



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

## CHODOSH TODAY

The Korban Omer and Chodosh

During the time of the Beis Hamikdash, a specially harvested bundle of barley - the Omer - would be brought to the Beis Hamikdash, where the kohen would wave it. To mark this occasion, a Korban Olah with its accompanying mincha-meal offering and nesachim-wine libations would be offered up by the kohen.

This ceremony, known as the Korban Omer, is performed on the 16th of Nissan - the second day of Pesach.

After describing the Korban Omer, the Torah continues (Vayikra 23:14):

וְלֶחֶם וְקָלִי וְכַרְמֶל לֹא תֹאכְלוּ עַד-עֶצֶם הַיּוֹם הַזֶּה עַד הַבִּיאָכֶם אֶת-קֹרְבַן אֱלֹהֵיכֶם  
חֻקַּת עוֹלָם לְדֹרֹתֵיכֶם בְּכָל מִשְׁבֹּתֵיכֶם.

This pasuk prohibits the consumption of lechem - bread, kali - flour produced from parched grain, and karmel - tender grain, until the Korban Omer can be assumed to have been offered up on the 16th Nissan.

The Mishnah (Menachos 10:7) clarifies that the Chodosh prohibition applies to the five grain types. These are: חטים, שעורים, כוסמין, שיבולת שועל ושיפון. The consensus is that these are identifiable to us today as wheat, barley, spelt, oats, and rye. The prohibition may also include their derivatives, such as whisky or beer, as will be discussed below.

Upon offering up the Korban Omer on 16th Nissan, all the new grain is permitted and now has the status of Yoshon. This includes anything which has grown in the preceding twelve months, as well as that which is still growing, so long as it has taken root in the ground before 16th Nissan.



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Since the Churban

Today, in the absence of the Beis Hamikdash, we are unable to bring this Korban. Strictly speaking, it should be permitted to partake of the new grain from the morning of the 16th Nissan; however, Rabban Yochanan ben Zakkai instituted that one must wait until the night of the 17th Nissan before partaking of the new grain (Mishnah Sukkah 3:12).

In Chutz La'aretz, due to s'feika d'yoma, one must wait until nightfall of the 18th Nissan, as the entire day of the 17th Nissan is also included in the prohibition.

This is the background of the core prohibition of "Chodosh" (meaning partaking of the "new" grain, i.e., the current year's produce).

There are several considerations regarding the practical application of the Chodosh prohibition today, especially for those living outside of Eretz Yisrael. Examples of these include:

- (1) Does the Chodosh prohibition apply to grain that grows outside of Eretz Yisrael?
- (2) Does it apply to the produce of a gentile?
- (3) Does it apply in a case of doubt, where it is difficult to verify what year the grain is from?

Chodosh produced outside of Eretz Yisrael

The Tur (Yoreh Deah 293 and Orach Chaim 489) cites a dispute between the Tana'im in Kiddushin, whether the prohibition of Chodosh applies outside of Eretz Yisrael.



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Tanna Kama holds that Chodosh does not apply outside of Eretz Yisrael, being a mitzvah ha'teluyah ba'aretz. Rabbi Eliezer disagrees and holds that it does indeed apply outside of Eretz Yisrael.

The Tur rules in accordance with the ruling of the Rif and the Rosh, who concur with Rabbi Eliezer's view, as does the Rambam. The Beis Yosef adds that the produce of a non-Jew is also subject to this prohibition, as per the opinion of Tosfos, Mordechai, Smag and Teshuvos Ha'Rosh. Likewise, the Rif, Ra'avyah, and Sefer Hamitzvos all concur that the prohibition equally applies to the produce of a non-Jew.

The Rosh in his responsa (quoted by the Beis Yosef) cites the lenient view of Rabbeinu Baruch regarding the produce of a Jew in Chutz La'aretz, but adds that such a view is incomprehensible.

