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YESHIVAS IYUN HALACHA
HILCHOS ISSUR V'HETER PROGRAM

HILCHOS TA'ARUVOS SHIUR 1

סימן צח סעיף א

מסיח לפי תומו - Mas'la't

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our sister

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(Yehudit Masha bat Eliezer v'Chava)

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TA'ARUVOS SHIUR 1

מראה מקומות

סעיף א

Gemora Chullin from

צז ע"א קדרה שבשל בה

until צז ע"ב הנהו אטמהתא

Tosefos ד"ה סמכינן

Tur, Bais Yosef ד"ה ומדברי הרמב"ם

Shulchan Aruch

Taz בטור *until* ס"ק ב

Shach לכך נראה לי *from* ס"ק ב *end of*

Shach ס"ק ה

Pischei Tshuva ס"ק א

R' Akiva Eiger ס"ק א (הגה סעיף א)

Pischei Tshuva ס"ק ג

Written by Rabbi Aharon Schenkolewski

INTRODUCTION

Hilchos Ta'aruvos deals with mixtures of issur and heter. The first thing we need to know is when the issur will forbid the heter and when it is batel (negated) in the heter.

There are two concepts that apply to ta'aruvos.

טעם כעיקר

טעם כעיקר means the flavor is like its essence. In other words, food that absorbed flavor from another food, acquires the dinim of the absorbed flavor. Therefore, if liquid issur is mixed into liquid heter, or if issur is cooked with heter, the entire mixture is forbidden if there is enough issur to give flavor to the heter. We will see in shiur 3 whether טעם כעיקר is d'Oraissa or d'rabbanan.

חדי בתרי בטל

If a piece of forbidden food is mixed into pieces of permitted food (without being cooked together), mid'oraissa the issur is בטל ברוב (negated by the majority). This is based on the אחרי רבים להטות.

Determining the Factors of the Ta'aruvos

In every ta'aruvos (mixture) there are two things to consider:

1. The Types of Mixtures:

There are two types of mixtures: יבש ביבש (dry mixtures) and לח בלח (liquid mixtures).

2. מין באינו מינו או מין במינו

The second factor one always has to consider is whether the forbidden food and permitted food are מין במינו (the same type of food) or מין באינו מינו (a different type of food).

Once we determine what type of mixture we are dealing with, we can determine what the din is.

The Halacha

In a case of מין במינו, if it is a dry mixture it is בטל ברוב. If it is a liquid mixture, mid'rabbanan 60 is needed against the issur. We will see the reasoning for this in the next shiur.

In a case of מין באינו מינו, the din of טעם כעיקר only applies where the flavor of issur can be tasted in the heter. Even so, if we are dealing with mixtures of יבש ביבש which are מין במינו even though there is no flavor of issur going into the heter, it is nevertheless forbidden mid'rabbanan (unless there is 60 times more heter than issur). We will discuss the reasoning for this as well in the next shiur.

Both Together

It is important to point out that it is possible to have both issues together. For example, if a piece of non-kosher meat fell into a pot of meat and potatoes cooking on the stove. Since the food is cooking, the flavor of the non-kosher meat will be absorbed into the other meat and potatoes. Therefore, since the potatoes are not the same type, ta'am k'ikar tells us that there if there is not enough heter to negate the flavor of the non-kosher meat, all the meat and potatoes are forbidden. If there is no flavor of issur in the heter, the kosher meat and potatoes are permitted but the issur remains forbidden. If we do not know which piece of meat is the non-kosher one, the pieces of meat are a שביב שבי mixture. Therefore, in order for the pieces of meat to be permitted, even if there is no flavor of issur, the kosher pieces must be a majority. If there is a majority of pieces of heter that are indistinguishable from the issur, the pieces of meat are permitted.¹ However, only pieces of meat that are possibly the issur are included. For example, if there are three pieces of meat in the pot, if you can identify one of the three as heter, we now only have two pieces in question, one issur and one heter. Since there is no majority against the issur piece, those two pieces of meat are assur even if there is enough heter in the pot so that there is no flavor of issur..

