

I. Can a kashrut organization rely on the rules of *bittul*, *safek*, *eid echad*?

1. שולחן ערוך יורה דעה הלכות תערובות סימן צט סעיף ה  
אין מבטלין איסור לכתחלה. ואפילו נפל לתוך היתר שאין בו שיעור לבטלו, אין מוסיפין עליו היתר כדי לבטלו. עבר וביטלו, או שריבה עליו, אם בשוגג, מותר. ואם במזיד, אסור למבטל עצמו, אם הוא שלו, וכן למי שנתבטל בשבילו.

We may not intentionally nullify a prohibited food item. Even in a case where the prohibited item falls into a mix where there is not quite enough to nullify it - we may not add additional permitted food in order to nullify it. If someone violated this and did, in fact, nullify it, or added to the permitted material: if they did so unintentionally, the food is now permitted. But if they did so intentionally, the food is prohibited to themselves, and to those for whom they may have nullified it, but is permitted to others. (*trans. Sefaria*)

2. ט"ז יורה דעה סימן צט ס"ק י (בשם רש"ל)  
דהיינו דוקא שידע זה שנתבטל עבורו וניחא ליה אפילו לא צוה אותו לבטלו אבל אם לא ידע ממנו שרי ליה דהרי הוא כשוגג

This is only when the one it was nullified for knew and approved, even if he did not tell him to nullify it. If he did not know, it is permitted for him as it is considered accidental.

3. רבי עקיבא איגר יורה דעה סימן צט סעיף ה  
ואם ביטל על הסתם למי שירצה לקנות הרי הוא כמו שנעשה בשבילם ביחוד ואסוי לכולם תשוי הריב"ש סי' תצ"ח ונשמע מזה דאף מי שנתבטל עבורו לא ידע מזה ודלא כט"ז (סק"י):

If he nullified it generally, for anyone who wanted to buy it, it is as if he did this for them specifically and it is forbidden for everyone (Rivash 498). This implies that this is true even if the one it was nullified for did not know, unlike Taz.

4. שו"ת אגרות משה יורה דעה חלק א סימן סב  
כיון שרוב היי"ש נמכר לעכו"ם נחשב במה שנעשה למכור כנעשה בשביל הרוב ... שאין להחשיב שנעשה בשביל ישראל המעוט ...

... as most whiskey is sold to non-Jews, it is as if it is meant to be sold for the majority...and it should not be considered made for the minority of Jews...

5. שו"ת אגרות משה יורה דעה חלק ב סימן מא  
מ"מ מכוער הדבר להשיג בלא הגעלה.

Still, it is disgusting to give a *hashgacha* without boiling it.

6. **Rabbi Feivel Cohen:** if a company wants a *hechsher*, it must listen to the *hashgach*. Hence, he would be telling them to nullify if he permitted it. Based on R. Moshe, R. Cohen, and the like, *kashrut* agencies do not rely on *bittul*.

II. What if it does not have a *hechsher*?

7. "Products that are kosher only without a heksher" by Rabbi Aryeh Klapper

Many years ago Garelick Farms decided to market its milk all-natural, which meant that it needed a natural source of Vitamin D – and it chose shark oil. This had at least two consequences: Hood Dairy began running an ad with the tagline "There's something fishy about Garelick Farms milk", and the KVH (this was long before I became involved) pulled its hashgachah. Garelick Farms sued Hood, arguing that the fish was imperceptible, and won – the (non-Jewish) judge tasted the milk and agreed there was no fish taste. I therefore ruled that the milk was kosher *because* the KVH had pulled its hashgachah.

The judge's taste test demonstrated that the shark oil was nullified (certainly the percentage was below 1/60 anyway), so the only remaining issue was deliberate nullification (*bittul lekhatilah*), which makes a product prohibited to the person or person for whose benefit the nullification occurred.

R. Akiva Eiger (YD 99:5) states that a nullification done with no specific end-user in mind, but rather for "whomever will wish to buy", is considered to be done for the benefit of *all* eventual purchasers. One understanding of this position is that anything consciously produced with observant Jews in mind has that issue, even if the observant Jews are a trivial percentage of the intended audience. However, by giving up its kosher certification, Garelick Farms demonstrated that it did not have any concern for observant Jews, and therefore the milk was kosher *because* it had lost its heksher. Paradoxically, had the KVH accepted this argument and sought to restore the heksher, the milk would have become treif. My contrarian ambition was to develop a list of products that were kosher only when unhekshered, as many industrial koshering procedures ultimately depend on some form of nullification. (Note however that this broad interpretation of the prohibition is not obvious either in R. Akiva Eiger or in his cited source, Responsa Rivash 498, and is not followed *consistently* in practice today; see for example Igrot Moshe YD 1:62-63.)

I thought this was a compelling but creative psak, and to make sure I really believed it, I went out and bought a quart of milk and drank a glass before paskening that anyone else could do so. But Dov Weinstein shows me that in the current issue of Tradition my teacher Rabbi J. David Bleich makes the same argument. Here is his quote.