In this vein, the Shulchan Aruch and Rema rule (Orach Chaim 489:10) that it is forbidden to eat Chodosh produce until the 17th Nissan (and outside of Eretz Yisrael, until the 18th Nissan).

### The Lenient View

The Bach (Yoreh Deah 493), however, noted the prevailing custom of his time, based on the opinion of Torah greats such as Moireinu Rav Shachna and the Maharshal, which was to be lenient with Chodosh of Chutz La'aretz.

Expressing his stand in an uncharacteristically emphatic manner, the Bach concludes, "Therefore, no Torah great is to render a stringent ruling (on this matter) contrary to the custom to be lenient. One who wishes to be stringent with themselves should be aware that he does so out of midas chassidus,



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but should not pasken so to others so as not to come to disputes. Only one who is accustomed to other aspects of prishus (abstention) and is renowned to be pious may rule stringently.”

The justification for the lenient approach towards consuming Chodosh was reiterated by Magen Avraham (Orach Chaim 489:17) and the Taz (Yoreh De'ah 293:4).

Likewise, the Aruch Hashulchan (Yoreh Deah 293) goes to great lengths to prove that in Chutz La'aretz, Chodosh is Rabbinically prohibited. Accordingly, writes the Aruch Hashulchan (Yoreh Deah 293:20-21), in places far away from Eretz Yisrael, the Rabbanan did not apply the prohibition of Chodosh at all and therefore, even the produce of a Jew in Northern countries is not included in the prohibition.

The words of the Tur are unclear as to whether he holds Chodosh of Chutz La'aretz and/or the produce of a non-Jew would be prohibited Min HaTorah or Miderabbanan.

It is also known that in many kehillas, the custom was to be lenient, including chassidishe kehillas, which maintained this tradition from the Baal Shem Tov. My late father-in-law (Mr Sinason zt"l of Berlin-Manchester) reported that in Berlin, there was a well-established tradition to be lenient with Chodosh.

(See also in Darkei Moshe on the Tur, who suggests perhaps the Halacha follows Tanna Kama's view and Chodosh does not apply outside of Eretz Yisrael.)

Remarkably, the custom across many kehillas was to be lenient, notwithstanding the clear ruling of the Tur and an explicit ruling of both the Shulchan Aruch and the Rema.



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## Today's prevalent custom

The widespread custom today of stringency in this regard stems from the Mishnah Berurah's rulings being widely accepted by Klal Yisrael. The Mishnah Berurah writes (Orach 489:45) that, as most Rishonim, as well as the Gra, hold Chodosh to be a Torah prohibition, equally applicable outside of Eretz Yisrael and to the produce of a non-Jew, a Ba'al Nefesh ought to conduct himself stringently in this matter.

So far, we have learned that any new produce of the five types of grain is, in the opinion of most Rishonim and the Mishnah Berurah, forbidden to be consumed before the 18th Nissan in Chutz La'aretz.

Broadly speaking, in the northern hemisphere, wheat ("winter wheat") is sown in the autumn and grows throughout the winter. By the time it is harvested in the late spring/early summer, the 16th Nissan has already passed, so it is permitted to eat.

In other climates, such as in the southern hemisphere, the planting of wheat ("summer wheat") may well take place only after Pesach; therefore, when it is harvested during the following twelve months, it will be prohibited to eat. In such a case, one would be required to wait until after the 16th (17th) Nissan the following year to be allowed to partake of it.

The seed must be planted before Yom Tov - How long before?

As stated above, the Omer only permits the produce that had taken root before 16th Nissan. How long does it take for a seed to take root?

The Rishonim write that it takes two weeks. However, the Shach (293:2) cites the Terumas Hadeshen, who holds that a shorter time of three days is sufficient.



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### **To summarise:**

Any one of the five types of grain which have been planted and have taken root before the 16th (17th) Nissan has the status of Yoshon when subsequently harvested.

