

PIRCHEI SHOSHANIM

Shulchan Aruch Learning Project©

Hilchos Ta'aruvos

YESHIVA PIRCHEI SHOSHANIM SHULCHAN ARUCH PROJECT©

Hilchos Ta'aruvos Shiur 1

Mareh Makomos for this shiur

Gemora Chullin 97a אמר רבא **until 97b** הנהר אטמהתא

Siman 98:1 Tur, Bais Yosef

Mechaber Rama

Shach , Taz

Pischai T'shuva 2

Written by Harav Don Channen

Contributing Editor R' Aharon Schenkolewski

Edition 9.1

© Yeshiva Pirchei Shoshanim

This shiur may not be reproduced in any form without permission of the copyright holder

164 Village Path, Lakewood NJ 08701 732.370.3344

Rabbi Akiva 164, Bnei Brak, 03.616.6340

Maslat, K'faila



Siman 98:1 - Relying on a non-Jew for the heter

1 1) If issur is mixed with heter, min b'she'aino mino, (1) for example chailev (fat) is mixed with meat, (2) 2) have a non-Jew taste it. If he says that there is no taste of chailev or that there is taste but it is spoiled, the food is mutar providing the taste 3) is not sofo l'hashbiach (taste better later in time).

It (this that we rely on a non-Jew) must be that he does not know we are relying on him (on his words). 4) If a non-Jew is not present to taste (the chailev) is measured in 60. So too, in a case of min b'mino where it is impossible to establish the issur by taste, we measure if there is 60.

RAMA 5) *The custom today is not to rely on non-Jews therefore we always measure 60.*

Introduction

In *Hilchos Ta'aruvos* we will discuss when mixtures of *issur* and *heter* are *assur* and when they are *mutar*. There are two types of mixtures, *lach b'lach* (when the *issur* and *heter* mix evenly) and *yavaish b'yavish* (when the pieces do not mix evenly). In this *Simon* we will discuss *lach b'lach*, in *Simon 109* we will discuss *yavaish b'yavaish*. Another differentiation is whether the mixture is *min b'mino* (when the *issur* and *heter* are the same type) or *min b'aino mino* (when the *issur* and *heter* are different types).

Min B'aino Mino

The *Gemora* tells us how *min b'aino mino* is negated:

Chullin 97A *Rava* said the *Rabbanan* say with taste, the *Rabbanan* say with a *k'faila*,¹ the *Rabbanan* say with 60.

The *Gemora* explains:

- *Min b'she'aino mino d'betaira* - if a permitted food fell into a different permitted food it can be discerned with taste.
- [*Min b'she'aino mino*] *d'issura* - if one forbidden food fell into a different permitted food it can be discerned by a *k'faila*.
- *Min b'mino* - if they are both the same food, since it is impossible to distinguish the *issur* by taste or *min b'she'aino mino* where there is no *k'faila*, 60 is needed to be *m'vatel* it.

What is an example *min b'she'aino mino d'betaira*? *Trumah* that falls in *chullin*, and the *trumab* does not taste like the *chullin*. In that case a *kobain* can taste the food. *D'issura*? For example if *chailev* (forbidden fat) falls into meat let a *k'faila* taste it.

K'faila

This *seif* discuss the *dinim* of *k'faila*. The *Bais Yosef* brings 4 *shitos* as to when a non-Jew is believed:

- 1) **Rashba**: The non-Jew does not have to be a *k'faila*² but he must not know we are relying on him³ (this is called *mas'la't*; *masiach lfi tumo*;

¹ Professional cook. The word can be applied to both a Jew or a non-Jew. When we are dealing with tasting *issur*, *k'faila* refers to a non-Jew.

² The proof is that in the case of *trumab* falling into *Chullin*. The *Kobain* who does tastes the food to ascertain if it tastes like *trumab* does not have to be a *k'faila*. Therefore, the average person is able to discern taste.

