



בס"ד

בית דין צדק דק"ק מנשטער

Manchester Beis Din

Jubilee School | Bury Old Rd | M7 4QY

www.mbd.org.uk | 0161 740 9711

This shiur was given by Dayan Steiner and can be listened to on the shiurim page of this website

DELIVERY OF FAST-FOOD IN HALACHA

The convenience of a ready-made meal delivered to your front door seems very enticing. There are, however, several points to consider as to the permissibility of food that has left the supervision of a Yid.

To clarify these Halachos, we shall open with an incident that occurred, which I was asked about. In clarifying the p'sak, we shall discuss the Halachos and various general issues one must be aware of, many of which were relevant here.

THE STORY:

A local restaurant produced a large batch of minced liver to supply to supermarkets. Before delivery to the supermarkets, the liver was placed in plastic containers. A non-Jewish deliveryman delivered the containers to the shop without any identifying marks.

The question was raised: What is the halachic status of the liver? The question had implications of hefsek meruba - a significant financial loss.

BACKGROUND OF THE HALACHA: MEAT/POULTRY OF AN UNKNOWN ORIGIN.

Two sections in Shulchan Aruch discuss meat that has not had constant supervision. These are: Yoreh Deah Siman 63, where the status of "Basar Hanimtza" is discussed, and Yoreh Deah Siman 118, where the status of food that was sent through an akum is discussed.

The Shulchan Aruch (Yoreh Deah 63:1) writes, "Meat which is found thrown to the ground in the marketplace, we follow the majority [of meats sold locally, based on the principle] that whatever has separated from its place of origin is assumed to have come from the majority [of available butchers]. If the majority of vendors are non-Jewish, the meat is permitted. If the majority of vendors are Jewish, the meat is permitted."



Likewise, if meat was found amongst non-Jews, and it is not known where it was purchased, if the local butchers are Jewish, it is permitted.”

The Shulchan Aruch qualifies, however, that the above ruling is Min HaTorah. However, Mi'drabbanan, any meat found, whether in a marketplace or the hands of a non-Jew, is forbidden to be eaten, even where all the vendors and all local slaughterers are Jewish.

The above applies to meat found on the floor in a marketplace.

The Shulchan Aruch adds that even if one buys meat (from a Kosher butcher), takes it home and then leaves it unattended (in Chazal's terms: "It was obscured from the eye"), it is prohibited to consume unless one of three conditions is satisfied:

- a) it had an identifying mark (Siman) (a triangular Siman, as set out in Bava Metzia 23b), or
- b) the person can recognise it (Tevi'us Ayin), and he is very certain that this is it, or
- c) if it were wrapped and sealed (Tzarur V'Chasum).

If one of the above three conditions were satisfied, the meat would be permitted.

In Yoreh Deah 63:2, the Shulchan Aruch cites the opinion of those who permit the meat that was hidden from the eye. The Rema adds that the prevalent custom is to be lenient in line with the latter opinion. Accordingly, the Rema concludes, "Even if the meat was [found] in the hands of a non-Jew, if it is a locale where all the vendors are Jewish, the meat is Kosher”.

The Shach (Yoreh Deah 63:6, however, see further in Yoreh Deah 63:10) writes: "It is certain that (to apply this leniency of the Rema) there must be Jews who sell only Kosher meat and no treif at all.”

he Shach intends to say that only if the entire range of butchers sells only Kosher meat can we assume that this is likewise Kosher.



However, if there is one who also sells treif meat, we would apply the principle of “Kol Kavua K’mechtza al Mechtza Dami,” and the meat would be forbidden. In our scenario, there is obviously much non-kosher liver available, so there is no “majority” of “kosher style” liver.

The Shach (Yoreh Deah 63:1) writes that in the case where the doubt also concerns Bishul Akum, we would also apply the leniency of the Rema, where the majority of meat consumers are Jewish. However, if it is found in the hand of a non-Jew, it would nevertheless be prohibited.

Given the above, it would appear that in our scenario, since one could hypothetically purchase liver in non-Jewish establishments as well as Kosher ones, there is no majority of Jewish ones. Therefore, the Halacha would follow that the entire delivery is prohibited, unless we assume that the taste of Kosher liver differs from that of non-Kosher. (This will be clarified below.)

SEALINGS

There are three opinions to consider regarding sealings.

