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In Whom Do We Trust? *Examining Conflicts of Interest in Food Certification*

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The Fundamental Question

Should someone be stigmatized because he has a conflict of interest? Apparently, the mainstream media feels this way and ethics review boards often highlight this as a red flag. People are not the only ones who are challenged by this issue. Organizations whose trust and authority hinge on an image of integrity must deal with perceived conflicts of interest, both on the corporate level and with regard to individual employees.

Food certification agencies, whether they oversee kosher, organic, non-GMO, gluten-free or a host of other popular standards¹ must all face the inevitable question: How do they ensure that compliance judgements are based on whether the client is meeting its regulatory requirements, without regard to financial considerations?

Government bodies, such as USDA, FDA and health departments largely avoid this question - on the corporate level - because they are funded independently of the businesses they certify.² Individual inspectors are screened to keep them from evaluating businesses with whom they have an outside relationship. However, governments are neither equipped nor qualified to service niche certification markets. Therefore, the job of certification falls to private sector organizations which must charge fees to remain viable. Given this arrangement, when choosing a certification to rely upon, consumers may wonder how compliance monitors maintain impartiality. How are they shielded from the monetary link between the certifier and certified company?

Deal-Breaker? Not Necessarily

If one adopts a perspective that all conflicts of interest are scandalous, then ultimately this question may remain an unresolved ethical conundrum. Yet, if one is open to a discussion on how certifying agencies can design and maintain systems to protect the integrity of the certification process, the result will lead to increased consumer confidence, lingering imperfections notwithstanding.

Contrary to assertions commonly espoused by skeptics and opponents, the existence of a conflict of interest is not necessarily a deal-breaker. In most cases, once the conflict is revealed the situation can be remedied by increasing transparency in other areas. A conflict of interest becomes an absolute disqualification only when public trust completely erodes.

A present example where conflicts of interest are tolerated, at least officially, is in the newly famous Title 18 Section 208 of

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1. Including: food safety, fair trade, and ethical sourcing.

2. Although, government agencies encounter a different set of conflicts stemming from special interest groups, political expediencies, and bureaucratic roadblocks.

EATING CHOCOLATE WITH A CLEAR "CONCH"-ENCE

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Chocolate, the king of confections, continues to grow in popularity. Chocolate is surely nature's sweetest combination of fruit and vegetable, sugar and cocoa beans. Kosher chocolate is a delicious study of technology and *halachah*. Let's explore the intoxicating world of chocolate.

Over the years, chocolate manufacturing has continued to grow, both domestically and internationally. Chocolate connoisseurship has reached new heights. Believe it or not, the most expensive chocolate today costs in excess of \$90 a pound. The chocoholic delights at the sight of Belgian truffles, French bonbons, Swiss chocolate and other chocolate bars that abound. Most major chocolate manufacturers in the U.S. have reliable kosher certification. Some specialty chocolate manufacturers are kosher certified, as well. *Cholov Yisroel* chocolate in particular has recently seen unprecedented growth. Today, a *Cholov Yisroel* consumer can feast on a *Cholov Yisroel* chocolate equivalent without having to compromise on taste or quality.

Chocolate raw ingredients make a long trek before being transformed into a familiar chocolate bar or chocolate covered cherry. The prime ingredient in chocolate is the cacao bean, which grows in many regions of the world including Africa, Central America, and Southeast Asia. Two main varieties of trees produce cacao beans: the Forastero tree in West Africa which produces commodity quality cacao beans, and the Criollo tree which is found in Venezuela and other South American countries and produces premium quality cacao beans.

The first stage of cacao bean processing is harvesting, which may be done by machete - a slow and tedious process - or by automatic shakers that release the cacao pods. Next, the pods are cracked open and the cacao beans are removed. Note that cacao beans, when processed for commercial use, will become cocoa beans. Cocoa beans, which are covered with a sweet white pulp or mucilage, are then fermented and dried. Once dried, the cocoa beans are packed in jute sacks and shipped overseas to the chocolate manufacturers for further processing.

The cocoa bean is one of *Hashem's* most fascinating creations. In order for its potential to be fully unlocked, it requires processing to convert the quality products contained within. The raw cocoa beans are cleaned and roasted in giant roasters, much like a coffee bean, to unlock the nib's delicious cocoa flavors. The cocoa bean is then ground into a paste known as cocoa liquor, the primary ingredient of chocolate.



Sometimes cocoa butter is listed as an ingredient. What is cocoa butter? The cocoa bean has over 50% natural fat. When squeezed under enormous pressure

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In Whom Do We Trust?