Grain which is planted and grown only after the 16th (17th) Nissan and subsequently harvested, is Chodosh and therefore prohibited from being eaten until the following Pesach.

### **Sofek Chodosh**

Sofek Chodosh is a term applicable to grain about which one is uncertain whether it grew in the permitted timeframe. Did it start growing in sufficient time before the most recent Pesach, in which case it is allowed, or did it only grow since Pesach, in which case it is prohibited?

### **What is the Halacha of Sofek Chodosh?**

We have previously explained that some authorities maintain that Chodosh is forbidden outside of Eretz Yisroel, even today, Min HaTorah, whereas others (such as the Aruch Hashulchan) suggest that it is Miderabbanan.

The general principle is that for uncertainties concerning Torah laws, one takes a stringent approach, erring on the side of caution. Not so with DeRabbanan law, where, in many cases, the p'sak would be to be lenient.

Assuming that consuming Chodosh produce is a Torah prohibition even today, one must consider whether one would need to be concerned about Chodosh where there are:



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- (1) Two independent doubts; in Talmudic terms, a "S'fek Sfeika".
- (2) A majority factor that lowers the level of uncertainty.

The Tur (Yoreh De'ah 293), citing his father, the Rosh in responsa, writes that where one is faced with produce containing a doubt as to whether it took root in time for the 16th Nissan, one need not be concerned that it did not, as the majority of grain does indeed take root earlier.

(One may question whether the Rosh wrote this while still in Germany or later in life when he lived in Spain.)

This would suggest, initially, that a majority factor alone would permit doubtful grain. However, the Rosh was presumably not satisfied with the majority factor alone, because he adds that a doubt surrounding such grain is, in fact, a "S'fek Sfeika," meaning there are two unknowns here:

- (1) Is this produce from this year? Perhaps it is from last year.
- (2) Even if it is from the current year, perhaps it took root in time.

It is clear from the Tur that to adopt a lenient approach to this matter, one requires both a S'fek Sfeika and a majority of grain growing in the permitted timeframe.

This has practical ramifications, as many factories store vast quantities of wheat, barley, or maize in silos - tall, cylindrical structures made from steel or concrete.

If we follow the ruling of the Tur, one would need to verify that there is both a majority and a S'fek Sfeika applicable to this produce.

The Beis Yosef, commenting on this ruling of the Tur, cites the discussion



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of the Rishonim concerning beer. Where one knows for certain that the beer is produced from barley that took root after 16th Nissan, one must refrain from consuming it. Where there is a doubt, however, one does not prohibit all the barley. Citing the Mordechai in the name of Ravyah, the Beis Yosef explains that we rely on the majority of beer which is produced from barley that took root this year, but before the Omer. In addition, perhaps the barley grew last year. This leads to a S'fek Sfeika plus the fact that only a very small minority of barley that grew both this year and in the prohibited timeframe (after Pesach).

The Prisha (Yoreh Deah 293:5) writes that one may deduce from the words of the Beis Yosef that in a case of 50/50 Yoshon/Chodosh, plus a S'fek Sfeika would not suffice - one also needs a majority.

According to this, one needs both to permit the uncertain grain.

The Shulchan Aruch (Yoreh Deah 293:3) rules: "Grain that did not take root before the 16th of Nissan is forbidden until the next Omer comes."

The Rema comments on this:

And nevertheless, all doubted grain is permitted after Pesach because of a double doubt: Perhaps it comes from the previous year. And even if you'll say that it came from this year, nevertheless, perhaps it took root before the Omer. So far, the Rema requires a S'fek Sfeika to permit indeterminate grain.

The Rema continues: In types of grain that they certainly plant after Pesach, for example, in some countries where they plant spelt and barley after Pesach, then he should be stringent after the harvest, unless the gates of the country are not closed and most of the grain comes from another place where they plant before Pesach.



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oWe learn from the Rema that there are two situations in which one would permit the doubtful grain:

(1) If there is a S'fek Sfeika, this alone would suffice.