(1) The Shulchan Aruch (Yoreh Deah 118) discusses wine, meat, or a piece of fish that lacks an identifying mark, which one either deposits with a non-Jew or sends through a non-Jew as an agent for delivery. The Shulchan Aruch initially writes that all such food items require a double seal. [This is in contrast to mevushal wine, bread, or cheese and other items that are only Rabbinically prohibited, which require only one seal.]

(1) The Shulchan Aruch then cites a dissenting opinion that even regarding items which require a double seal, this requirement only applies in the case where one sends a non-Jew as an emissary for delivery and will not see the seal.



However, if one deposits the item by a non-Jew, where, upon later collection, the depositor will see the seal, it is sufficient to have only one seal as the (non-Jew) is afraid to swap the food.

(2) Finally, the Rema cites a third opinion, that of Rabbeinu Tam, that one only requires a double seal for a Jewish person who is not trustworthy, whereas for a non-Jew, even one seal suffices. (The Darchei Teshuva adds that the same is true of an Am Ha'aretz who does not respect Rabbinic law. He may likely come to confuse Torah law with De'Rabbonon and therefore cannot be trusted at all. A double seal will be required in such a case, too.)

The Rema concludes that b'dieved, one may rely on this third opinion.

The Shach (Yoreh Deah 118:1) raises a question from Yoreh Deah Siman 1:4, where the Rema writes that a slaughtered animal which is found in the hands of a non-Jew is permitted where the majority of slaughterers are Jews.

In his second answer, the Shach differentiates between Yoreh Deah Siman 63, where the Rema is talking about one who finds meat in the hands of a non-Jew who had purchased it from a Makulin. Therefore, in a place where the vendors are Jewish, we permit the meat. This is because there is no concern that a neveila was purchased, and there is also no concern that the non-Jew exchanged it for a neveila, for there would be no purpose in doing so.

In Siman 118, however, where one sends thorough or deposits it with a non-Jew, and there is a concern that he exchanged the kosher food for the neveila, which he owns, there would be a genuine concern that the neveila was indeed swapped.

A further resolution offered by the Shach is that an agent holds the meat for a short time only, whereas a guardian takes care of it for an extended period and therefore potentially has sufficient opportunity to swap it.



However, if one deposits the item by a non-Jew, where, upon later collection, the depositor will see the seal, it is sufficient to have only one seal as the (non-Jew) is afraid to swap the food.

(2) Finally, the Rema cites a third opinion, that of Rabbeinu Tam, that one only requires a double seal for a Jewish person who is not trustworthy, whereas for a non-Jew, even one seal suffices. (The Darchei Teshuva adds that the same is true of an Am Ha'aretz who does not respect Rabbinic law. He may likely come to confuse Torah law with De'Rabbonon and therefore cannot be trusted at all. A double seal will be required in such a case, too.)

The Rema concludes that b'dieved, one may rely on this third opinion.

The Shach (Yoreh Deah 118:1) raises a question from Yoreh Deah Siman 1:4, where the Rema writes that a slaughtered animal which is found in the hands of a non-Jew is permitted where the majority of slaughterers are Jews.

In his second answer, the Shach differentiates between Yoreh Deah Siman 63, where the Rema is talking about one who finds meat in the hands of a non-Jew who had purchased it from a Makulin. Therefore, in a place where the vendors are Jewish, we permit the meat. This is because there is no concern that a neveila was purchased, and there is also no concern that the non-Jew exchanged it for a neveila, for there would be no purpose in doing so.

In Siman 118, however, where one sends thorough or deposits it with a non-Jew, and there is a concern that he exchanged the kosher food for the neveila, which he owns, there would be a genuine concern that the neveila was indeed swapped.

A further resolution offered by the Shach is that an agent holds the meat for a short time only, whereas a guardian takes care of it for an extended period and therefore potentially has sufficient opportunity to swap it.



From the second answer of the Shach, it arises that within a short time, it would be permitted for the non-Jew to hold the meat for the Jew.

Nonetheless, one would still require a majority of kosher meat vendors, as explained above. However, if there is no majority, one would be stringent.

A PUBLIC THOROUGHFARE

In Yoreh Deah

118:7, however, the Shulchan Aruch adds: "If one sends meat through a non-Jew without a seal, if the place is a public thoroughfare, it is permitted [to send it through] for the agent will be afraid lest one of the passersby see him (swapping the goods and) he will be caught like a thief."

The Taz adds that the public need not be comprised of Jewish people; even if there are only non-Jews in public, the agent will remain afraid to swap the goods whoever may spot him.

