, but there is one exception. Male calves born on dairy farms are quickly sold since they will never produce milk. Some buyers raise those calves for beef or veal production, but others send them to slaughter within a few weeks. That type of veal is known as "bob veal", and it appears that it is low-quality meat.[41] [A USDA estimate says that 15% of all veal is bob veal].[42] Of significance to us is that some buyers of these male calves send them to slaughter within a few days of purchase[43] which raises an issue that the שחיטה might happen before cow is in its 8th day.

Shulchan Aruch[44] rules that a non-Jew does not have נאמנות to say that the animal is actually old enough, and therefore, a *hashgachah* who oversees the kosher production of bob veal will need a *Mashgiach* at the farm to verify when

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[38] *Gemara*, *Shabbos* 136a derives this halacha from *Vayikra* 11:39 which speaks of animals that, "אשר היא לכם לאכלה", and this indicates that there are some animals from kosher species which are not suitable for eating. The *Gemara* (ibid. 135b-136a) assumes that this refers to a נפל, and derives from *Shemos* 22:29 that if the animal survives until the 8th day (see below in the text), then we are confident that it is no longer a נפל.

[39] *Tosfos*, *Niddah* 44b s.v. *d'kim*, codified in *Shulchan Aruch* 15:2.

Tosfos describes how common a נפל animal is by saying that נפלים הוי מיעוט דשכיח ודבר ההוה הוא ולכך החמירו חכמים. *Nodah B'yehudah* (EH 2:19 and *Dagul Mirivavah* to *Shulchan Aruch* 15:2) says that *Tosfos* added the words דבר ההוה הוא to indicate that this question of whether an animal is a נפל applies every time an animal is born. [This is in contrast to *hilchos yibum* (see *Shulchan Aruch* EH 156:4) where it is rare that it will be significant to know if the child is a נפל]. Therefore, *Chazal* were particularly *machmir* about this halacha – forbidding the animal which had *shechitah* before the eighth day (see *Simlah Chadashah* 15:4) – even though they might not have been as strict for other cases of מיעוט המצוי where it is no longer possible to determine if the *issur* is present.

Aruch HaShulchan 15:10 says (based on *Tosfos*, *Bechoros* 20b, final lines on the page) somewhat differently, that since the status of a נפל is relevant to *yibum* which has the strict concerns of איסורי עריות, *Chazal* chose to be consistently *machmir* about all halachos regarding a ספק נפל.

[40] See *Pischei Teshuvah* 15:2 who cites many, including *Simlah Chadashah* 15:4, who adopt the position noted in the text, and reject the opinion of *Pri Megadim* MZ 15:3 that the animal must live for seven 24-hour periods (i.e. the 7 days are measured מעת לעת).

[41] For more on bob veal, see http://ontarioveal.on.ca/wp-content/uploads/2015/06/BobVeal-FS-Dec1514.pdf.

[42] See https://www.fsis.usda.gov/wps/portal/fsis/topics/food-safety-education/get-answers/food-safety-fact-sheets/meat-preparation/veal-from-farm-to-table/CT_Index.

[43] See, for example, the article cited in footnote 4.

[44] *Shulchan Aruch* 15:3. *Shach* 15:4 says that the non-Jew is not believed even if he is מסיח לפי תומו. *Pri Megadim* explains that although (as noted in the previous text), the concern is just of a Rabbinic nature and generally מסיח לפי תומו is believed in such cases (see *Shach* YD 98:2), here the halacha is more strict because the calf has a חזקת איסור of being "un-slaughtered" (חזקת אינו זבוח). See also the sources cited in footnote 2.

each animal is born so they will know when it can have שחיטה.

From a different angle, *Shulchan Aruch*[45] rules that the entire halacha only applies if we are unsure whether the animal was born prematurely. But there is no concern that the animal is a נפל if it was born at full term; this is known as כלו לא חדשיו (*it had the full months of pregnancy*). Later *Poskim*[46] clarify that this means that to qualify for this leniency one would have to know that the cow was pregnant with this calf for (at least) 271 days, and that it did not mate with any bulls for that entire time. While that may have been very difficult to determine in the days of *Shulchan Aruch*, it might be simpler on certain farms which have no bulls at all and where all cows are impregnated through artificial insemination (i.e. in a controlled manner, by the farmer).