³ We are afraid he will lie.

speaking incidentally⁴). However, if the non-Jew is a *k'faila* we can rely on his direct words because he values his reputation.⁵

- 2) **Rosh:** The non-Jew should be a *k'faila*⁶ and *mas'la't*.
- 3) **Tosefos, Ran:** The taste tester must be a *k'faila*, *mas'la't* is not a factor.
- 4) **Rambam:** Any non-Jew can be relied upon regardless of the fact he knows we are relying on him (when the *Gemora* says *k'faila* it is *lav danka* (not exact).

The **Bais Yosef** holds that even though the *Rosh* says the factor of *k'faila* alone is not enough to rely on a non-Jew, still we can accept the opinion of the *Rashba* that a *k'faila* can be relied upon even without *mas'la't* since *Tosefos*, the *Ran*, and the *Rambam* agree. If the non-Jew is not a *k'faila* then we can only rely upon him with the additional factor of *mas'la't*.

HALACHA 98:1

The **Gra** (5) asks, “Why did the *Mechaber* leave out the *din* of *k'faila*?” In other words does the *Mechaber* hold that *k'faila* is enough of a factor to believe a non-Jew even without the factor of *mas'la't*? It is not clearly stated so in the *Mechaber*.

The answer is that we can learn that the *Mechaber* holds by *k'faila* alone through process of elimination:⁷ there is only one *shita* that holds *mas'la't* on its own is a factor, which is the *Rashba*. Therefore, the *Mechaber* holds like the *Rashba* and we can learn that we can rely on a *k'faila* even without *mas'la't*.

⁴ The *Taz* (end of 2) says that as long as the gentile does not know that he is permitting something to be eaten it is called *mas'la't*.

⁵ Losing his reputation as an expert will affect him financially.

⁶ The *Bais Yosef* says that there is no inference if the *Rosh* is strict about the necessity of *k'faila*. However, the *Gra* 98:5 quotes the *Rosh* simply as needing both *k'faila* and *mas'la't*.

⁷ *Nesivai Hora'ab* (by Rav Yehudah Deri Shlit'a).

60 or Kfaila

The **Tur** brings a *machlokes Rishonim*, regarding whether we can rely on a *k'faila* if there is less than 60:⁸

1. **Rashi**: We cannot rely on a *k'faila* if there is less than 60. Furthermore, even if you have 60 a *k'faila* is required.
2. The **Ramban**: If there is *mamashos* (tangible) of *issur* then we need 60 but if there is only *ta'am* (taste) then a *k'faila* is believed even less than 60.
3. The **R"Y** and **Rosh**: If there is 60 a *k'faila* is not necessary, only if there is less than 60 do we need a *k'faila*.
4. The *Bais Yosef* brings the **Rambam**: A *k'faila* is always believed and even with 60 *k'faila* is required. However, if we do not have a *k'faila* then it is *batel* (negated) in 60.

The **Shach** (4) says that the **Mechaber** *paskins* like the *Rambam*.⁹

עדות אשה

Even though the *Mechaber* holds by *mas'la't* in our case we must qualify the circumstances and its application. Both the **Shach** and **Taz** ask, “The only time *mas'la't* helps is in a case of *עדות אשה*?¹⁰” There are four possible answers:

The **Shach** gives three possible answers:

- 1) *Ta'am k'ikar* is *assur mid'rabbanan*: Therefore we can be lenient. The *Shach* says that this only helps according to those that hold *min b'she'aino mino* is *assur mid'rabbanan*, however according to the *Mechaber* *min b'she'aino mino* is *assur mid'oraisa* and therefore this answer does not help.¹¹

⁸ A synopsis can be found in *Sifsai Da'as* 4.

⁹ However, see **Gra** 7 that says that it is not clear what the *Mechaber* holds.

¹⁰ The *Rabbanan* accept the testimony of a non-Jew as testimony, if it is *mas'la't*, that a woman's husband has died. The Rabbis are lenient only in this case in order that the woman can remarry.