In our siman we are dealing with mixtures where the issur gives flavor to the heter. We will learn about chad b'trei in siman ט"ק.

Nosain Ta'am Lifgam

Another concept dealt with in our se'if is טעם לפגם. This means that the issur gives a bad flavor to the food. In such a case the principle of טעם כעיקר does not apply. We will learn more about this in סימן קג.

מסל"ת – סימן צח סעיף א

INTRODUCTION

Siman צח begins with the laws of how to determine if there is enough heter in the ta'aroves to be mevatal the taste of the issur. Since we are dealing with mixtures where there may be flavor of the issur, a Jew cannot taste it. Therefore, the way to verify if it has the flavor of issur is by having a non-Jew taste it. According to most Rishonim, in order for us to believe the non-Jew he must either be a קפילא or be speaking מסל"ת (as we will explain).

1. If the piece is a חתיכה הראויה להתכבד (a piece fitting to serve to guests) and cannot be found, we do not say ביטול ברוב and all the pieces are forbidden. We will learn more about this in סימן קא and סימן צב.

◆ קפילא

A קפילא is a professional cook. Since he is a professional we can believe him, because he will not want to ruin his reputation.

◆ מסל"ת

מסל"ת stands for מסיח לפי תומו, which means speaking innocently (unaware that he is giving information we require). Since he is not telling us outright (in which case he might be purposely misleading us), we can assume he is telling the truth.

◆ 60

In cases where we cannot get a non-Jew to taste it, Chazal learn from זרוע בשלה (the fore-leg of the korban of a nazir, which is permissible only to the Kohen yet is cooked together with the rest of the animal, which is permissible to non-Kohanim) that if the volume of heter is 60 times more than the issur, the issur will not give flavor to the mixture. We will see later which cases we apply this to.

THE SOURCE

The source for the laws of believing a non-Jew regarding ta'aruvos is the Gemora Chullin ע"א.

The Gemora cites a Baraissa:

If meat was cooked in a pot, one may not cook milk in the pot. If one cooks (milk in the meat pot), we ascertain by taste. (If there is a taste of meat in the milk, the milk is forbidden.) If one cooked trumah (in a pot) one may not cook chullin in it. If one cooks (chullin in a pot used for trumah), we ascertain by taste (if the flavor of the trumah can be detected in the chullin it is forbidden for a non-Kohen).

The Gemora asks:

I understand that terumah can be tasted by a Kohen (and therefore he can taste the mixture of trumah and chullin), but basar b'chalav, who should taste it (since there might be an issur of basar b'chalav, a Jew cannot taste it)?

The Gemora answers:

Now that Rebbi Yochanan said we rely on a non-Jewish professional cook, here too we can rely on a professional cook, as Rava said, the Rabbanan said (when there is a ta'aruvos we ascertain its status) by tasting; the Rabbanan said, with a קפילא; and the Rabbanan said, according to (a ratio of) 60. Therefore, (if it is a mixture of) מין באינו מינו (for example a mixture of terumah and chullin, we assess it) by tasting. If it is (a mixture of) מין באינו מינו (of) issur, (we determine it) with a קפילא. If it is (a mixture of) מין באינו מינו, where it cannot be tasted, or מין באינו מינו of issur where there is no קפילא available (we determine its status) according to 60.

Definition of Flavor

The first issue the Tur deals with is what degree of flavor renders something forbidden. The Tur cites the Rashba that any flavor that is not detectable to the average person is not considered flavor. The Rashba (תורת הבית הארוך ב"ד טז ע"א) proves this from the Gemora that does not mention a professional cook in the case of Kohen (implying that any Kohen can decide if it has flavor). This is also the opinion of the Ran (לד ע"א ד"ה מין במינו) who writes that any Kohen can taste a mixture of terumah even if he is not a professional.²

Which Non-Jew is Believed

There is a machlokes Rishonim what conditions are necessary in order to believe a non-Jew.