(2) If it is a situation where the local produce is definitely Chodosh produce, but there is a majority against that from outside the country, it is permitted.

The Shach (Yoreh Deah 293:3), however, writes - general produce which one does not know at all if it took root before the Omer, is what the Rema intends to be lenient about. However, if it is known that most of that species does not take root before the Omer or is sown after the Omer, even though there is a minority which [is planted in time], then it is prohibited. One could not apply a S'fek Sfeika to such circumstances.

In summary, there would appear to be a machlokes if one requires a S'fek Sfeika - double doubt, or if there simply being a majority permitted grain would suffice.

Is this actually a compounded doubt?

Rabbi Akiva Eiger, citing Responsa Mutzal Me'eish, raises a fascinating question. In what respect may this be considered a S'fek Sfeika? Surely, there is only one Sofek concerning this product! Is it from this year, before the recent Pesach, or is it last year's produce from before the recent Pesach?

Meaning, whether it is from this year or last year is of no significance; our only question is regarding the cutoff point of the most recent Pesach. Why, then, should it be considered a double uncertainty?

The Aruch Hashulchan (Yoreh Deah 293:16) provides an innovative response to this. They truly are two independent uncertainties, for the



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question of whether or not it is from this year will impact whether one may bring the Korban Omer from this produce, as we do not offer the Korban Omer from last year's produce.

Would the principle of S'fek Sfeika even apply here?

The Shach (Yoreh Deah 293:4) raises a further question based on the Talmudic principle that something that will eventually be permitted - a "Davar Sheyesh Lo Matirin" cannot have a S'fek Sfeika leniency applied to it? This produce will, in any case, be permitted after the forthcoming Pesach, so why should we permit it in case of doubt?

The Mordechai and Tosfos Anshei Shem already provide a solution to this, that since in the following year the principle of Chodosh will still apply, one cannot consider this grain as something which will be permitted.

However, this is difficult to understand, and it is a Mitzvah to explain this, for we are only considering whether to permit the current doubtful produce, not Chodosh overall.

The Shach references Siman 110 as an answer to his question. There, the Shach writes that specifically for a definitely prohibited item which is mixed with permitted food, one would apply the stringency of Davar Sheyesh Lo Matirin. Not so with a food item about which there is a doubt to begin with, such as produce, which may be Chodosh. This answer is already provided by the Ran (Beitzah 3b Dafei HaRif).

However, in the Dirshu edition of the Mishna Berura, they reference a Shulchan Aruch Harav (Kuntres Acharon 5), who proves from the Rema cited above, that even though Chodosh is in principle a Davar Sheyesh Lo Matirin, we would indeed follow the majority to be lenient.



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However, see the Pischei Teshuva (Yoreh De'ah 102, quoting the Sidduro shel Shabbos) that it is uncertain whether we can follow a majority factor in a case of Davar Sheyesh Lo Matirin.

A utensil that has absorbed Chodosh.

Usually, a pot that absorbs forbidden food is considered treif. Likewise, a pot that had hot milky or meaty food prepared may not be used for the opposite one. This is known as "Beliyos".

The question arises regarding the status of a pot in which Chodosh was cooked, whether one would need to be concerned regarding Beliyos. The Beis Lechem Yehuda permits it, writing in Siman 293, "One who is careful regarding Chodosh may eat from a cooked item prepared in a pot in which Chodosh has previously been cooked". The Mishnah Berurah (489:48) cites the opinion that forbids the beliyos of Chodosh, but adds that one would only be stringent with the beliyos of a utensil used in the last 24 hours.

We now draw on practical examples of produce that may or may not have a chashash Chodosh.

Whisky

Whisky is produced through distillation, a process that transforms fermented grain mash into a liquid with high alcohol content. This should give it the Halachic status of the juice of a prohibited product.