This criterion of כלו לו חדשיו also is relevant in an earlier *siman* which discusses the halachos of בן פקועה, a fetus discovered inside an animal which had שחיטה. There *Shulchan Aruch*[47] tells us that if the mother's שחיטה was done properly and she was not a טריפה, the בן פקועה is permitted. If the mother did not have a kosher שחיטה or was found to be a טריפה, then the בן פקועה is forbidden – even if it has שחיטה – because it is considered "part" of the (non-kosher) mother. But if the fetus is כלו לו חדשיו, it is permitted (with its own שחיטה) because then it is viewed as being independent of the mother. On this final point, *Rema* comments that we cannot take advantage of its leniency because we do not consider ourselves qualified to determine that the fetus was כלו לו חדשיו.[48]

Magen Avraham[49] understands that *Rema's* limitation is true wherever the criterion of כלו לו חדשיו applies. Therefore, we cannot rely on כלו לו חדשיו to permit שחיטה before the calf was 8 days old (our halacha) and similarly cannot perform שחיטה to a calf born on *Yom Tov* since that animal might be a נפל (and must wait until it is in its 8th day of life). However, *Tevu'os Shor*[50] argues that *Rema* is only *machmir* regarding בן פקועה since a mistake in calculation of כלו לו חדשיו will result in people eating meat which is *assur mid'oraisah* (i.e. the fetus which has the non-kosher status of its mother if it is not כלו לו חדשיו). But in our halacha and regarding *Yom Tov*, the issue is only one of a *d'rabannan* since from a *d'oraisah* one may assume the animal was not a נפל (as noted above). For that reason, one may rely on their calculation of כלו לו חדשיו, which is why *Rema* does not mention any restriction in our halacha or in *hilchos Yom Tov*. That said, *Tevu'os Shor* suggests an alternate reason[51] why one should be *machmir* and concludes that in practice one should adopt *Magen Avraham's* stringency and never rely on כלו לו חדשיו. This is the only opinion he records in *Simlah Chadashah* and is also cited in *Mishnah Berurah*.[52]

Thus, we will not permit שחיטה for a calf until it is in its 8th day of life, even if we can be sure it is כלו לו חדשיו.

On a different note, bob veal is also an example of the *machlokes* between *Shulchan Aruch* and *Rema*[53] as to whether ביצי זכר (a.k.a. Rocky Mountain Oysters) from an animal which is less than 30 days old, requires *nikkur*. [When they are more than 30 days old, all agree that the outer קרומים which contain small blood vessels must be removed before *melichah*].[54]

This article is based on an ongoing video series on Meat and Poultry

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[45] *Shulchan Aruch* 15:2.
[46] See, for example, *Simlah Chadashah* 15:2, *Machatzis HaShekel* to *Shulchan Aruch* 15:2, *Tosefes Merubah* (printed in the margin of some editions of *Shulchan Aruch*), all of which are based on *Gemara*, *Bechoros* 21a. 271 days are required for a cow, and 151 are required for a sheep or goat (ibid., although *Simlah Chadashah* says that one can be less demanding when dealing with sheep and goats).
[47] *Shulchan Aruch* 13:2-3.
[48] What if the בן פקועה lives for 8 days? *Shach* 13:11 says that it is then permitted, but *Simlah Chadashah* 13:5 disagrees.
[49] *Magen Avraham* 598:9.
[50] *Tevu'os Shor* 15:16.
[51] He suggests that *Chazal* knew how it takes for fertilization to occur in an animal and could therefore calculate if this calf was כלו לו חדשיו, but we do not have that information and therefore in practice can never make that determination. For more on that novel suggestion see *K'raisi U'plaisi* 15:9 (*K'raisi*), *Yad Yehuda* 15:4. and *Oneg Yom Tov* YD 65.
[52] *Simlah Chadashah* 15:4, and *Mishnah Berurah*. See also *Aruch HaShulchan* 15:8.
[53] *Shulchan Aruch* and *Rema* 65:4.
[54] *Shulchan Aruch* ibid. This קרום is one of two mentioned in the *Gemara* (*Chullin* 93a) which must be removed due to an abundance of blood which will otherwise not be purged during *melichah*.

