

## Miscellaneous Laws of Pesach

### **Searching for *Hametz***

Observance of the laws of Pesach demands an honest, direct look at the *halakha*, on one hand, and reality, on the other. The first example that comes to mind is the search for *hametz* “by candlelight”, based on Hazal’s assertion that “candlelight is appropriate (or ‘effective’) for the search” (Pesachim 8a). They also assert that a flaming torch is not recommended since it cannot enter cracks and crevices, and furthermore, the person conducting the search “will be anxious about burning the house down, and so his attention will not be on the search” (Rashi, ad loc.). However, on the basis of all the reasons given for not using a flaming torch, and the prohibition against using an oil flame when searching for *hametz* (see Orah Hayim 433:2 and the Mishna Berura), there are many areas of our homes where a candle is not suitable for use in the search. We hesitate to hold a lit candle inside a cupboard or wardrobe filled with papers or clothing, or other places where *hametz* may be found and where we are obligated to search. People are also concerned about wax dripping, and this may also interfere with their concentration on performing the task thoroughly. A candle may be a better option in such instances than a flaming torch, but a battery-operated torch is even better. Hence, it is clear that when searching such areas, an electric torch is preferable.

Rav Ovadia Yosef writes in his Hazon Ovadia, Laws of Searching for *Hametz* 2, that it is permissible to conduct the search using a small torch that may be used to illuminate into cracks and crevices, or a small electric light that may be carried all over the house. These may be used for the search where necessary, when no other permissible light is available, and one may also recite the blessing over them.

In my humble opinion it is clearly preferable to use a small electric torch in many places in the house where the use of a candle is problematic. Indeed, Rav Ovadia Yosef notes: “I have heard it said in the name of the Hazon Ish, that he *instructed to search* using an electric light or pocket torch” (my emphasis).

However, we find in the Gemara (Pesachim 7b) that the concept of searching by candlelight also has important symbolic value. Therefore, the best option is to light a candle for the search, but at the same time to hold an electric torch to shine into cupboards and into nooks and crannies, where it offers the best and safest illumination.

### **Selling *Hametz***

The sale of *hametz* before Pesach is a procedure to which *halakha* awards license “under duress”, as it were. It involves “*ha’arama*” (a legal trick), and is certainly not a “*hiddur*

*mitzvah*” that one should seek to fulfill. The source for the license may be traced back to a desire to protect from economic ruin the women who used grain to produce liquor, which they stored in cellars (Orah Hayim 448:3; see Taz ad loc and Sha’arei Teshuva). The permit extended for the sake of these women actually required that the liquor (which was *hametz*) be removed from the house and transferred to the domain of the non-Jew.

In our commercial reality, the factories that produce food containing *hametz*, and the stores that sell them, could not viably exist were it not for the possibility of selling *hametz* before Pesach. However, in the case of a private home – assuming that it does not boast a full cellar of whiskey, beer, etc. – why go to the trouble of selling the *hametz*? Why not simply remove and destroy it, as Hazal recommend?

The Torah commands us, “... but by the first day you shall have removed leaven from your houses”. In their guidance as to fulfilling this command, Hazal did not stipulate that the *hametz* should be sold through a chain of agents, through “*ha’arama*”. Rather, they imposed the obligation of searching for *hametz* and ways of annulling and destroying it. Therefore, wherever possible, it is certainly preferable for a person to simply finish or destroy the remainders of *hametz* in his home – including packets of soup powder, mustard, chicory powder (Chico), etc – rather than selling it. In my experience, it is possible to stop buying soup mixes, noodles and other forms of *hametz* during the period between Purim and Pesach, to finish all the *hametz* in the house, and to destroy whatever remains. There is no real justification for selling *hametz* in one’s home. Often, people resort to this out of laziness – so as not to have to go through all the innumerable boxes, bottles and containers in the kitchen, or so as not to have to check which medications may be taken on Pesach (most!). Whatever is unfit for even a dog to eat may be kept over Pesach and there is no need to sell it. *Hametz* which is absorbed into pots and other vessels need not and cannot be sold, for a sale cannot be concluded over something that is invisible.