¹¹ See the *Pri Megadim* (introduction to *basar b'chalah* starting *טעם כעיקר*) who asks that according to everyone by *basar b'chalah* if there is taste it is *assur mid'oraisa*. Therefore, this answer will not help even according to

- 2) אין איתחזיק איסורא (there is no previous status quo of *issur*): We do not assume the worst. The food was kosher before the *chailev* fell in and although we may suspect that it is now *assur* (which is why a Jew cannot eat it) there is no clear proof that it is *assur*. Therefore, if the non-Jew tells us that there is no taste of *chailev* he is not changing the status of the food. However, the *Shach* says that אין איתחזיק איסורא only helps by an *issur d'rabbanan*, but by an *issur d'oraisa* even if there is no *chazaka d'issura maslat* is not believed.
- 3) אפשר למיקם עלה דמילתא:¹² This is a fact that can be checked. If he tells us that the food has no taste of *chailev* then we can eat it. Since he knows that the facts can be easily confirmed or denied, he will be afraid to lie.

The **Taz** adds:

- 4) The *Mechaber* holds the reason for *mas'la't* is that we can rely on *Rashi* and the *Rambam* (that *ta'am k'ikar* is *d'rabbanan*). The *Taz* then says that the *Rashba* would believe *mas'la't* for a different reason. We say that non-Jews are not believed even with *mas'la't*, except in a case of עדות אשה, only when witnesses are required. *Issur v'heter* is not a subject that needs witnesses, as it is only discovering the facts and therefore non-Jews are believed if they are *mas'la't*. However, the *Taz* concludes that this will not help for the *Mechaber* because we see in *Simon* 316 that a non-Jew is not believed to say that an animal is not a *bechor*¹³ even though we do not require witnesses to say that an animal is a *bechor*. Therefore, we have to say that in our case the *Mechaber* relied on *Rashi* and the *Rambam* but in all other cases we do not believe a non-Jew *maslat* (except by *adus isha*).

THE RAMA SAYS:

The custom today is not to rely on non-Jews therefore we always need 60.

those that hold that *ta'am k'ikar* by *sha'ar issurim* is *assur mid'rabbanan* since we see in *Siman* 92 that a gentile is believed even by *basar b'chalar*.

¹² Literally, it is possible to establish this. Meaning that if everything were *mutar* we do not need the non-Jews testimony to know the facts.

¹³ A first born animal must be given to the *Koben*.

R' Akiva Eiger says that it is difficult to understand why the *Rama* does not rely on a non-Jew in some way, either a *ke'faiila* or *mas'la't*. He answers by saying that the *Rama* is following the strict opinions of all *Rishonim*. In that case *ke'faiila* and *mas'la't* are a contradiction since *ke'faiila* means that one must know, in order to give an expert opinion, and *mas'la't* means that one must not know, so how can he give an expert opinion. Therefore, there is no way to rely on a non-Jew.

The **Match Yehonatan**¹⁴ asks a question on *R' Akiva Eiger's* answer, "Why can't you ask two non-Jews their opinions! One a *ke'faiila* that is not *mas'lat* and one a *ke'faiila* that is *mas'la't*?"

Halacha L'ma'aseh

The **Kaf HaChaim** (2) brings down that even *Sephardim* who normally hold like the *Mechaber*, hold like the *Rama* in this case and do not rely on the taste test of a non-Jew. Therefore, all *issurim* are measured with 60.

The Jewish Taste Tester

The *Rama* said that we don't rely on a non-Jew. We infer from this that a Jewish taste tester would be believed; otherwise the *Rama* should say that we don't rely at all on a taste test. This is providing the Jew is allowed to taste the food, as in the case of a radish cut with a meat knife or *trumab* that fell into *chullin* that can be tasted by a *Kobain*.¹⁵ However, the **Gilyon Maharsha** brings that the *Shach* in *Siman* 96:5 says that only if it was already cooked do we rely on a Jew if he said that there was no taste but *l'chatchila* (a situation in which the validity of an action is being considered before the action occurs) we do not ask a Jew to see if there is taste.