KASHERING FROM THE FOOD SIDE

Halacha and applications

Halacha

There is a (lesser known) halacha that the *hag'alah* water must hit the utensil from the side where the food was during cooking, and it is insufficient for the hot water to just come from the side where the fire was during cooking. This source of this halacha is the *Gemara*[55] which says that a בוכיא (or כוביא)[56] requires *libun* and that can only be accomplished by filling it on the "inside" (food-side) with hot coals, but heating it with coals from the outside (as is done during cooking) is ineffective. This halacha is undisputed and is cited in *Shulchan Aruch*.[57]

The *Tur* explains that the reason one cannot place the fire on the outside of the בוכיא is that:

> וכוביא...היסיקו מבחוץ ואסור לאפות בו בפסח
> דכיון שאין נותנין האש בפנים אינו מפליט החמץ הבלוע בו

The exact meaning of *Tur* is clarified by *Pri Megadim* and *Gra"z*[58] who respectively say:

> אבל הסיקו בחוץ אף דיעבד אסור, כפי תשמישו הכשירו,
> שבולע חמץ בפנים אף שהיסקו תמיד בחוץ
>
> והיסק חיצון אינו מועיל כלום מן התורה
> שהרי האיסור נשתמש ונבלע בפנימית הכלי
> וצריך להפליטו גם כן דרך פנימית הכלי דכבולעו כך פולטו

That is to say that since the *ta'am* was absorbed from the inside/top of the בוכיא, the principle of כבולעו כך פולטו dictates that the heat of *kashering* must also come from that side of the utensil.

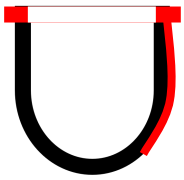
Yad Yehuda[59] says that such a requirement would be understandable when one *kashers* with *hag'alah* which functions by drawing *ta'am* out of the utensil such that it might make a difference which side the water is on. But *libun* incinerates all of the *ta'am* so why should we be concerned where the fire comes from? Shouldn't it be equally effective in burning regardless of which side it is on? Accordingly, he argues that the *Gemara* just intends to say a "practical" piece of information that when the fire is on the outside it is unable to heat the בוכיא to the required temperature. But if the utensil becomes hot enough then *libun* is accomplished even if the fire is on the "wrong" side.

Yad Yehuda acknowledges that *Tur* and *Pri Megadim* disagree with his explanation. It also appears that the *Poskim*[60] who discuss whether the halacha of בוכיא is limited to חרס or even applies to metal (which can get red hot and become a "fire"), also understood the halacha as explained by *Pri Megadim*. The way this halacha is explained by *Mishnah Berurah* and others also appears most consistent with *Pri Megadim*.[61]

In the paragraphs below, we will see two situations where this halacha is relevant.[62]

Reactors

Most factories cook food in kettles, where the food is always on the interior of the kettle until it is drained out of a discharge pipe on the bottom. The cover of the kettle tends to be on a hinge so that the cover is opened by tilting it up at a 90-degree angle. In contrast, many reactors are constructed to withstand pressure; therefore, they have no drain and have a cover that has to be lifted straight up. To remove finished product from the reactor, the cover is lifted up and the reactor is tilted on its side so that the liquid pours out into a waiting bucket or container. Another difference between a kettle and reactor is that a kettle is usually heated with a steam jacket, while the reactor has direct steam injection.