Accordingly, one may apply the leniency referenced in the Poskim of ze'ah b'alma (literally "merely sweat" i.e., of the fruit or grain). Since it is not the actual grain itself, the prohibition of Chodosh would not apply.



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Although the Darchei Teshuvah (Yoreh Deah 92:263) goes to great length to demonstrate that liquids do not have the same status as solids regarding applying the leniency of ze'ah b'alma, nonetheless, some dispute this position.

There are further considerations to permit whisky, including the opinion of the Beis Lechem Yehudah cited above.

Furthermore, the majority of such beverages are at the very least three years old and therefore not a chashash Chodosh.

## **MALT**

Liquid malt is extracted from roasted barley and is commonly used to add flavor to many cereals. The barley is soaked in water and then dried with hot air. It is ideal to clarify when the barley grew to ensure it is not Chodosh. However, if there is any doubt as to what year it is from, one can possibly form a S'fek Sfeika, as explained above.

## **BEER**

Beer (which was the topic of the Teshuvah HaRosh cited above) is produced from malted barley.

The Lechem Mishneh (authored by Rabbi Moshe Lifschitz, a talmid of the Shelah Hakadosh), in his commentary towards the end of Maseches Terumos, permits the consumption of beer for the reason that it is merely liquid which emerges from barley.

Many Gedolei Yisrael quote the Lechem Mishneh, some in approval, others to explain his intention to only be that it is permitted min haTorah, but still prohibited mid'rabbanan and still others to completely dispute this heter. The Shach (Yoreh Deah 293:6), after citing this leniency of the Lechem Mishneh, writes. "One must explain this (lenient) view, as from the Responsa of the Rosh and the Terumas Hadeshen, it is apparently prohibited."



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The Beis Hillel writes, "For 50 years we have already derived such a leniency from the words of Rashi in Chulin 120b, yet we have rejected this leniency. Therefore, a G-d-fearing Jew should be stringent; however, one who is naturally weak and has not got the strength to be stringent due to weakness of the heart, is permitted to drink it."

In view of this dispute, it appears that in a place of safek such as standard beer, which is not possible to clarify the source of the barley, one may rely on the Lechem Mishneh in case of need; however, one should investigate this before drinking the beer.

There are two beer factories under the supervision of Manchester Beis Din, with whom I sought to clarify this issue. At a minimum, on the level of mes'iach lefi tumo, there is no concern of Chodosh in their barley.

## GIN

The primary ingredients in gin usually include a base spirit (often grain alcohol) and various botanicals, with aromatic juniper berries being the most prominent.

Gin is known to be produced at a rapid pace and it can be prepared in less than seven weeks from when the seed is sown. Therefore, there is a genuine chashash Chodosh. The above-mentioned dispute regarding zei'ah b'alma will apply to Gin too and those who are stringent in this regard,

## OATS

The Beis Yosef concludes: "Most of our produce is sown and takes root before the Omer. However, [in a place where they] sow the oats after Pesach, nevertheless, since the gates of the country are not locked and they import from other places, where the majority of oats are planted before Pesach, it is permitted."



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There are two factories under our supervision that export oats globally. They are particular about storing them in a storehouse so they have a plentiful supply. The process of growth is as follows: The seed is sown early in the winter and takes root in the soil. The seed sits in the ground through the winter. Having endured the cold season, the plants are more robust. In the early spring, the growth stage begins. Subsequently, the grains fill and ripen, after which they are harvested. Therefore, there is no chashash Chodosh regarding English Oats.

As far as Scottish oats are concerned, some grow in the Scottish Borders (a council area in south-east Scotland, bordering England to the south). Although it is in Scotland, which ought to give rise to the possibility of a later planting and therefore a Chodosh concern, nonetheless, after investigations, it is clear that they are sown in the winter and there is no chashash. (Several authorities have not sufficiently clarified this matter, but this is the reality.)