Examining Conflicts of Interest in Food Certification



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the United States Code. This exempts the President and Vice-President from the restrictions imposed on government officials whose financial holdings can profit due to their position in public office. Apparently, the law assumes that if the electorate chose them to lead the executive branch they are considered sufficiently trustworthy to make decisions for the benefit of the nation and not their own pockets. (The Jewish stance is *leiv m'lachim b'yad HaShem!*)

In *halachah*, a conflict of interest is also not necessarily taboo. *Rambam* (*Ma'achalos Asurus* 8:7) rules that a butcher, without any oversight, is believed when he says he removed forbidden fats (*cheilev*) and the sciatic nerve (*gid hanasheh*) from meat that is sold by weight, even though doing so reduces his profits. Nevertheless, this trust is not automatic. The *halachah* includes a provision that the butcher must be a "person of upstanding moral character and *muchzak b'kashrus* - possessing an impeccable reputation in matters of kosher food production."³ Elsewhere (*Shechitah* 10:14), *Rambam* writes that an established butcher of good repute, proficient in the laws of kosher meat production, can be trusted even when his primary source of livelihood comes from selling kosher meat. We don't assume that financial gain will sway his *kashrus* determinations. In fact, some butcher shops in bygone communities in Europe and America were self-certified and did not carry outside supervision.

In his *Pirush HaMishnayos* (*Bechoros* 4:5), *Rambam* appears to take an opposing stance. He censures communities where the *shochtim* and *bodkim* (those who check for defects that would render the animal a *t'reifah*) are paid only when their work results in kosher meat, but not when the meat is deemed non-kosher. Even when the individual is known to be righteous, we are concerned that the opportunity to make money may sway him to improperly designate meat as kosher. *Halachah* mandates avoiding *ch'shad*, engaging in activity that onlookers may misconstrue as dishonest.

Accordingly, *Shulchan Aruch* (*Yoreh Dei'ah* 18:18) rules that *shochtim* be paid for their services regardless of the results. Apparently, one is not trusted to make a proper judgement when his livelihood is at stake. Eventually, this led to the widespread practice of appointing fixed wage community *shochtim* who function separately from the butchers. Nevertheless, later *Poskim* acknowledge a few instances in meat processing where the conflict of interest was never fully resolved and the food was still accepted as kosher.

The *Rambam's* viewpoint is reconcilable. *Aruch HaShulchan* (18:43) writes that fundamentally (*mei'ikar hadin*) a knowledgeable, upstanding person is considered trustworthy and, unless otherwise

demonstrated, the presumption is that he will not attempt to present non-kosher food as kosher for the sake of financial gain. Even so, communities throughout the centuries have enacted reasonable precautions to safeguard against the temptation of fraud. Many of these enactments were subsequently enshrined in *halachah*.

Certified Advantage

Exploiting *halachic* confidence to operate without outside certification comes with

significant responsibility and risk. After establishing a person's innate trustworthiness,⁴ *Rambam* proceeds to describe how if a butcher is found to be a charlatan a steep penalty is levied for even a first-time offense. The proprietor loses all kosher credibility and is forced to close his business. To restore his previous reputation, remorse and penance are not enough. He must move to a different location and exhibit unsolicited displays of honesty before regaining his former status.⁵

An advantage of retaining the services of a certification agency is that in the event a mistake is made, instead of being forced to leave town as the *Rambam* prescribes, the certifier can investigate the matter. If it's determined that the proprietor acted in good faith, they can help formulate a plan to restore consumer trust. Another benefit to obtaining kosher certification is that even a business that is not staffed by people with kosher qualifications becomes eligible to produce kosher certified foods, provided it meets the certification requirements.

Even when there is no wrongdoing, a trust-based model doesn't work in communities with large populations where the people don't know each other very well on a personal level. Especially in today's business climate, where products must reach a broad market in order to be profitable, it is impossible for customers to verify the good reputation and competency of every food provider. Therefore, credible kosher certification plays a critical role in the food industry.

In recent years, the secular world has joined the kosher bandwagon with a proliferation of other forms of outside food certification, comprising a multi-billion-dollar industry. Sales depend on good distribution abilities, and major food distributors and supermarket chains now carry only products from manufacturers with independently audited food safety and quality credentials.

I'll Eat In Your House, Not In Your Store

Kosher certification fills a need for small-scale cottage industry businesses, as well. Many consumers innately recognize that commercially produced food should be certified, even when produced by friends or acquaintances, as the following anecdote illustrates:

A wealthy Eastern European Jewish businessman regularly visited his *rebbeh*, always bringing a gift of goose fat that he personally rendered. Years passed, the businessman's fortunes declined, and he was left without a source of income. He approached his *rebbeh* for advice, who counseled him to transform his hobby of rendering goose fat into a commercial operation. Soon enough, the fellow was back on his feet with a new thriving business. During his next trip to the *rebbeh*, with a generous amount of goose fat in hand, he was astounded when instead of graciously accepting the gift the *rebbeh* asked him if his product had a *hashgochah*. For so many years the *rebbeh* accepted the gift based on personal trust alone! What had changed? The *rebbeh* gently explained to his *chossid* that the difference was quite simple. When rendering goose fat was merely a personal activity, his *ne'amanus* (*halachic* trustworthiness) was sufficient. However, now that it became a for-profit endeavor it needed a *hechsher!*