"Paradoxically, according to R. Akiva Eger, a product that otherwise would be permitted may become forbidden by virtue of the fact that it is certified as kosher. Products produced for the mass market are not produced for the benefit of Jews. Accordingly, if some small quantity of a non-kosher ingredient is present, but nullified, the product is permissible. The same product, if produced for a Jew, according to the opinion of R. Akiva Eger, even for an unspecified, anonymous Jew, is prohibited. Kosher certification is sought by a producer precisely because he wishes to market his product to the Jewish consumer. Targeting the Jewish consumer as a potential customer creates a situation in which nullification is carried out expressly for the benefit of a Jew and hence, according to R. Akiva Eger, a Jew may not benefit from such nullification. Accordingly, stem-cell burgers might be produced that are indeed kosher but they would become prohibited if labeled as such!"

### III. Meta Arguments:

#### 8. דובב מישרים חלק ג סימן מט על פי דברי הישועות יעקב יו"ד סי' ט"ו

תקנה שעושים לתמידיות יש לחוש גם למיעוטי דמיעוטי. והוא כעין דברי הרמב"ן... דבתקנה חוששין גם למיעוט, והוא כסברא הנ"ל משום דברוב ימים יזדמן גם המיעוט.

A decree that is meant to be constant must worry about even a small minority. It is like Ramban [as to why we make a decree that weddings should happen on Wednesday so accusations as to non-virginity can be brought to court, even though such cases are rare] – that by decrees we worry about small minorities. This is because with so much time, the minority case will happen.

#### 9. שו"ת מנחת אשר (חלק א:לז-לח, חלק מ:קשור) (<http://www.torahbase.org/kashrus>)

ומ"מ ממה שהתוס' והר"ן ושאר ראשונים לא תירצו לחלק בין יחיד לרבים נראה דלא סברו כסברת הישועת יעקב... אמנם אין זה אלא במה דאפשר ובמה דלא אפשר סמכין ארובא בכל דבר... ועוד דנתי שם אם הלכה זו דחוששין למיעוט המצוי מה"ת היא או מדרבנן והסקתי דהוי מדרבנן...

Nevertheless, since Tosafot and Ran and other Rishonim don't distinguish between a individual or a community, it seems they did not agree with the logic of Yeshuat Yaakov... And, this would only be when it was possible, but if it is not possible, we rely on the majority for everything.... I have also discussed whether worrying about the minority is biblical or rabbinic, and concluded it is rabbinic...

ומ"מ הנח להם לישראל אם לא נביאים הם בני נביאים הם (פסחים ס"ו ע"א) ובצדק נהגו ארגוני הכשרות לחקור ולדרוש ולברר כל דבר עד מקום שידנו מגעת כדי להיזהר ממאכ"א שמלבד חומרת עונם מטמטמין הם לבו של אדם... ברור ופשוט דבעניני הכשרות מוטל על בתי הדין וגדולי הזמן לעמוד על המשמר ולתקן תקנות לפי צורך השעה, וכבר כתב הטור בשם הרא"ש ביו"ד סימן י"ח דאף דע"א נאמן באיסורין וכל אחד נאמן על השחיטה, כבר נהגו בכל גליות ישראל שלא להאמין לקצבים ממנים אנשים ידועים על השחיטה ועל הבדיקה ורק להם נתנו נאמנות. וכשם שבזמניהם נוכחו לדעת שאין לסמוך על הקצבים כך נוכחו בזמנינו לדעת דגם בתחומים אחרים כל שיש פיתוי כספי יש לחשוש למכשול ואין לסמוך על הנוגע בדבר נגיעת ממון.

Nevertheless, leave the Jews to their ways. If they are not prophets, they are the children of prophets, and it is correct for the *Kashrut* organizations to investigate, search, and clarify everything as much as they can to avoid forbidden foods, which are not only forbidden, but clog up the heart of man....

It is clear that with regards to Kashrut, the courts and leaders of the generation must stand guard, set up decrees that are needed for the time. The Tur writes in the name of the Rosh that even though one witnesses is believed in ritual slaughter, the custom in the Diaspora is to not believe butchers, but rather to appoint known people to supervise, and only they are believed. As in their times, they knew that we can't rely on butchers, now we know we can't rely on others when there is the temptation of money, as there is concern that they will stumble. We cannot rely on one who has a vested monetary interest.

- The cases of *Niddah*, *Kashrut*, and *Chametz* – where we check and don't rely on *chazakah* are unique, not representative.
- In some cases we do rely on *chazakot* for communal purposes. Ex. we assume a 13-year-old boy has reached physical maturity and allow him to act as an adult for many purposes.
- Hence, his argument above, that it depends on how onerous it is to check.

### 10. Halakhah in America: The History of City Eruvin, 1894-1962 by Adam Mintz

In the last section of his essay, Rabbi Price addresses those *mahmirim*, the stringent ones, who tried to gather all the stringencies and declare the Toronto *eruv* invalid. He responds to their claim by asserting that the tradition throughout the ages, from the talmudic period to the present day, is to be lenient in the laws of *eruv*. He cites a proof from the *Gemara* in which the *Gemara* says that if the rabbis were strict and did not allow the creation of an *eruvei hazerot* on *Yom Tov*, there would be great harm since people would forget and carry on the Sabbath. Rabbi Price explains that this *Gemara* explains that being strict regarding *eruv* leads people to sin. He supports the notion that the tradition has always been to be lenient regarding *eruv* with the example of *eruv* in big cities... Although Rabbi Price emphasizes the tradition of being lenient regarding *eruv*, he describes his Toronto *eruv* without any reference to leniencies.