1. The opinion of the Rashba is that we can rely on a non-Jew: a) if he is a professional cook, even if he is not speaking מסל"ת, because he will not want to ruin his reputation, or b) if he is not a professional cook, only if he speaks מסל"ת.
2. The opinion of the Rosh (פ"ז סימן כ"ה) is that the non-Jew must be speaking מסל"ת. The Bais Yosef writes that it is not clear if he must also be a professional cook, but the Taz (end of ב ס"ק ה) and the Biur Hagra (ה ס"ק ה) write that from the fact that the Rosh used the word נחתום (baker) we see that he holds that the non-Jew must also be a professional cook.
3. The opinion of Tosefos (ד"ה סמכינן) is that a non-Jew is only believed if he is a professional cook. Speaking מסל"ת does not give credibility.
4. The opinion of the Rambam is that any non-Jew is believed. It is not necessary for him to be a professional cook or to be speaking מסל"ת. According to the Rambam the word קפילא in the Gemora means any taster.

The Bais Yosef concludes that we can combine the opinions of the Rishonim and rely on the non-Jew if he is a professional cook or if he speaks מסל"ת.

About Which Mixture is the Non-Jew Believed

Another machlokes Rishonim is for which mixture we rely on a non-Jew.

1. The opinion of Rashi is that we only rely on a non-Jew if there is 60 times heter against the issur.
2. The opinion of the Ramban is that we only rely on a non-Jew in a case where the issur is removed and only the flavor of the issur is mixing with the heter. Since we do not know how much flavor come out of the issur we rely on a non-Jew.

2. See however, Shach (ס"ק ב') that cites his mechutan Rav Gershon that the reason a kefaila is needed is because if he is not a kefaila, how do we know that he knows how to discern flavor. It seems that he holds that flavor is assessed only by a professional.

However, if the actual issur is mixed with the heter, we use the 60:1 ratio. The Bais Yosef writes that if only part of the issur gets dissolved and we do not know how much, we can also rely on the non-Jew.³

3. The opinion of the Ri is that if the heter is 60 times the issur, we do not need a non-Jew. The case where we rely on a non-Jew is if the heter is less than 60 times the issur.

4. The opinion of the Rambam is that where a non-Jew is available, whether there is 60 or not, we ask the non-Jew. In a case where a non-Jew is not available we use the 60 times ratio.

SHULCHAN ARUCH

The Mechaber Writes:

When issur is mixed with heter and is min b'aino mino (i.e. the issur and heter are different foods), for example chailev (forbidden fat) is mixed with meat, a non-Jew should taste it. If he says that there is no taste of chailev, or if he says that there is a taste (from the chailev) but it is unpleasant, it (the mixture) is permitted as long as (the bad taste) will not later taste good (for example if it is heated or cooled). He (the non-Jew) must not know that we are relying on him. If there is no non-Jew available, we assess by 60 (heter times the volume of the issur). Similarly, if it is (a mixture) of min b'mino (both the issur and heter are the same type), since we cannot discern by taste, we assess by 60.

The Rama Writes:

The custom now is not to rely on a non-Jew, and we assess every case by 60.

The Mechaber seems to be ruling like the Rashba. Therefore, the Gra (ס"ק ה) asks why the Mechaber makes no mention of קפילא. We apparently must answer that he relied on what he wrote in Bais Yosef. The Shach (סימן צ"ב סק"א) and Chochmas Adam (כלל נ"א דין ה) therefore both write that the Mechaber holds that we can also rely on a קפילא.

The Rama follows the approach of the Agur (quoted in the Bach) that we do not rely on a non-Jew because most non-Jews know the Jewish customs and are not speaking מסל"ת. R' Akiva Eiger has another explanation. He writes that we are choshesh for all opinions. According to the opinions that we rely on a קפילא because he will not want to ruin his reputation, he can only be relied on if he is not speaking מסל"ת. Since we also want to follow the opinions that we only rely on מסל"ת, the two requirements are contradictory, and

3. It seems that he understands from the Ramban that we rely on a non-Jew when we do not know how much issur there is. This also seems to be the way the Pri Megadim understands – see Sifsai Da'as 'ס"ד.

therefore we do not rely on any non-Jew. However, the Mateh Yehonasan⁴ rejects this reasoning, because if so we should be able to rely on two non-Jews simultaneously, one that is a קפילא but not מסל"ת, and one that is speaking מסל"ת.