A request for certification is not a disparagement of one's honesty. Au contraire, certification is offered only to businesses whose management is appraised as honest! The truism "locks are on doors to keep honest people honest" can be adapted to "food producers are certified to keep kosher food kosher."⁶

Dealing with the Question

Once the necessity for the institution of a kosher certification agency has been established, let's return to our original question: What

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3. אין לוקחין בשר מכל טבח אלא אם היה אדם כשר ומוחזק בכשרות.

4. זוקת כשרות.

5. לשון הרמב"ם: "ו אם יצאת טריפה מתחת ידו ומעבירין אותו ואינו חוזר לכשרותו עד שילך למקום שאין מכירים אותו וחוזר אבידה בדבר חשוב או יציא טריפה לעצמו בדבר חשוב."

6. The experience of kosher certification agencies is that certification works only for businesses with a culture of rectitude. Once it's demonstrated that the system has been compromised with malicious intent, no amount of oversight is effective.





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in a hydraulic press, the cocoa bean exudes fat that is yellow in color, similar to rich dairy butter; hence, the name cocoa butter. Unlike dairy butter, however, cocoa butter is thicker, blander, and hardens at room temperature. What remains behind in this extraction process is a massive solid cake which, when ground, will be known as – you guessed it – cocoa powder. Ironically, for the chocolate manufacturer the main commodity product is the cocoa butter and the by-product is the cocoa powder.

Cocoa liquor that is produced from premium cocoa beans is rich enough to form chocolate. Cocoa liquor made from standard cocoa beans lacks richness and, therefore, cannot be made into chocolate without the addition of cocoa butter.

THE CHOCOLATE-MAKING PROCESS

Sugar, chocolate liquor, cocoa butter, milk powder, flavors and lecithin as an emulsifier are the primary ingredients of chocolate. When these products are blended together, as we will soon see, they meld to form liquid chocolate. Interestingly, liquid chocolate is over 50% sugar. The percentages of the other ingredients vary according to the type of chocolate being manufactured.

There are three major types of liquid chocolate: dark chocolate, milk chocolate, and white chocolate. Dark chocolate is a combination of cocoa liquor, cocoa butter, sugar and flavorings such as vanilla or vanillin. Sometimes a dairy ingredient, such as traced butter oil (not to be confused with cocoa butter) is added as a flavor ingredient. Milk chocolate contains powdered milk and milk crumb, a combination of milk powder and sugar that is added to the “dark chocolate” mix. White chocolate is not a conventional chocolate as it contains no cocoa liquor or cocoa powder, only cocoa butter. White chocolate is also known as a compound chocolate because additional vegetable fats are added to the ingredient base.

All varieties of chocolate undergo three basic steps of chocolate production: a) kneading the ingredients into a paste, b) grinding the paste into semi-granular particles, and c) blending the ingredients in a conch. Solid chocolate requires tempering as a final step to finish the product.

THE QUALITY IN THE CONCHING

What is Conching?

As any good cook or baker will tell you, there are certain tricks of the trade that set a “great” product apart from a “good” or “ho-hum” product. The trick of the chocolate trade is quality ingredients blended in a blending machine called a conch. The chocolate blending process is known as conching. The conch is a large rotary blender that blends the chocolaty mass for hours on end at a temperature of approximately 140°F. The chocolate may be conched for over 12 hours in order to fully homogenize the ingredients. Lecithin, an emulsifier, is added to help blend the ingredients. Conching releases any bitter aromas and flavors in the liquified chocolate and allows all the remaining delicious chocolate flavors and aromas to mature fully and develop into a symphony of chocolaty taste.

If the chocolate is being sold as liquid chocolate, no further processing is required. Industrial chocolate is shipped to the manufacturing customers in a heated transport, in which a constant temperature of 112°F is maintained to prevent solidification or hardening. Customers are typically bakeries, ice cream manufacturers or candymakers who will further process the chocolate.

Solid chocolate must be tempered after conching in order to give it its luster. In the tempering process, the chocolate is heated to 113°F, quickly cooled and slightly heated to 90°F. The tempered chocolate is then ready to be molded into any variety of forms: large 50 pound cubes, 25-pound bars, or consumer sized chocolate drops.

With this overview, let us examine the issues that confront kosher chocolate making.

Ingredients

As with any manufactured food product, all ingredients require strict kosher certification. *Mashgichim* travel to cocoa bean plantations around the world. All the additional ingredients require reliable kosher certification.