Tongue Tasting

Safek

The first **Drisha** in this *Siman* says that from the fact that we may not give *issur* to a Jew to taste we see that it is *assur* for a Jew to taste *safek issur*. Therefore, it is *assur* to taste meat in order to check if it is salted even if only using the tongue because one may be tasting blood.

¹⁴ In the *machon* it is found in the back in the *Yalkut Meforshim*

¹⁵ *Kaf HaChaim* (12), *Shach* (5).

The **Taz** (2) argues and brings a proof from the *din* of gall bladder. The *din* is that if the gall bladder is missing the animal is *treif*, however if the liver has a bitter taste of the gall bladder the animal is kosher. Even though this is a case of *safek issur* it is *mutar* to test the liver by using the tongue. Therefore, in our case as well tongue tasting is permitted. The reason we need to use a non-Jew is because tasting with the tongue does not help us solve the *safek* because in order to properly ascertain the taste the food it must be eaten.¹⁶ The *Mishb'tzos Zahav* explains that the *Taz* holds that tongue tasting is only an *issur d'rabbanan* and is therefore permitted in *safek*.

However, the **Mishb'tzos Zahav** and **Pischai Tshuva** (1) bring that the **Shach** (42:4) holds that only by a gall bladder is tongue tasting *mutar* because it is not normal for the gall bladder to be missing and is most probably absorbed in the liver so it is most likely that one will taste the gall bladder. We see that the *Shach* holds that in cases where there is no probability that it is kosher tongue tasting is *assur*. The *Pischai Tshuva* says that the *Pri Megadim* (*Mishb'tzos Zahav* 95:15) agrees to the *Shach*.

Issur D'rabbanan

The *Pischai Tshuva* then brings that the **Tzemach Tzedek** permits food that is only *assur mid'rabbanan* to even be tasted in ones mouth and then spat out. The *Pischai Tshuva* concludes with the **Noda B'Yehudah** that even an *issur d'rabbanan* is only *mutar* if the *issur* is *pagum* and only through tongue tasting.

Similarly, the **Mishb'tzos Zahav** (108:9) holds that in the case of *borit* (a type of soap made from *chailev*) that has such a bad taste that even a dog would not eat it that it is *mutar* to taste in ones mouth.¹⁷ He concludes that even by *borit* the **Pri Chadash** argues and therefore one who is strict is praiseworthy.

How To Measure Sixty

The **Pischai T'shuva** (2) brings the **Teshuvos Shar Ephraim** that we measure with size and not weight. He then brings in the name of the **Chinuch Bais Yehudah** who elaborates that if the *heter* and *issur* are the same *min*, if neither one has more air space than the other then we can measure with size or weight and if one has more air space than the other, then we should measure by weight. However, if the *heter* and *issur* are two different *minim* then we should press out the air spaces and measure with size.

¹⁶ The gall bladder is bitter and it can be discerned using the tongue.

¹⁷ One would taste it in order to know if there was enough salt in it to make in potent.

Review Questions

- 1) Explain the following concepts: *min b'mino*, *min b'aino mino*.
- 2) Also explain the following concepts: *k'faiila*, taste and 60.
- 3) What is *mas'la't*? Can you give your own example?
- 4) What are the 4 opinions concerning a non-Jew taste tester?
- 5) Does *Rashi* believe a non-Jew? In what case?
- 6) Does the *Mechaber* hold we believe a *k'faiila*? What is your proof?
- 7) Does the *Rama*?
- 8) Why does the *Mechaber* rely on *mas'la't* in our case even though the law states clearly that we rely on *mas'la't* only in the case of **עדות אשה**?
- 9) Why doesn't the *Rama* rely on *mas'la't*? Are there other options to his *psak*?
- 10) *L'ma'aseh*, do we rely on *mas'la't*?
- 11) Can we rely on a Jew to determine if there is a taste of meat in a *tznon* (radish)?
- 12) Is it *mutar* to taste food with ones tongue that may be *assur d'rabbanan*? Can it be tasted in ones mouth and spat out?
- 13) Which type of *issur* can be tasted with the tongue and we will not worry it will come to be eaten?

