

Buying Non-Kosher Food for a Non-Jew

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QUESTION: I have a small business and occasionally order lunch for my non-Jewish employees. I order non-kosher food for them, but I was told that it is not permitted to purchase non-kosher food for non-Jews. Is that true? If so, does this extend to non-business oriented situations? For example, when a homeless person asks me for money, I will offer to buy him food. If he says yes, I will walk with him to the nearest non-kosher restaurant and purchase something for him. Is this also not permitted?

ANSWER: At the outset it would seem that this should not be a problem because such food may be eaten by the non-Jew himself. The Gemara states that a Jew is not allowed to give a non-Jew *eiver min ha'chai*, a limb torn from a living animal, for the purposes of eating it (Avoda Zara 6b). The seven Noahide laws prohibit the eating of such meat, and a Jew may not assist or enable a non-Jew to transgress a Noahide prohibition. The mitzvah of *lifnei iver lo titein michshol*, not to put a stumbling block before the blind, obligates us to not cause others – whether Jews or non-Jews – to sin.¹ It would seem clear from this Gemara that a Jew would be permitted to give food to a non-Jew whether it is kosher or not.

In fact, this is explicit in a verse in the Torah. “You shall not eat of anything that dies of itself: you shall give it unto the stranger that is in your gates, that he may eat it; or you may sell it to a foreigner...” (Devarim 14:21). Non-kosher meat is to be given or sold to a non-Jew, which is certainly preferable to throwing it away. The Talmud states in many places that food that one is forbidden to derive any benefit from must be buried or burned, but food that is forbidden to be eaten is sold or given to non-Jews (see, for example, Mishna Hullin 7:2). The one exception to this rule is if another Jew might buy it from that non-Jew assuming that it is kosher since he or she saw it being sold by a Jew (see Hullin 94a-b; Tosafot 94b, s.v. *Abayee*; Rosh Hullin 7:18; Rambam Forbidden Foods 8:17-18). This is not relevant in this case.

One may not sell to non-Jews food that is *assur bi'hana'ah*, food from which one is forbidden to derive benefit. The most common category of such food nowadays, other than chametz on Pesach, is Biblical *basar bi'chalav*, beef from a kosher animal that has been cooked together with milk. This would not apply to Rabbinic forms of *basar bi'chalav*, such as chicken cooked with milk, or meat and milk which have been mixed together but have not been cooked together (see Rema YD 87:1). One could thus not sell or otherwise derive benefit from cheeseburgers and pepperoni pizza, but one could derive benefit from chicken *cordon bleu*, although the latter uses both pork, chicken and cheese. There is a debate in the *poskim* whether one could derive benefit from beef that has been cooked with milk when the beef has not be slaughtered properly (see Dagul Mei'rvava YD 87:3 and Pitchei Teshuva YD 87, no. 6), which is the case with all commercially available meat. There is also a debate as to whether one is forbidden to derive benefit when the beef and milk (or cheese) have been roasted or fried together but not cooked together (see Be'eir Heitev YD 87:1; Gra YD 87:1; Rabbi Akiva Eiger, YD 87:1; Pitchei Teshuva YD 87, no. 3; and Darkhei Teshuva YD 87, no. 13). The operating principle is that the prohibition against benefit does apply in such cases, and thus a person should not buy pepperoni pizza or cheeseburgers or the like for his employees. Likewise, one should not buy them for a homeless person, as we rule that *basar bi'chalav* that is forbidden in benefit should be destroyed and not even given away (see Pitchei

¹ This verse also prohibits us to mislead others or knowingly give them bad advice, and should also apply whether one is advising Jews or non-Jews, see Rambam Laws of Murder 12:14, Sefer HaChinukh 232, and Minchat Chinukh *ad. loc.*, note 1.

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Teshuva 87, no. 2; Taz YD 94, no. 4 and Pitchei Teshuva 94, no. 5). For the purposes of our teshuva, we will be focusing on non-kosher food that is not Biblical *basar bi'chalav*.

The one place that the Talmud restricts selling standard non-kosher food is in the instance of doing commerce with it. The *mishna* in Shviit (7:3), quoted in Pesachim (23a), states: שאין עושים סחורה בפירות שביעית... ולא בנבלות... ולא ברמשים צדי חיה עופות ודגים שנודמנו להם מיני טמאין, “for one may not do commerce with the fruits of the Shmita year... nor with animal carcasses nor with *treifot* nor with rodents and insects.” This restriction only applies to one who sets out to do commerce with non-kosher foods, as the next *mishna* clarifies: מותרים למכרן, “Trappers of wild animals, birds and fish who by chance trapped non-kosher species, are allowed to sell them” (Mishna Shviit 7:4). Many *Rishonim* rule that this is a Biblical prohibition based on the verse ושקץ יהיו לכם (Vayikra 11:11), which is interpreted to mean that we may not overly involve ourselves with such foods (see Sifra Shmini parsha 3, no. 11; Tosafot Pesachim 23a, s.v. *Amar*, Rosh Baba Kamma 7:13, and Taz YD 117:1). Others understand this to be a Rabbinic prohibition made to safeguard against accidental eating of these foods (Teshuvot HaRashba 3:223).² This debate impacts both the weight and scope of this prohibition (see Arukh HaShulchan 117:5).