Interestingly, ingredients used in European chocolate processing may present many more challenges than in domestic chocolate production. In Europe today, genetically modified raw materials are strictly avoided. One example of a genetically modified grain is the soybean, used to produce lecithin and emulsify and blend the ingredients being conched. Nearly all soybean crops worldwide have been genetically modified. Consequently, lecithin has come under scrutiny in Europe and European chocolate producers have looked to find suitable alternatives to lecithin. The newest trend alternative in Europe is sunflower lecithin.



Alternatives to lecithin were researched, and a seemingly innocuous product called ammonium phosphatide is used as a lecithin alternative. This product itself poses no *kashrus* problems. One company in Denmark that manufactures ammonium phosphatide was a totally non-kosher facility, thereby requiring massive kosherization. Due to the demand, kosher ammonium phosphatide is available.

Reliable kosher traced butter oil requires strict kosher supervision. It goes without saying that the vegetable fats used to manufacture kosher compound chocolate must have reliable kosher certification, because these vegetable fats can be produced in the same facilities as tallow or lard.

In Search Of A Pareve Conch

What is the greatest nemesis to chocolate? Water – just ask any *balabusta* who uses melted chocolate in homemade recipes. When mixed with chocolate, even minimally, water causes the chocolate to solidify almost instantaneously into a solid block that can't be remelted! Consequently, chocolate manufacturers passionately avoid the introduction of water into their facilities at all costs. Recognizing this problem, how do kosher chocolate manufacturers overcome the issue of compatible conches that may be used indiscriminately for *pareve* and dairy chocolates without using water?

One possibility is to dedicate conches exclusively for dairy and *pareve* productions. This method is used in certain chocolate production facilities because sufficient amounts of both *pareve* and dairy products are manufactured to justify the separation. Most kosher chocolate companies felt that segregating conches is expensive and impractical.

This problem has plagued kosher chocolate manufacturers for many years. Their solution was that in lieu of water, the conches would be *kashered* by *sha'ar mashkim*, using liquid dark chocolate.¹ The *Shulchan Aruch* poses the question regarding whether liquids other than water may be used for kosherization. The *Remah* is opposed to using *sha'ar*

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1. The “*kashering* dark chocolate” serves as a substitute for *kashering* water and is known in *halachic* terms as *sha'ar mashkim*.



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measures can be implemented that will eliminate, or at least minimize, the inherent conflict of interest? Even if there is no *halachic* dilemma posed by a conflict of interest, and even if organizations were staffed exclusively with professionals possessing impeccable moral character, the *Torah* imperative of “*v’hyisim n’ki’im*” (*Parshas Matos 32:22*) enjoins us to bolster public perception and pre-empt suspicions of impropriety.

The Code of Federal Regulations (CFR) Title 21 establishes the operating rules for the Food and Drug Administration (FDA). Subpart M deals with, “Accreditation Of Third-Party Certification Bodies To Conduct Food Safety Audits And To Issue Certifications.” Section 1.657 is entitled, “How must an accredited third-party certification body protect against conflicts of interest?”⁷ These regulations primarily address safeguarding against individuals associated with the certifying agency from having any financial ties to the certified entity. They also set parameters of legitimate payment for services and disallow anybody working for the certifier from accepting anything that can be construed as a bribe.⁸

In the kosher certification sphere, the federal guidelines should be just a starting point for the agency’s organizational structure. Since kosher is, at its essence, a spiritual matter with ramifications on one’s soul and eternal relationship with the Creator, the expectations should be much higher.

In a democratic and capitalistic society, each organization is obviously free to determine their own guidelines in this realm. Moreover, just because a certifier implements tight protocols to guard from conflicts of interest, their actual *kashrus* standards could be quite lacking. Conversely, a certification may well deserve their excellent reputation despite a perception of having conflicts of interest.

With that disclaimer in mind, what follows are some observations that this author has noticed during his tenure as a *kashrus* administrator concerning how a kosher certifier can effectively counteract the perceived challenge:

Leadership – The leaders who form the backbone of the organization and set the tone in the workplace are known to be beyond reproach, setting a strong example in both their personal and professional lives. In the words of *Yisro* (18:21), “... *sonay votzah*.” (See *Rashi, Devarim 1:15*)

Separation of Divisions – The agency’s regulatory department must have independent authority, with autonomy to evaluate the merit of a certification based on compliance with the kosher system, without regard for financial repercussions.

Checks and Balances – All certification approvals or denials are reviewed by multiple parties. Also, there is a peer review system to continually monitor that policies are followed.

Numerical Strength – A large organization is adequately funded so that its operations and staffing remain unhampered, even if major accounts are discontinued. Its solvency does not depend on retaining any client.