Hence, is it a good idea to think twice before selling *hametz* in a private home. A person should consider his reasons for resorting to “*ha’arama*” (unless considerable financial loss is involved). In particular, one should rely on Hazal’s assertion that the declaration of annulment of the *hametz* is valid with regard to crumbs and any *hametz* that we have not found, and keep in mind that sale of *hametz* is a “forced” solution that is intended mainly for businesses, stores, and factories.

### ***Kitniyot***

Every year there is much discussion of the issue of *kitniyot*. Some opinions are so stringent in their desire to give honor to the Torah that there are actually people who come to disdain *halakha* because of the Ashkenazi custom according to which any form of *kitniyot* is prohibited on Pesach.

Hence the importance of understanding the origin of this prohibition. Its source is to be found in the Sefer ha-Mitzvot ha-Katan (SaMaK) by Rabbi Yitzhak of Corbeil, and in the “Mordekhai” (by Rabbi Mordekhai Ashkenazi, brother-in-law of R. Yitzhak of Corbeil), which explicitly link the source of the custom to the opinion (rejected by the *halakha*) of Rabbi Yohanan ben-Nuri, a Tana from the Galil who was a contemporary of Rabbi Akiva (see Rosh ha-Shana 32a). Rabbi Yohanan ben-Nuri disagreed with the other Sages, maintaining that rice and millet are types of grain; hence, the prohibition of *hametz* applies to them, and conversely, one fulfills his obligation to eat *matza* if it is made from one of them (Pesahim 35a).

It is clear from the relevant Talmudic discussions (Pesahim 35a; 114b) that Rabbi Yohanan ben-Nuri’s view is rejected. The greatest of the Babylonian Amoraim – Rav Huna and Rabba – would eat rice at the Seder, while Rav Ashi declared, “There is no need to take Rabbi Yohanan ben-Nuri’s view into consideration”. All of the *poskim* rule accordingly (Rambam, Laws of Hametz and Matza, chapter 5, law 1; Shulhan Arukh, Orah Hayim 453:1).

In our days, it is easy to understand the ruling of the Talmudic Sages that only five types of grain can become ‘*hametz*’, since these grains contain gluten, which causes leavening. Rice and millet are gluten-free, and therefore cannot become “leavened”. (Spelt flour requires a separate discussion, which lies beyond the scope of the present article.)

In any event, it is clear from the Sefer ha-Mitzvot ha-Katan and from the Mordekhai, as well as from other sources, that the custom forbidding *kitniyot* originates with this opinion, which survived in ancient Ashkenazi custom and was eventually accepted as a “*humra*” (a custom of added stringency).

In his explanation of the custom, the SaMaK writes (siman 222, appearing in the gloss of Rabbeinu Peretz, his disciple, although in the Mordekhai on Pesahim [ad loc] it is quoted in the name of the SaMaK) as follows:

“And concerning ‘*kitniyot*’ (literally: “small things”) such as peas and white beans and rice and lentils and the suchlike, our rabbis maintained the custom of prohibiting their consumption on Pesach altogether, and this appears proper.

I believe that I have heard concerning pulses that they should not be cooked on Pesach in any manner other than placing them directly in boiling water in the pot [note: something that is placed in boiling water undergoes no further leavening – even if it is one of the ‘five species’ of grain that is being used. However, we are not expert in the precise manner of ‘*halita*’ – boiling in water; see Rambam, Laws of Hametz and Matza, chapter 5, law 3], and great Torah authorities are lenient in their regard. My teacher, Rabbeinu Yehiel (of Paris) used to eat white beans on Pesach, and he cited major authorities as permitting this. He brings as proof that even concerning rice, which Rabbi Yohanan ben-Nuri counted as a type of grain for the purposes of leavening, the Talmud teaches that there is no need to take the opinion of Rabbi Yohanan ben-Nuri into consideration.”