The Pri Megadim (מש"ז סק"ג, שפ"ד סק"ד) writes that we do not rely on a non-Jew even to be strict if he says there is a taste of issur even though there is 60, or in a case of a safek d'rabbanan.

עדות אשה

The general rule is that a non-Jew is not believed מסל"ת regarding איסורי דאורייתא except to verify that a woman's husband died, thereby permitting her to get remarried. On this basis the Taz (והך יטעמנו ס"ק ב) and Shach (ס"ק ב) both ask that since (as we will see in the next se'if) the Mechaber rules that טעם כעיקר is d'oraissa, if so why is a non-Jew believed in our case?

♦ Taz

The Taz writes that the Terumas Hadeshen asks this question on the Rashba, and answers that the Rashba holds טעם כעיקר is d'rabbanan. The Trumas Hadeshen (in Piskei Maharai) also asks this question on the Rosh. The Rosh writes that a non-Jew is believed to say that an animal already gave birth and future animals born are not בכורות, in a case where the price will not rise.⁵ Here the issue of בכור is clearly d'oraissa.

The Taz answers, that the Rashba and Rosh hold that the rule that we do not rely on a non-Jew except for עדות אשה is only applicable where testimony is required. In the case of issur v'heter (including בכור) testimony is not needed, just a proof that it is permitted; therefore a non-Jew is believed. However, the Taz concludes, the Mechaber does not rely on a non-Jew even in the case of בכור where testimony is not required.

Therefore, we must say that regarding מסל"ת the Mechaber is relying on the opinions that טעם כעיקר is d'rabbanan.

♦ Shach

The Shach rejects the answer of the Terumas Hadeshen that טעם כעיקר is d'rabbanan, because the Rashba clearly paskens that טעם כעיקר is d'oraissa. This is also the psak of the Mechaber and the Maharshal.

The Shach answers that the reason a non-Jew is believed in our case is because it is קפילא, איכא למיקם עלה, meaning it can be given to a קפילא and the non-Jew will be caught lying, therefore he can be relied on.

4. Actually an addition from the Cheshek Shlomo.

5. Usually if an animal already gave birth its price is higher since we know that it can give birth.

Tasting Safek Issur

The Taz (ב"ק) quotes the Drisha that learns from the fact that a Jew cannot taste the food, that it is forbidden to lick food that might be assur. Therefore, if it is uncertain if meat was salted,⁶ one may not lick it to see if it is salty. The Taz disagrees, because we find in hilchos treifos (סימן מב ס"ג) that if the animal is missing its gallbladder (which would render it treif), one can cut the liver and lick it, and if there is a bitter taste the animal is kosher (as this is a sign that the animal had a gallbladder). We see that where there is a safek issur one may lick it. Therefore, it should be permitted for a Jew to lick a ta'aruvos to determine if there is forbidden flavor. The reason why a Jew cannot taste a ta'aroves is that in order to properly discern if there is flavor of issur, the food must eaten. Furthermore, we find that on a ta'anis one may lick food even though it is forbidden to eat it. On a ta'anis there is an added heter, that even though it is not a safek one can still lick food, as opposed to issur that is only permitted to lick when there is a safek.

However, the Shach (סימן מב סק"ד) writes that the reason it is permitted to lick the liver is because the probability is high that there was a gallbladder and there are opinions that permit the animal without a gallbladder. Since most likely the animal was kosher, it is permitted to lick it. However, in a regular case of safek it is forbidden to lick it.

♦ Issur D'rabbanan

The Pischei Tshuva (א"ק) cites the Tzemach Tzedek that one may taste an issur d'rabbanan. This is because tasting any issur is only assur d'rabbanan, therefore if the issur itself is d'rabbanan, the Rabbanan permitted tasting it. From his words it seems that even tasting in one's mouth is mutar (so long as one does not swallow). However, the Noda B'Yehuda writes that only licking is permitted, and only if there is a bad taste.