Incentive-less – Although incentive models are a terrific way to motivate employees and make them feel appreciated for their hard work, no certification administrator should be rewarded for securing any client. There are also no consequences if a company is released for failing to comply with certification standards.

Anonymous Presentations – When questions arise regarding a company’s policy compliance, the core issues can be presented for adjudication by the certifier’s *poseik* (or *poskim*) without regard to the company’s identity, unless that is also a factor in the specific *halachic* decision.

Gift Acceptance – *Kashrus* professionals often work long and sometimes erratic hours on behalf of the companies they service, and their efforts are usually appreciated. A firm policy regarding acceptance of gifts must be in place.

Fee Structure – While we certainly take tremendous pride when our certified companies are successful, certification fees are a function of the resources required to administer the certification and maintain *kashrus* standards, not the company’s profitability.

Transparency – The certifier readily discloses its standards.

Conformance – While there is ample room for individual variances between *hashgachos* to meet a spectrum of consumer communities, the certifier adheres to a baseline standard in all circumstances.⁹

Disclosure – CFR Title 21 sec 1.657 part (d) requires that third-party certification bodies must maintain an up-to-date list on their website of all “the eligible entities to which it has issued food or facility certifications.” Similarly, reputable *kashrus* organizations disclose the identity of all companies enrolled in their certification program for public examination.

Non-Profit Status – A “for-profit” organization can operate with the same level of integrity and ethics as a “non-profit.” However, a “non-profit” is subject to additional oversight and external scrutiny that may contribute positively in preventing malfeasance.

Whether one is a lone rabbi in a small town who bears the responsibility of providing his community with kosher offerings, or part of a global organization overseeing networks of professionals stretching across continents, the method to resolve conflicts of interest is the same. Protecting the integrity of kosher certification is paramount, to the degree that financial issues do not even qualify as an “interest”.¹⁰ In the absence of competing interests, there is no conflict. A certifier who consistently functions with these principles will earn the trust and respect of both consumers and companies alike.



7. Available at: <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfCFR/CFRSearch.cfm?r=1.657>

8. The one allowance mentioned is: “Lunch of *de minimis* value provided during the course of an audit and on the premises where the audit is conducted, if necessary to facilitate the efficient conduct of the audit.”

9. Membership in AKO (Association of Kashrus Organizations) requires a commitment to abide by a certain threshold of *halachic* application and administration expertise. Within AKO, a range of standards exists and there is no expectation of reciprocity. Additionally, member organizations may not use their admittance for promotional means.

10. See *Remah, Yoreh Deiah 157:1* and commentaries regarding the obligation to absorb monetary loss instead of transgressing *issurim*. Causing others to eat non-kosher food involves numerous *issurim*.





When Challah Separation Goes A-Rye

Q: I made some dough in order to bake bread and separated *challah*. When I wasn't looking, someone inadvertently took that piece of separated *challah* and added it back into the rest of the dough. Now that the dough and *challah* are all mixed together, how should I proceed?

A: Before we discuss how to proceed, let us clarify one point. The word "*challah*" has two meanings. It is used as the name of a bread which is braided, baked and commonly eaten at *Shabbos* meals. It is also used to describe a small piece of dough that was separated from a larger batch of dough in order to fulfill the *halachic* obligation of *hafrashas challah*. We are using the word "*challah*" in that second sense.

Let us discuss the case where *challah* was mixed with dough and can no longer be recognized. If the batch of dough that the *challah* fell into had a volume which was 100 times as much as the volume of the *challah* that fell in (or more), the *challah* is *botul* and the whole mixture may be eaten. Even though the *shiur* of *bitul* is generally 1 part in 60, for *challah* the *shiur* of *bitul* is 1 part in 100.¹

Rav Yaakov Emden writes that this *halachah* of *bitul* applies only when the *challah* is mixed into a different dough, not when it is mixed back into the very same dough from which the *challah* was separated. In our scenario, where the *challah* was added back into the same dough from which it came, Rav Yaakov Emden *paskens* that *bitul* will not help. However, the majority of *Poskim* disagree with this and say that in this case the *challah* would be *botul*.² Generally, there is not 100 times as much dough as there is *challah* and we cannot rely on *bitul*. The question, therefore, remains how should one proceed in that case?