When this type of reactor is emptied, product drips down from the cover and scraper blade onto the outside and upper rim of the reactor. [These areas are indicated in red in the diagram at right]. As we have seen above, most assume that the *hag'alah* water must hit the vessel from the side on the food-contact side. In this case, not only must there be *hag'alah* water on the inside of the reactor, but there must also be water on the outside and the upper rim since (as noted) product drips onto those areas when the reactor is still quite hot.

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[55] *Gemara*, *Pesachim* 30b.

[56] A ceramic tiled baking surface where the food is on the tile and the fire is underneath the tile. [*Rema* YD 97:2 says that it is כלי חרס שמסיקין תחתיו ואופין עליו עוגות, and *Rashi*, *Pesachim* ibid. translates בוכיא as טייליי"ש, which *Targum HaLaz* 714/717 translates as tiles. See *Chok Yaakov* 451:12-13 that since these are tiles they can withstand the heat of *libun* and which is why the *Gemara* says that there is no concern of דלמא חייס עלייהו for them such as there are for other כלי חרס.]

[57] *Shulchan Aruch* OC 451:2 and YD 97:2.

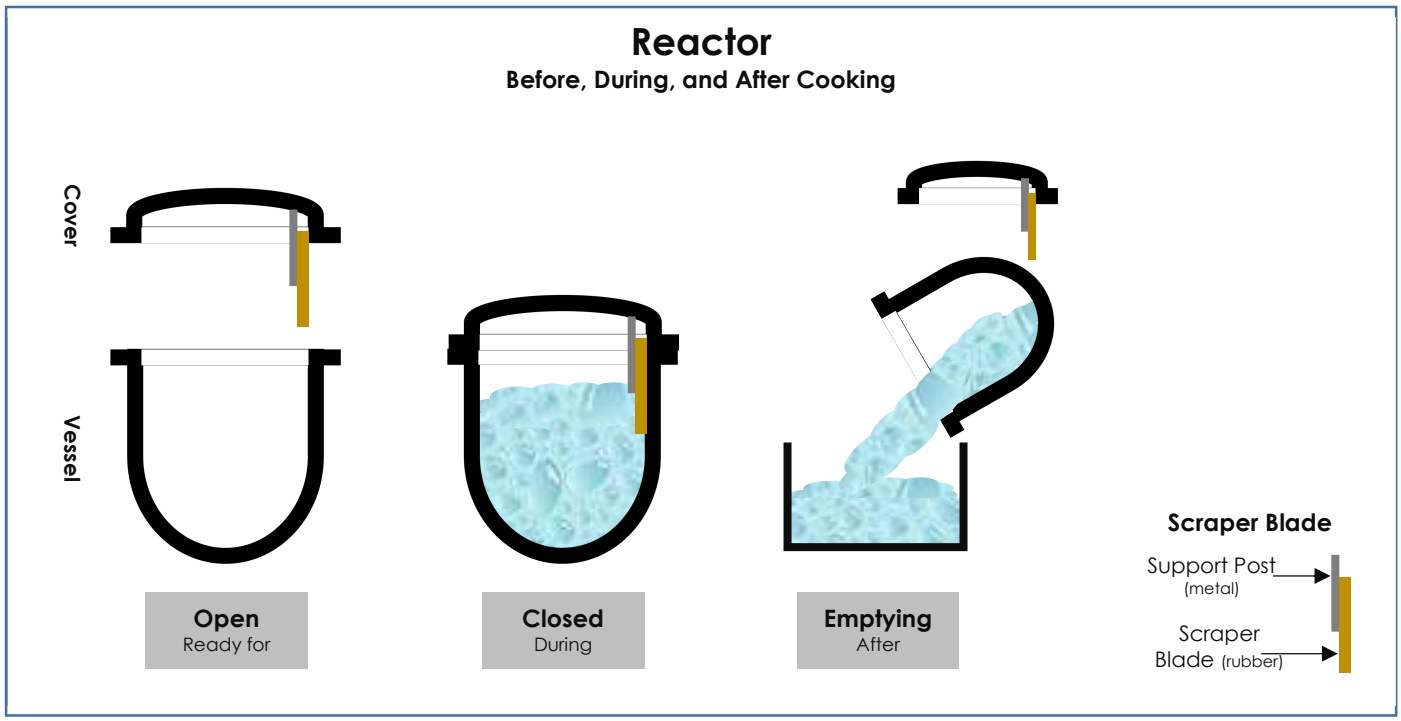
[58] *Pri Megadim* MZ 451:4 and *Gra"z* 451:8.