However, further north in Scotland, in an area called "Banff" and similarly in Sweden, Norway, North Germany and Canada, due to a shortage of sunshine, the seeds tend to only be planted from February onwards. It is from these countries that the more expensive oats are imported. Such imports may be, at least on occasion, certainly Chodosh produce.

I enquired of the supermarkets, including Morrisons, Tesco and Sainsburys and (again, at least on the level of meis'iach lefi tumam) according to all of those supermarkets, Scottish Oats have not chashash at all.

Irish oats from Northern Ireland (commonly supplied to Lidl and Aldi) are also Chodosh-free for the next couple of years at least.

In practice, without being able to identify where in the UK oats have



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arrived from, according to what was previously explained, it is permitted, even according to the Tur.

This is because (a) the majority of UK oats do indeed take root before Pesach and (b) regarding the doubtful oats, even if they grew after Pesach, they may be from a previous year. Certainly, according to the Rema cited earlier, they are permitted.

On this, too, several authorities have taken an unnecessarily stringent stance.

As noted above, the oats that carry a true chashash Chodosh are typically more expensive than regular oats. For this reason, cereals containing oats have no chashash Chodosh as cereal manufacturers will use the cheapest oats possible.

#### GLUTEN-FREE OATS

Oats are generally gluten-free. However, due to a likelihood of "gluten contamination," those who are gluten-intolerant usually seek out specifically labeled "gluten-free oats". Gluten-free oats are only grown on fields that have not had wheat planted there for several years. Such oats are commonly grown in the northern countries referred to above. Therefore, a chashash Chodosh is likely applicable to gluten-free oats.

In North Scotland, gluten-free oats are grown in Banff. The Manchester Beis Din researched the 10 fields there that supply oats to the Mornflake Gluten Free brand and as far as oats packaged by that factory are concerned, there is no chashash Chodosh.

However, one must avoid purchasing gluten-free oats from a source without verification, as there is a genuine chashash that the oats are planted in fields too close to Pesach.



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## WHEAT

There is not usually a practical concern of Chodosh regarding wheat, unless it is known to be sourced in Canada, or from another very northern country, where there is close to no sunlight for much of the winter months, meaning it is only planted in the spring or summer.

However, even with UK-grown wheat, one must constantly verify this. This is because each type of seed they only used for seven or eight years, after which it weakens and a new type is introduced. The process of growth may not be equal for different varieties of wheat and the reality can change. (The same is true of barley.)

## VODKA

The Manchester Beis Din investigated vodka, much of which is made from wheat. If the grain is sourced from a northern country such as North Germany, Canada, or Finland, it is possible that it is Chodosh. If it is not possible to ascertain, perhaps one can rely on the majority factor and S'fek Sfeika as previously explained. (In our day, there are new types of vodka with other kashrus concerns, a separate topic.)

## BARLEY

There are several types of barley. Some barley is sown in the winter, and some only towards the end of the winter, the latter known as Spring Barley. There is one very large factory under the supervision of the Manchester Beis Din. We tried to ascertain when the barley is planted; however, due to its sheer size, it was very difficult to clarify this matter (see above regarding beer).

What appears to be the correct estimate is that barley intended for human and animal consumption is preferred to be sown in the winter (though this is not guaranteed). This is because it adds to the protein content of the grain. On the other hand, for barley intended for whisky production, there is a preference for it to be planted at the end of winter.



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This would lend to a chashash Chodosh, however, see above regarding whisky itself.

### **RYE/SPELT**

Rye is only planted in the winter. Cragg's Spelt is known to be sown in the winter and therefore certainly Yoshon.

### **STABILISER**

Although regarding stabilisers, there is a chashash that they are made from items containing Chodosh, nonetheless, it is possible to be lenient with this, due to bitul b'shishim - nullification when present in a mixture at a ratio of 1:60 (one part of the questionable ingredient to 60 parts of permitted food). However, this will depend on whether Chodosh will have the stringency of a "Davar Sheyesh Lo Matirin" as previously discussed.