A Jewish Taster

The Shach (ה"ק) infers from the words of the Rama, "Not to rely on a non-Jew," that we can rely on a Jew. For example, if someone made a neder not to eat meat or wine, and one of them fell into other food, another Jew can taste it and see if it has the flavor of meat or wine. Another example is if meat or milk falls into parve food, or a radish was cut with a meat or milk knife, a Jew can taste it, and if there is no taste of meat or milk the food remains parve. However, the Gilyon Maharsha sends us to the Shach (צ"ו ס"ה) where he writes that this is only after the fact. If there was no taste of milk or meat and it was cooked with the opposite type, we can permit the food; but we do not rely on tasting to permit adding the food to the opposite type.

6. Meat must be salted before cooking to remove the blood.

[⁷To further elaborate, the Shach there sends us to what he wrote in Aruch MiShach (סימן צ"ה) (ד"ה ותו).⁸ There he bases his ruling on the Gemora in Chullin (end of ע"ב). The Gemora cites Chizkiyah who said that a radish that was cut with meat knife may not be eaten with milk.⁹ The Shach questions why we can't have someone taste it. He answers that since cutting with a knife only causes the knife to penetrate a n'tila (the width of a thumb), tasting will not help. We see that this is only an issue, when something is only forbidden a n'tila but when the taste of the food spreads throughout the food, we can rely on a Jew to taste it. However, the Shach cites the Toras Chatas that we do not rely on a Jew because we are not proficient in taste testing.]

The Pischei Tshuva (ג"ק) cites the Bechor Shor that disagrees with the Shach. His proof is from the Rama (סימן מ"ב ס"ג) that writes that we rely on a Jew to taste to liver to see if the animal had a gall bladder. In Darchei Moshe the Rama explains that we rely on the Jew because many poskim permit an animal that does not have a gall bladder. We can infer that elsewhere a Jew is not believed. The Pri Megadim however argues that the Darchei Moshe is only referring to a case of licking, but if the Jew actually tastes the food we can rely on him.

L'halacha, the Chochmas Adam (כלל נ"א סעיף ו) writes that we can rely on a Jew provided that he is proficient in tasting.

PRACTICAL APPLICATION

◆ Question

A piece of meat was put on top of the kettle and there is not sixty in the water against the meat. Can the water be used for coffee with milk?

◆ Answer

Someone who is proficient in tasting can taste the water, and if there is no flavor of meat in the water it can be used to make coffee and milk.

◆ Question

If issur fell into a pot of food and there is not sixty against the issur, is there is way to permit it for Ashkenazim.

7. For advanced learning, can be skipped.

8. Aruch MiShach is a separate sefer the Shach wrote to elaborate on some things that he wrote in the Shach. It can be found in the Machon Yerushlaim edition after the Tur.

9. The Gemora treats a radish as a davar charif (a sharp food). We will learn that when a davar charif is cut with a knife the blios (tastes) abosorbed in the knife will go into the sharp food.

♦ **Answer**

It is said in the name of Rav Shmuel Salant that he had a non-Jew taste the food. If he said maslat that there is no flavor of issur, he gave it to a Sefardi to taste and if the Sefardi said that there is no flavor or issur he allowed a Ashkenazi to eat it because we rely on a Jew to taste. See however, Kaf Hachaim (ב ק"ו) that writes that the minhag of both Sefardim and Ashkenzim is not to rely on a non-Jew.

CHAZORA PART 1

1. What are the two types of mixtures? What din applies to each one?
2. What is needed to permit the food if there are both pieces and taste?
3. If the issur and heter are the same how much is needed for the heter to be mutar? How much is needed if the issur and heter are not the same?
4. What are the two factors needed to believe a non-Jew?
5. What degree of flavor is enough to osser food?
6. Which non-Jew is believed? Bring the Rishonim and halacha.
7. About what type of mixture is a non-Jew believed? Bring the Rishonim and halacha.
8. Why does the Rama say that we do not rely on a non-Jew?
9. Why is a non-Jew believed in our case even though it is not to permit a woman to get married?
10. Is it permitted to taste safek issur with ones tongue?
11. Do we rely on a Jewish taster?