There is a *halachah* that a person who makes a *neder* (vow) may nullify his *neder* through a process known as *hataras nedarim*. A verbal declaration that a piece of dough should be *challah* is *halachically* akin to a *neder* in that *hataras nedarim* nullifies the declaration. Therefore, in our scenario where the *challah* was mixed into the dough, the person who separated the *challah* should perform *hataras nedarim* and then separate *challah* again.³

The person who separated *challah* should perform *hataras nedarim* in front of a *beis din* of three men who are all over the age of *bar mitzvah*. (In *Eretz Yisroel*, where the obligation to separate *challah* is from the *Torah*, the members of the *beis din* should be adults or older teenagers. The *beis din* may include men who are either related to each other or to the person performing *hataras nedarim*. However, a husband cannot be part of a *beis din* for his wife's *hataras nedarim*. The three people do not need to be *talmidei chachamim*, but they do need to understand the basic concepts of *hataras nedarim*. The person performing *hataras nedarim* should stand and the *beis din* should sit. The person should say that he/she regrets having designated the dough as *challah*, and that had he/she known that it was going to be remixed into the dough it would not have been designated as *challah*. The *beis din* should respond that the *neder* is annulled, which is customarily done by stating, "*Muttar lach, muttar lach, muttar lach*". *Hataras nedarim* may be performed either during the day or night. (*Hataras nedarim* may be performed on *Shabbos* if it is being done *le'tzorech Shabbos* or *le'tzorech mitzvah*).⁴

Generally, the person who separated the *challah* must personally appear before *beis din* and cannot send a *shaliach* on his/her behalf. For example, a father cannot appear before *beis din* on his daughter's behalf. However, a woman may send her husband as a *shaliach* to perform *hataras nedarim* on her behalf. He should not gather three men specifically for this purpose, but instead should find three men who are already together (e.g., in *shul* after *davening*).⁵

After performing *hataras nedarim*, *challah* should be separated again. If there is sufficient dough to require a *brachah*, the *challah* should be separated with a *brachah*. Even though a *brachah* was already recited over the first *challah*, since that *hafrashas challah* was nullified a second *brachah* must be recited over the new *hafrashas challah*. Even though this results in the same *brachah* being recited twice, the person is not considered to have uttered an unnecessary *brachah levatalah*.⁶

For further information regarding *hafrashas challah*, see "When You Need to Knead: A Guide to *Hafrashas Challah*" by Rabbi Dovid Heber at <https://www.star-k.org/articles/articles/1197/when-you-need-to-knead-a-guide-to-hafrashas-challah/>.

1. השו"ע י"ד סי' שכג סעי' א פסק שחלת חו"ל בטלה בחולין שוה בשוה, אבל הרמ"א שם כתב שאוסרת עד מאה ואחד אם נתערבה במינה, ואף שהט"ז בסוה"ס שם פסק שבדיעבד מהני ביטול ברוב מ"מ הש"ך שם ס"ק ג הסכים לדברי הרמ"א דבעינן ביטול במאה ואחד. ומ"ר ר' משה היינעמאן שליט"א אמר שאף לדעת הרמ"א, אדם שחילק עיסתו לכמה חתיכות קטנות, ויש לו עוד חתיכה קטנה של חלה, ונתערב החתיכה זו באחרות ואינו מכיר איזו חתיכה הוא של חלה, בטל החלה ברוב כדמבואר בשו"ע י"ד סי' קט סעי' א.

2. כ"כ בשו"ת יעב"ץ ח"א סי' קלה וה"ב סי' צט הובא בפת"ש שם ס"ק ב, אמנם בערוך השלחן שם סעי' יג ובשו"ת טוב טעם ודעת תליתי ה"ב סי' קעט ובשו"ת מהרש"ם ח"א סי' לח (ד"ה ובגוף) ובשו"ת חלקת יעקב י"ד סי' קפ בשולי העמוד הרבו להקשות ולתמוה על דבריו.

3. רמ"א שם בשם תשובות מיימוני, והט"ז שם ס"ק ב פסק דלא מהני התרה בכה"ג שאינו מתחרט אלא משום שהחלה נתערבה בעיסה, אבל הש"ך בנקודות הכסף דחה את דבריו והעלה כדברי הרמ"א, וכ"כ הברכי יוסף שם ס"ק א והערוך השלחן שם סעי' יז, וכ"כ בשו"ת בית יעקב סי' קי (הובא בפת"ש שם ס"ק ג) ושו"ת חות יאיר סי' קל ושו"ת שאילת יעבץ ח"ב סי' צח ושו"ת חת"ס אהע"ז ח"ב ס"ו ס"ב צב.