All the above, however, is "b'dieved". As the Shulchan Aruch concludes, "Nonetheless, l'chatchila, one should not send through a non-Jew without a seal.

Therefore, b'dieved, where the non-Jew travels in the street, there is no concern, and it will be permissible. However, the Pri Toar (118:10) writes that there is no heter of a public thoroughfare if it is found in the hands of a non-Jew for a significant amount of time, such as overnight, for in such a case it would be prohibited as the non-Jew could swap it.

The Darchei Teshuva (Siman 118:60) quotes the Shevus Yaakov, who writes that if one sends dissolved fats through a non-Jew in a public thoroughfare, one may rule leniently.

The Darchei Teshuva concludes, however, that the non-Jew can justify replacing the kosher fats by explaining that the original ones were spilled out and he replaced them. Therefore, the Darchei Teshuva says that the fats would be forbidden.



out and he replaced them. Therefore, the Darchei Teshuva says that the fats would be forbidden.

It arises from the words of the Darchei Teshuva, that even in a public thoroughfare, if the non-Jew could justify himself and claim he is not liable, the food would be prohibited.

Accordingly, in the case in question, as well as in all scenarios involving a taxi driver or a deliveryman, even though he travels through a public street, one would need to consider if there would be a feeling of "Nitfas Alav K'Ganav" and if it would be comparable to one who stays overnight with their food, because there would be an opportunity to swap the food.

TEVIUS AYIN

The Shulchan Aruch (Siman 63:1) writes a further room for leniency (cited above briefly): "Tevius Ayin". This means one recognises the food as definitely being their original one.

When I arrived in Manchester 20 years ago, I noticed that non-Jewish deliverymen were delivering bread to the local shops. I insisted that, as bread requires an identifying sign (being a Rabbinic requirement in nature as explained above), the drivers should return all the bread to the bakers, and the Mashgiach should be asked if he recognises the bread. All of this entailed significant inconvenience.

(The Poskim discuss why, regarding a lost item, only a Talmid Chochom is trusted with Tevius Ayin. Some differentiate between Metz'ia, where the temptation for financial gain is a genuine concern, and Kashrus, where even a non-Talmid Chacham would not wish to transgress a prohibition.)

The Be'er Hetev, citing the Nachalas Shiva, writes that an Am Haaretz would be required to look very carefully at the item to be able to say he truly identifies it, unlike a Talmid Chochom, who would merely be required to recognise it at first glance.



Regarding the bread, I asked the bakery owners if they have a clear Tevius Ayin that this is theirs? They replied that they do not; however, the owner advised that were he to taste a bit, he would recognise from its (unique) taste that this is from his bakery.

I therefore asked the restaurant owner if he could recognise the liver if it were sent back to him.

The producers of the liver informed us that their liver is inserted into the plastic containers through a tube, and this means it has a twirl at the top in each container. One may question, therefore, if this suffices as a Tevius Ayin.

I found a similar discussion in the Bach (Yoreh Deah 118:4), who discusses a case where pots of food were left in the hands of non-Jews. Upon the return of the pots to the Jews, a Jewish woman, who had previously taken a small amount of the fat with a spoon, recognised the dent in the fat left through the spoon... The question arose whether this suffices for Tebiyus Ayin. The Bach writes on this: "It would appear to permit this and to accept that Tevius Ayin is possible here."

However, in practice it is difficult to apply this leniency in this scenario, because it would appear that the siman of a twirl is not comparable to the case discussed by the Bach and Kereisi Upleisi, as it is a very weak Siman and therefore difficult to rely on at Tevius Ayin on this.

As noted above, the Rema cites the opinion of Rabbeinu Tam, that the only case that requires is with a Yisroel Choshud. In that case, one needs two simanim. The first siman needs to be strong, the second can be weak.

Not so when sending through a non-Jew, for whom one would require only one Siman.

The question becomes - how good does that single Siman need to be? There is a dispute between the Taz and Nekudas Hakesef, where two seals are required



if one needs only one good seal, yet the second one may be weaker. The Taz says b'dieved one can rely even on a "Siman Kol-Dehu". The Nekudos Hakesef argues and says that where we rely on one siman, it must be a robust one.

The Pischei Teshuvah cites the Shemesh Tzedakah, who was asked regarding one who sends pieces on the neck of a chicken stuffed with meat from city to city through a non-Jew. These were placed in a wooden box with nails inserted in them without any seal; however, on each of them there was a note stating, "Pesach," which itself would not be considered a seal.