However, it is a very grave matter to permit something that has been considered forbidden since the time of the earliest Sages, for it seems that they did not impose the prohibition because of the leavening itself – for they would not have erred concerning something which even children who have learned *halakha* would know, in accordance with the explicit teaching in Pesachim, that only the five types of grains undergo leavening. Therefore it would seem that the custom should be maintained and all *kitniyot* should be forbidden on Pesach – not because of the leavening itself, for it would be a mistake to claim thus, but rather as a decree. For since *kitniyot* are cooked in a pot, and grain is likewise cooked in a pot, like porridge, then if *kitniyot* are available, one might come to substitute them and end up permitting porridge (made from grains), since both are foods that are cooked in a pot. Furthermore, *kitniyot* are small things that are heaped (sold by weight), like the five kinds of grain, as it is written in Bava Metzia (88b) – “*Kitniyot* are called ‘things that are heaped’”. Also, there are places where bread is made from them, just like from the five types of grain. Therefore, those who are not well-versed in Torah law may come to substitute them. [Hence, the situation of *kitniyot*] is are not like that of vegetables – such as cabbage, leeks etc., for these are not in any way similar to grain, and hence they will not come to be substituted for them.

It is a worthy custom to avoid all *kitniyot* and anything that is called a ‘legume’, and it is likewise proper to prohibit mustard, because it is a small thing that is heaped. And although in the Talmud it says that even rice [need not be avoided], this applies specifically in those times, when people were all proficient in the laws of forbidden and permitted foods. But now, in these later generations, the Rabbis decreed to avoid them... It is not proper even to place them in boiling water, and certainly not to place them in cold water.”

It is clear from the above that anyone who interprets the custom of avoiding *kitniyot* as though the various types of *kitniyot* are prohibited like *hametz*, is mistaken, because this view is based on the opinion of Rabbi Yohanan ben-Nuri, who considered rice and millet as forms of grain – and the Talmud rejects his view out of hand. Prof. Yisrael Ta-Shema proves in his book, “*Minhag Ashkenaz ha-Kadmon*” (Magnes, Jerusalem:5752, pp. 271-276) that there were some very early authorities who held this view, but it is reasonable to assume that their opinion was not accepted.

Not all of the sages of Germany and France agreed with the prohibition, and some expressed their explicit disagreement, viewing it as a mistaken custom. There have been a few major authorities – both Rishonim and Aharonim – who have recorded this in writing. (See “*Ha-Mo’adim be-Halakha*, by Rabbi Shemuel Zevin zt”l, pp. 255-258 - e.g. Rabbeinu Yeruham, and Rabbi Yaakov Emdin, also in the name of his father, the “*Hakham Tzvi*”).

The greatest of the Ashkenazi *poskim*, who maintained the custom of prohibiting *kitniyot* on Pesach – headed by the SaMaK and the Mordekhai – did so as an auxiliary decree, lest kernels of *kitniyot* inadvertently be exchanged with kernels of grain, with grain porridge, flour, or even bread.

The more familiar justification – lest kernels of wheat become mixed into the rice or *kitniyot* – is cited by the Tur (Orah Hayim 553) as a secondary reason and as an extreme stringency, and where there was thorough sifting in advance, some authorities permitted the consumption of *kitniyot*.

From all of the above it is clear that our situation today lacks any sort of halakhic logic – specifically for those who are strict in their observance of the custom of *kitniyot*, i.e., Ashkenazim. Supermarkets and private kitchens are full of “grain alternatives” made from *matza* flour or potato flour, and Ashkenazim who are meticulous in their observance of every ‘*humra*’ happily consume cakes and other products (stamped with the best and strictest kashrut certification) that resemble grain products very closely. Last year I saw a notice posted by the Chief Rabbinate in Israel, warning the public about “Kif Kef” wafers, produced by Elite, which were completely *hametz*, but had mistakenly been wrapped in “kosher for Pesach” wrapping. Fortunately, an especially alert resident of Ginot Shomron discovered the mistake. Here, then, is an example of an extremely serious potential problem. The original decree against *kitniyot* was essentially aimed at preventing precisely this sort of problem from arising. At the same time, some of the same people who could easily have ended up eating those wafers (and the kashrut authorities who permit the manufacture of “kosher for Pesach” wafers in the first place!) go to great lengths to prohibit any product that might perhaps contain some mixture involving soya oil. Without intending to, of course, they thereby make a mockery of the *halakha*, heaven forefend.