[59] *Yad Yehuda* 97:13 (*Aruch*).

[60] See, for example, *Avnei Nezer* OC 368 and YD 110 (who specifically says that the follows *Gra"z*), *Beis Shlomo* OC 87, and *Minchas Shlomo* 2:51.

[61] *Mishnah Berurah* 451:17 says דמחמת שהסיקו מבחוץ לא מהני ההיסק להוציא הבלוע. Similarly, *Aruch HaShulchan* 451:8 says, כוביא..הסיקו מבחוץ אסור לאפות בו בפסח דאין חמץ שבו נפלט בכך. [See also *Piskei Rid* to *Pesachim* ibid. who says, שכשמסיקין אותו מבחוץ אינו פולט בליעת חמץ שבתוכו]. This implies that the concern is that *kashering* from the "wrong" side is ineffective (i.e. as per *Pri Megadim*), rather than just not hot enough (as *Yad Yehuda* would say).

[62] A third example is a heat exchanger which has a regeneration section, as discussed in Sappirim 13 (available at https://kshr.us/Sappirim13).



None of this would occur in a standard jacketed kettle because (a) the kettle doesn't have to be tilted to drain product out, (b) the cover tilts up at an angle such that the product drips back into the kettle instead of onto the outside, and (c) the kettle is jacketed such that food which drips onto the outside is not landing on the kettle-wall but rather on the jacket-wall.

A typical *kashering* would not include getting boiling water onto the rim and outer surfaces, and special arrangements would have to be made to accomplish this when *kashering* a reactor. This would likely involve spraying very hot water onto those areas after the reactor is already heated (as a *kli rishon*). Clearly, this type of procedure will require *Mashgiach* oversight and could not be verified through chart-recorders or other devices.

Glass stovetop

Another example where this halacha is relevant, is for a glass stovetop which is a smooth cooking surface that is heated by electric coils underneath the glass. Its kosher status is affected when non-kosher (or *chametz*) food spills onto it, and the method to return it to a kosher state is through *libun kal*.[63] If one turns on the electric coils, the glass above the burners[64] will get hot enough for *libun kal*, but the heat will be coming from <u>below</u> the glass while the *b'liah* was from <u>above</u> the glass. As we have seen, this potentially means that the glass stovetop cannot be *kashered* in this manner.

However, in this case, Rav Reiss said that there are a number of mitigating factors which permit *kashering* in this manner. One is that the surface being *kashered* is glass. Most *Rishonim* are of the opinion that glass does not absorb *ta'am* at all, and this is the position adopted by *Shulchan Aruch*.[65] *Rema* says that the *Ashkenazic* custom is to be *machmir*, but even he acknowledges that in cases of a significant *sha'as hadchak* or *b'dieved* one can accept the lenient opinion.[66] The inability to *kasher* the glass stovetop (due to the above concern) in a home purchased from someone who does not keep kosher, would seemingly qualify as a significant *sha'as hadchak*. What about using the stovetop for *Pesach* after it had been used for *chametz* all year round? In that case, the choice to use metal discs (see below) may be a reasonable option for some, but in other cases it also would be considered an appropriate *sha'as hadchak* where one can rely on *Shulchan Aruch*. Regardless, the lenient opinion regarding glass is surely a *tziruf* (*contributing factor*) in considering whether one

[63] We will see in the coming text that *Rema* 451:26 says that *Ashkenazim* are <u>*machmir*</u> to treat glass as if it is *cheress*, which is to say that it cannot be *kashered* with *hag'alah*, but rather only with *libun*. *Rema* 451:4 as per *Pri Megadim* (AA 451:6 & 22) rules that wherever *libun* is required as a *chumrah*, one can be satisfied with *libun kal*. Therefore, glass can be *kashered* with *libun kal*.