In line with the ruling of the *mishna*, Shulchan Arukh rules that one cannot make his business in non-kosher food items, but is allowed to sell them if he has them by chance (YD 117:1). He further limits this restriction to Biblically non-kosher food. One would be permitted to do commerce with Rabbinically non-kosher food such as *stam yaynam* or *bishul akum* (SA YD 117:1). If one purchased a truckload of cheese believed to be kosher with the intent of reselling it at a profit and then found out that it did not have a *hekhsher*, she may sell it to non-Jews, since this falls into the category of food that came by chance. She would even have been permitted to purchase the cheese knowing it was not *hekhshered* if it had not been made with animal-based rennet, as such cheese is not kosher only on a Rabbinic level.

It is worth noting that there is a wealth of responsa regarding this restriction (see Darkhei Teshuva YD 117), which reflects the seriousness that it was treated throughout the centuries as well as the challenges that it presented to people’s attempt to be successful in business or even to just make a living. These challenges led some *poskim* to define more precisely the exact scope of this restriction.³ For example, a number of *poskim* argue that the prohibition does not apply when one’s primary business is kosher food but one wishes to also sell non-kosher to bring non-Jewish customers in the door (see Arukh HaShulchan 117:26-27). *Poskim* also debate whether this restriction applies when a Jew does not personally handle or even take possession of the non-kosher food, or when the food is sealed in a package, common occurrences in this age of e-commerce (see Teshuvot Devar Shmuel 144 and Teshuvot Zera Emet YD 94).

In our case, it appears that there should be no problem buying food for a homeless person. This is a direct gift and can in no ways be a form of commerce. However, Beit Yosef (YD 117, s.v. *Katav haRambam*) quotes a ruling of HaGahot Maymoniot that a person may not buy non-kosher even to give to a non-Jew. Beit Yosef’s explanation of this is that one gives a gift because he has once received something— tangible or intangible— from that person and giving a gift is a type of “commerce.” This is a difficult position to understand; even in such circumstances, why define this act as “commerce,” an activity whose entire goal is buying and selling to

² Rambam’s position on this is not clear, see Mishne LeMelekh on Rambam Forbidden Foods 8:18.

³ Interestingly, when it came to doing commerce with ritual objects of other faiths - a practice that was widespread in the Middle Ages - far more allowances were found, see Rema, Shulchan Arukh YD 151:1. This is particularly surprising given that commerce with such items could be seen as a transgression of the Biblical prohibition of *lifnei iver*.

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achieve a profit? Significantly, Beit Yosef does not rule this way in the Shulkhan Arukh and never states that one may not purchase food to give as a gift to a non-Jew. Buying food for a homeless person is not a problem.

Purchasing food for one's employees should logically not be a problem either. As stated, the restriction applies only to making a profit by buying and selling non-kosher food. When one buys food for his workers, even if it is at some level a form of employee compensation, it is nevertheless not being sold at a profit.

Rema, however, rules otherwise: ואפילו לקנותו להאכילו לפועליו עובדי כוכבים אסור, "And it is even forbidden to purchase food to feed it to one's non-Jewish workers" (SA YD 117:1). Rema seems to be of the opinion that food purchased in any business context constitutes a form of "commerce." Almost all later *poskim* reject the ruling of the Rema. Shakh (YD 117, no. 3) notes that "many of our people intentionally purchase *treifot* with the goal of feeding them to their workers, and it is obvious to them that this is permitted." Shakh goes on to show that there is almost no textual support for Rema's position. When one purchases food to feed his workers, he does so at cost and does not intend to profit from this exchange. It would be different if he sold the food to his workers at a profit. Later *poskim* agree with Shakh that buying food for one's workers is common practice and fully permitted (see Darkhei Teshuva, YD 117, no. 27). One *posek* does attempt to defend Rema's position, and argues that since non-kosher food is less expensive than kosher food, buying non-kosher food is a form of commerce since one benefits financially from having chosen to purchase the non-kosher food (Yad Yitzchak 1:23). In response, Arukh HaShulkhan writes: "אינו מחוייב לאבד מעותיו ואין האיסור אלא להשתכר ולא להפסיד ע"ז, "a person is not obligated to waste his money. The prohibition is to make a profit, not that one must lose money as a result [of not purchasing such foods]." Such transactions, then, are fully permitted and do not constitute "commerce."

Is purchasing non-kosher food a problem of *marit ayin* – an act that appears to be a transgression - since it will appear as if the person is buying the food for him or herself? The answer is no. As shown above, it has been common practice for Jews to purchase non-kosher food for their non-Jewish employees, and the concern of *marit ayin* was never raised in regards to the act of purchasing such food. As a rule, *marit ayin* is highly contextual and in cases where people will not readily assume that one is transgressing *halakha*, there is no problem (see Avoda Zara 12a, Rosh HaShana 24b and Rema Shulkhan Arukh YD 150:3). In the case of the homeless person there is even less of a concern, since the context is visible and obvious to all. There is also a serious debate whether *marit ayin* applies to cases where it looks like one is going to do a transgression, such as walking into a non-kosher restaurant, but which does not look like the act of transgression *per se* (see Rashba, Avoda Zara 12a, s.v. *Mipnei* who understands this to be a debate between Rashi and Rabbeinu Yonah). This is the topic for another *teshuva*.

IN CONCLUSION: One may not buy Biblical *basar bi'chalav* – beef and milk cooked together - for one's employees or to give to a homeless person. There is no problem purchasing non-kosher food for a homeless person or for one's employees. Such activity does not constitute commerce with non-kosher food and it is not a case of *marit ayin*.