The appearance of *matza* flour and potato flour has already had the effect of undermining the original enactment of the SaMaK and the Mordekhai. What we are left with is the mistaken custom that regards the various types of *kitniyot* themselves as possibly presenting a problem of *hametz*.

A person who genuinely seeks to observe the prohibition against *kitniyot* is obliged to avoid anything that resembles *hametz*, regardless of what sort of flour is used in its production. This would include “kosher for Pesach” breakfast cereals, cakes, wafers, cookies, egg matza, and – of course – anything resembling bread. I myself follow this custom, in keeping with the original prohibition.

Permitting all kinds of foods that are outwardly identical to *hametz*, while forbidding anything that may perhaps contain some mixture of *kitniyot*, is a strange approach that ends up leading to contempt for the *halakha*. Stringencies of this type give rise to improper leniencies and the breakdown of barriers.

Unlike foods and products that resemble *hametz*, *kitniyot* oils were never included in the original prohibition. Although the Rema, in the wake of the Terumat ha-Deshen (Orah Hayim 451:1) permitted using such oils only for lighting, some of the leading *poskim* permitted their consumption (for example, Rabbi Hanokh Aiges, Marcheshet Orah Hayim 3, quoted by Rabbi Zevin ad loc.).

Rabbi Kook permitted *kitniyot oils* without reservation, since in our times they are not refined using water, as they were in times gone by, and hence there is no reason to apply the decree at all. In fact, Rabbi Kook went so far as to speak out against those who add baseless prohibitions, forbidding that which is permitted by *halakha*, and thereby leading to contempt for *halakha*, heaven forefend (see Orah Mishpat, Teshuvot 108-114).

The Hassidic Beit Din in Jerusalem fiercely opposed Rabbi Kook, in this matter among others, but their reasoning does not fit in with the original reasoning of the Ashkenazi authorities who issued the original prohibition. This being the case, what did the Hassidic Beit Din gain by maligning Rabbi Kook and undermining his authority? And a further question: why has the Chief Rabbinate of Israel chosen (to this day) not to uphold the ruling of the first Chief Rabbi, preferring to follow the stringent approach?

Indeed, anyone who understands *halakha* and the Ashkenazi system of customs may use *kitniyot oils* without any reservation.

In summary, it is clear that the custom followed by most Sefardi Jews in Israel is essentially correct, for they are following the approach of the Talmud. It is equally clear that the original Ashkenazi custom had its origins in an ancient halakhic approach in *Eretz Yisrael* that extended the prohibition on *hametz* to include rice, millet and legumes, but this approach was rejected even by the Ashkenazi authorities as a mistaken custom that was contrary to the ruling of the Talmud.

The prohibition that was imposed was essentially a precaution against *hametz* substitutes, which might lead to confusion. According to this approach, it is appropriate to avoid anything that resembles *hametz*, even if it is produced from *matza* flour or potato flour. A person who eats such products is nullifying and uprooting the original Ashkenazi enactment.

*Kitniyot* oils, on the other hand, are completely permissible, and any products containing substances made from *kitniyot* oils (such as margarine, etc.) are completely permissible even to Ashkenazim. Those who have avoided them in the past, out of uncertainty or a lack of knowledge as to their halakhic status, and who become informed, should perform a “*hatarat nedarim*” (annulment of vows) and – bon appetit.

## **Leaning**

For several years now, I have held my “Seder” in the sitting room, adding mattresses for the children and grandchildren. This has given rise to genuine interest and questioning: “Zeide – why are you carrying mattresses?” “Zeide – on the “Seder” night we’re going to sit on the sofa, right?”

Many people have reported a very special experience on the Seder night, when they moved the Seder to the sitting room and fulfilled the commandment to “lean” in the

manner of free people, in a manner most similar to the way in which it was fulfilled by our ancestors during the time of the Mishna and the Talmud.

An added advantage of this arrangement is that it allows some smaller tables to be prepared with the requirements for the Seder, while the larger table is set and ready for the meal.

A helpful hint where it comes to nuts and candies: don't hand them out indiscriminately. They should be rewards for children who ask questions related to Pesach. This is a tried-and-tested technique that ensures a steady stream of questions. It can even become difficult to halt the children's enthusiasm for asking – which, after all, is the whole point of the Seder.