[64] The status of the area <u>between</u> the burners is beyond the scope of this article.

[65] *Shulchan Aruch* 451:26.

[66] See *Darchei Moshe* 451:19 as per *Mishnah Berurah* 451:155 and *Sha'ar HaTziun* 451:196.

can *kasher* the glass stovetop from the "wrong" side.

In addition, we have seen that *Yad Yehudah* may not even agree with the entire principle that one must *kasher* from the food side.

Lastly, *Darchei Teshuvah* cites *Yad Yosef*[67] who says that for *libun kal* there is no need for the fire to be on the food side. He cites his source for that as *Magen Avraham* and *Pri Chadash*,[68] and although one can question whether those sources actually support his assertion,[69] there is no denying that *Yad Yosef* surely adopts this position. Thus, although other *Poskim* do not accept *Yad Yosef*, but his opinion is yet another factor which justifies *kashering* a glass stovetop by merely turning on the coils until the surface becomes hot enough.[70]

An alternative to the *kashering* method noted above is that there is a way to use a glass stovetop without *kashering* it. Namely, metal discs (or a "diffuser plate") can be placed onto the stovetop, and all pots are put onto the discs instead of directly onto the glass. In this case, no *ta'am* can possibly transfer between the glass stovetop and the kosher pot, and the food in the pot will be unaffected by the stovetop's status. While this might not be feasible for year-round cooking on a stovetop which had previously been used by someone who does not keep kosher, it might be reasonable for *Pesach* use in a kosher home.

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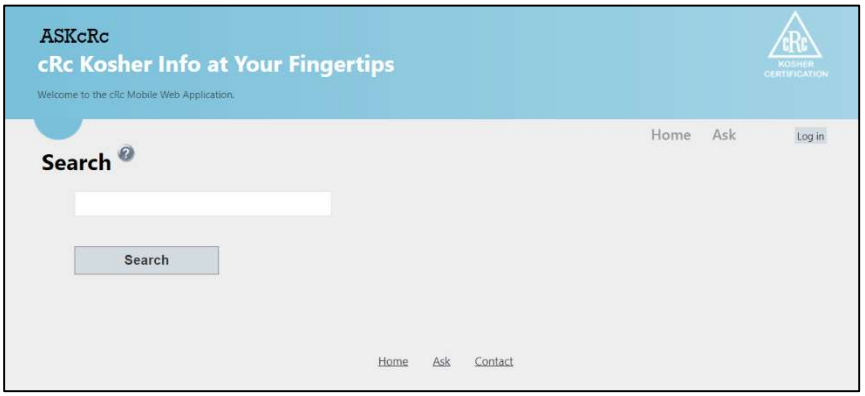

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[67] *Darchei Teshuvah* 121:46 citing *Yad Yosef* YD 47, available at https://hebrewbooks.org/pdfpager.aspx?req=976&st=&pgnum=84.

[68] *Magen Avraham* 451:27 and *Pri Chadash* 451:5.

[69] This is because (a) it is not clear that the *Magen Avraham* is discussing fire which is outside the utensil (although the end of *Pri Chadash* does seem to be about that case), and (b) these *Poskim* are discussing metal where one can claim that the heat of the metal functions as a pseudo-fire of its own (as per *Avnei Nezer* cited earlier regarding *libun gamur*) which is not true of glass.

[70] Another factor to consider is that the primary use of the glass stovetop (*rov tashmisho*) is with pots touching its surface in a manner which causes no *b'lios*. Thus, the only reason to *kasher* is because of the occasional spill (*miut tashmisho*) and *Rema* YD 121:5 rules that where the *kashering* demanded by *miut tashmisho* will mean that the item cannot be *kashered*, one can rely on *rov tashmisho*. [See also *Mishnah Berurah* 451:155]. For more on this, see the forthcoming *Imrei Dovid*, *Hechsher Keilim/Kashering*, Chapter 21.