What is the Halachic status of this food? Are the nails considered a seal that would allow for a lenient ruling, according to the Rema (in the understanding of the Taz), that when sending through a non-Jew, one seal is sufficient? The Shemesh Tzedoko replied that in a case of hefsed merubah, it is permitted even in this scenario where it affects a potential Issur D'Oraysa. He combines numerous reasons to be lenient, for these nails knocked into the box.

However, the Pischei Teshuva himself concludes that it would be difficult to be lenient in such a scenario. Therefore, he disputed this ruling and adopts a more stringent approach¹.

THE HETER TO TASTE THE FOOD

The proprietor suggested allowing him to taste that food; as the person who produces the liver, he would recognise it from its ingredients.

¹ The Darchei Teshuva brings a possible solution of recognisable weights or measures being included in the Tevius Ayin concept. This requires further study to see if this is relevant to our discussion.



if one needs only one good seal, yet the second one may be weaker. The Taz says b'dieved one can rely even on a "Siman Kol-Dehu". The Nekudos Hakesef argues and says that where we rely on one siman, it must be a robust one.

The Pischei Teshuvah cites the Shemesh Tzedakah, who was asked regarding one who sends pieces on the neck of a chicken stuffed with meat from city to city through a non-Jew. These were placed in a wooden box with nails inserted in them without any seal; however, on each of them there was a note stating, "Pesach," which itself would not be considered a seal.

What is the Halachic status of this food? Are the nails considered a seal that would allow for a lenient ruling, according to the Rema (in the understanding of the Taz), that when sending through a non-Jew, one seal is sufficient? The Shemesh Tzedoko replied that in a case of hefsed merubah, it is permitted even in this scenario where it affects a potential Issur D'Oraysa. He combines numerous reasons to be lenient, for these nails knocked into the box.

However, the Pischei Teshuva himself concludes that it would be difficult to be lenient in such a scenario. Therefore, he disputed this ruling and adopts a more stringent approach¹.

THE HETER TO TASTE THE FOOD

The proprietor suggested allowing him to taste that food; as the person who produces the liver, he would recognise it from its ingredients.

¹ The Darchei Teshuva brings a possible solution of recognisable weights or measures being included in the Tevius Ayin concept. This requires further study to see if this is relevant to our discussion.



One must consider if (a) tasting the food would carry the reliability of Tevius Ayin, and (b) how it would be permissible to taste the food where the concern is that the food item was swapped for something not Kosher!

Can a Jew taste the food to determine if it is the same food?

The Achronim (cited by Pischei Teshuva 98:1) dispute whether tasting with the tongue without swallowing is permitted in a case of an Issur d'Rabbanan, or whether this only applies to tasting something that is almost inedible.

The Mishnah Berurah writes in Hilchos Brochos (Orach Chaim 210:3) that tasting a cooked food does not require a Brachah.

Similarly, on a Taanis, it is permitted to taste if he does not swallow. If so, in our case, perhaps we could be lenient and allow a mere tasting through the tongue. However, it would appear that we could request a non-Jew to taste the liver (in line with the principle of Kefeila), and through Mirtas the non-Jew would say the truth. Meaning, one creates a situation of Mirtas as he says to the non-Jew that after he has tasted it, the proprietor will also taste it.

This, combined with other reasons to be lenient, led us to permit the liver, b'dieved.

IN PRACTICE

Where food is delivered through a non-Jewish agent, one must ensure that the package is both well-wrapped and sealed. As there is a robust basic seal, for example, a vacuum-packed wrapping, then one may rely on a sticker as a second seal, as explained above, especially where the vacuum package encloses the sticker. Simply affixing the label of the kashrus authority will not be sufficient. Furthermore, it is possible to forge a sticker or a Hechsher label. In certain countries, they are actually engaged in forging holograms.



בס"ד

בית דין צדק דק"ק מנשסתר

Manchester Beis Din

Jubilee School | Bury Old Rd | M7 4QY

www.mbd.org.uk | 0161 740 9711

The Rema considers closing the package by sewing a thread, but rules that it is too easy to remove the sewing. (There is also discussion in the Darchei Teshuva regarding removing labels of a kashrus authority. One solution they crafted was to write the Parshas Hashavua)

Today, it is possible to track the agent at the time of his journey to ascertain his whereabouts. Nonetheless, this would not be sufficient as the deliverman could always rationalise himself that he carried out a detour for a non-related matter.