Questions on Shiurim

Question

Why do I need a *beter* to taste meat with my tongue to see if it was salted? In any case it should be *mutar* because if it was salted there is no *issur* and if it wasn't salted it should be *mutar* because raw meat is *mutar* to eat even though it hasn't been salted!

Answer

We have to say that there is some form of *issur* in connection with this meat otherwise your question cannot be answered. Perhaps the salt has not been washed off and still has blood on the surface. Another possibility is that we are worried that the meat did not have *hadacha rishona* and there is *dam b'ayin*. The *Taz* holds that it is *mutar* to taste test with the tongue a *safelek issur* even if the *issur* is *mid'oraisa*

Question

Which is stronger : relying on a non-Jew with *mas'la't* or because he is a *k'fai'a*?

Answer

According to the *Bais Yosef* we rely on *mas'la't* in a case where the non-Jew is not a *k'fai'a*. We see from this that it is preferable to use a *k'fai'a*; the reason is that the non-Jew's livelihood is on the line. This outweighs his lying and now we can benefit from his expertise.

Question

On page 2 the *Rambam* holds neither *mas'la't* nor *k'fai'a*. Is his *svora efsbar l'mikam ala* (that he can be caught out)?

Answer

Your *svora* is correct. This is found in the **Pri Toar** 92:3, who says that since he will be found to be a liar immediately he will say the truth. However, he says that this will not help by *issurai d'oraisa*. Therefore, we must say that the food is tasted before it is swallowed (which is only *assur d'rabbanan*) or the *Rambam* is relying on the opinion that anything that is a *safelek mid'oraisa* is only *assur mid'rabbanan*.

Question

On page 4 footnote 9, it says "The *Rabanan* accept..." and "The rabbis are lenient": isn't the fact that we do not rely on a non-Jew *d'oraisa*?

Answer

You are touching on a big topic. We can give a whole *shiur* on this but in short, there is *machlokes Rishonim* whether the din that a non-Jew is not believed is *mid'oraisa* or

mid'rabbanan. *Rasbi* holds that it is only *mid'rabbanan* (except by *kiddushin* and *gitten*) and *Tosefos* holds that it is *mid'oraisa*. One way to explain why they are believed is that the reason non-Jew's are not believed is because they have the same *din* as robbers but in a case where we can assume that they are telling the truth they are believed. (see *Tosefos Baba Kama* 88a *Yehai*, *Tosefos Gitten* 9b *af al pi* and *bagaos* on the *Rosh Gitten* 10).

Question

Say you're a caterer. One of your *aino yebudi* employees comes to you and, with a sly smirk, says, "I'm joining the Navy, goodbye!" As he runs out, he shouts, "And just to show you what I think of you and all your kosher rules. I just threw a whole *treif* Tyson's chicken into your pot for the richest guy in town's only child's *chasunab*. It's all *treif* now! Ha, ha!" He's gone before you can stop him. You look into the pot. Ten whole chickens, all identical, are floating in it, and there's not 60, even if you add the kosher chickens and the kosher soup.

Do we believe him when he claims to have done something out of malice? It's not *mas"t*, and certainly there's no *mirsas*!

Answer

This is a great scenario! I believe it's not as far fetched as it looks.

The **Shach** brings this case in *Siman* 118 *Shach* 38. He quotes the **Shibulay Haleket** who says that the food is *mutter* because we do not believe an *aino yebudi* for either *issur* or *heter*. According to the **Sefer Bain Yisrael L'nachri** the food should be eaten right away in order that the *aino yebudi* will not do this again to other Jews.

The **Aruch Hashulchan** (118:36) adds that this *din* does not apply in all cases. If you see that the *a'y* is not speaking out of *latzanus* or for revenge, rather he is giving over information in a sincere way, then you should suspect it may be true and not eat the food. The rule is that even though *m'ikar hadin* you do not have to believe him, still if you see that he's sincere you should refrain from eating the food.