4. בשו"ע י"ד סי' רכח סעי' א כתב שיש תקנה להתיר נדר ע"י חרטה לפני ג' הדיוטות והוא דגמירי להו וסבירי, דהיינו שמבינים מה שלומדים עמהם (ט"ז שם ס"ק א וש"ך שם ס"ק ב), וגם יודעים לפתוח לו פתח. וע"ע בערוך השלחן שם סעי' ד במה שהדיינים צריכים לדעת. ובה"ר רע"א סי' רכח סעי' כתב שאין להתיר אלא לפני ג' שנתמלא זקנם משום דלא סמכינן על חוקה דרבא במידי דאורייתא, אמנם נראה שבחלת חו"ל שהוא דין דרבנן שני בג' שהם בניגול בר מצוה, וע"י כע"ז בשם הגרי"ש אלישיב זצ"ל באשרי האיש י"ד ח"א עמ' רפז שלהתרת נדרים בערב ר"ה אפשר להקל לקחת ג' שלא נתמלא זקנם אם הם בני ג' שנה ויום אחד (מפני שיעקר התרת נדרים בערב ר"ה הוא להנהיגות טובות שאינם אלא מדרבנן). והשו"ע בסעי' ג שם כתב שיאמרו לו ג' פעמים מותר לך, ומהני אפילו בקרובים ובליילה. וכתב הש"ך שם ס"ק ט שהנהיג בכל אופן שהמתירין יושבים והמודר עומד לפנייהם. וכתב הרמ"א שם סעי' ז שנהגו להחמיר לעשות מן החרטה פתח, שלאחר שאומר שמתחרט מעיקרא אומרים לו אילו ידעת שתחרט כלום נדרת והוא אומר לא ואו מתירין לו. והשו"ע סי' רלד סעי' נו כתב שאין הבעל מצטרף עם ב' להתיר נדרי אשתו בלשון התרה. ואע"פ שהב"ח שם כתב שיש להחמיר בזה באיסור דאורייתא ומשמע שבחלת חו"ל שהוא דרבנן יש צד להקל, מ"מ הרי הדעת קדושים סי' שכג ס"ק ד כתב שבעל לא יצרף להיות מהמתירין לאשתו מטעם אחר, כיון שהעיסה שלו והוי כמתיר לעצמו (הובא ג"כ במקדש מעט שם ס"ק יב). וע"י בשו"ע או"ח סי' שמא סעי' א שמתירין נדרים בשבת אם הוא לצורך השבת, וכתב המ"ב שם ס"ק א דה"ה לצורך מצוה.

5. השו"ע סי' רכח סעי' טז כתב שהנדר אינו עושה שליח לשאלו על נדרו אלא צריך לבא בעצמו למתירין. אמנם בס"י רלד סעי' נו כתב השו"ע שהבעל נעשה שליח להשאל על נדרי אשתו ובלבד שמצא שלשה מקוצבים אבל הוא לא יקבצם, והש"ך שם ס"ק עא הוסיף שאם נתנה לו רשות גם לקבצם ולהתיר יעשה. וכתב הערוך השלחן סי' שכג סעי' יד שלשאלו על הפרשת חלה אין ביכולת רק הבעל הבית או בעלת הבית ולא אחר. ובענין התרה ע"י טלפון, ע"י בשו"ת שבת הקהתי ח"ד סי' רלט ובספר אשרי האיש י"ד ח"ב עמ' קצב אות לד.

6. כ"כ בשו"ת חת"ס י"ד סי' שכ הובא בפת"ש י"ד סי' שלא ס"ק ג. ואף שהרש"ש שם בנדרים דף נט ע"א (ד"ה ודע) כתב שלא יברך על ההפרשה השניה וכ"כ בברכי יוסף סי' שכג ס"ק א (מטעם אחר), כבר תמה בשו"ת אמרי יוסף ח"ב סי' מז על דברי הרש"ש, וגם הגר"ח קנייבסקי שליט"א בדרך אמונה פ"ד מהל' תרומות ס"ק קפד פסק כדברי החת"ס. וע"י בשו"ת מנחת שלמה ח"א סי' סב אות יג ובספר מעדני ארץ תרומות פ"ד הל"י ז' מש"כ הגרש"ז אויערבאך זצ"ל בזה.

EATING CHOCOLATE WITH A CLEAR “CONCH”-ENCE

CONTINUED FROM PAGE 3

mashkim and forbids its use for kosherization. However, the *Remah* permits *kashering* with *sha'ar mashkim* if one has already done the kosherization, *b'dieved*.² It is STAR-K policy not to *kasher* with *sha'ar mashkim*. However, some *kashrus* agencies in the U.S. and Europe rely on the lenient position, even though the *Shulchan Aruch* frowns upon that method of kosherization.

Another interesting caveat to this question is whether liquid chocolate, or more specifically cocoa butter which is a solid at room temperature, may be considered a liquid and could, therefore, be used as a *kashering* liquid. Interestingly enough, when the *Mishna Berura* discusses the issue of egg *matzah* the *Chofetz Chaim*, *zt"l*, mentions that fats are categorically considered a liquid,³ *sha'ar mashkim*, and would be permitted to be used as a *kashering* liquid for those who allow this type of kosherization.

Milk Allergens To The Rescue

Many companies do not keep their conches separate and will conch dark and milk chocolate interchangeably. However, milk is an allergen and in our “allergy ridden” world *pareve* chocolatiers owe milk a debt of gratitude. In order to keep dark chocolate allergen-free in some companies, the dark chocolate conches and the tempering lines have been segregated. Tempering is the process through which the liquid chocolate is cooled, giving it its luster and shine. It allows the liquid chocolate to solidify smoothly without any white spots. Typically, the tempering line is used for both milk and dark chocolate. In this case, the holding tanks, cooling tunnels and belts are totally separated so *kashering* with *sha'ar mashkim* has become a non-issue.

Brochah Recited On Chocolate

As we saw through our tour of chocolate manufacturing, the cacao bean is the fruit of the *Forestaro* and *Criollo* trees. However, the cacao bean is indistinguishable in its chocolate form. The question is: Does a fruit product that has been pressed into a paste, such as dates into date paste or apricots into fruit leather, retain its *Borei Pri Ha'etz* status because the original product in its pressed version is recognizable? The *Shulchan Aruch*⁴ concludes that since the fruit product retains its original status, the *brochah* does not change. However, the *Remah* explains that this is not the case regarding a fruit that totally loses its original form. Therefore, the proper *brochah* for chocolate would be *Shehakol*. However, other *halachic* opinions posit that since the cacao bean was grown for the purpose of making chocolate, this is the essence of the fruit. In spite of the fact that it loses its original identity, the *brochah* should be *Borei Pri Ha'etz*. The case in point in the *Shulchan Aruch*⁵ discusses spices that were ground and sweetened. The *brochah* on sweetened ground spices is *Borei Pri Ha'etz*

because spices are made to be ground. Applying the same logic to the cacao bean, since the purpose of the cacao bean is to be ground and liquified into chocolate, some *Poskim* are of the opinion that the *brochah* on chocolate should be *Borei Pri Ha'etz*; the consensus of *halachic* opinion is that the *brochah* is *Shehakol*.

It is a known fact that chocolate contains over 50% sugar. Sugar is processed from vegetables such as sugar cane or sugar beets. In truth, the *Shulchan Aruch* also deals with the *brochah* recited over sugar.⁶ In any event, the amount of sugar used would not affect the *brochah* on chocolate since the purpose of the sugar is to sweeten the cocoa ingredients. Sugar, therefore, is viewed as a secondary ingredient (*tafel*) to the cocoa liquor even though sugar is chocolate's primary ingredient.⁷ According to all opinions, the *brochah* remains *Shehakol*.

In the case of chocolate-covered nuts and fruits, such as peanuts, almonds or raisins, does the combination of chocolate with nuts or fruits affect the *brochah*? Most definitely! However, there are many opinions regarding the proper *brochah*. The *Mishna Berura*⁸ views the fruit as the *ikar* ingredient, and the chocolate that sweetens the fruit as secondary.

The *brochah* on chocolate-covered fruits and nuts would follow the item that the chocolate is sweetening; in the case of fruit or nuts, *Borei Pri Ha'etz*, and in the case of peanuts, *Borei Pri Hoadama*. However, other *Poskim* reason that the *brochah* is subjective and would follow the item that is more desirable.⁹ Still others maintain that the item that is more plentiful would be the dominant ingredient, while some *halachic* authorities maintain that one should recite two *brochos* on chocolate-covered peanuts because both are of equal importance.¹⁰ Interestingly, the *brochah* of *Borei Pri Ha'etz* would suffice, *b'dieved*, for a chocolate and fruit combination because the *brochah* on chocolate may be *Borei Pri Ha'etz*,¹¹ as mentioned earlier. Rabbi Moshe Heinemann, *shlit"l*, Rabbinic Administrator of STAR-K, maintains that the *brochah* is subjective. If the chocolate is more desirable, the *brochah* would be *Shehakol*; if the raisin is more desirable, the *brochah* on a chocolate covered raisin would be *Borei Pri Ha'etz*.

Shlomo Hamelech, when extolling the virtues of *Bnei Yisroel*, *Torah*, and *mitzvos* exclaims metaphorically, “*Vayochal p'ri megadav*,” “And he ate His delectable fruits.” Indeed, this verse could certainly apply to the delights of chocolate, the most delicious fruit in the world.

Many thanks to David Lachevere, of Cargill Chocolate, who graciously and enthusiastically reviewed this article.

2. Orach Chaim 425:5, *Remah*

3. Orach Chaim 462, *Mishna Brura* 26

4. Orach Chaim 202:7

5. Orach Chaim 203:7

6. Orach Chaim 202:15

7. Orach Chaim 203, M.B. 13

8. Orach Chaim 204, *Be'er Hetev* 19

9. Rav Ovadia Yosef, *zt"l*

10. Rav Moshe Feinstein, *zt"l*, Orach Chaim III 31

11. Rav Yosef Shalom Elyashiv, *zt"l* (*Yuva Moshe*)



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