

SHE'AILOS U'TESHUVOS

by Rabbi Doniel Neustadt

QUESTION: If one orders take-out food from a restaurant or a pizza shop, and the delivery person is not Jewish [or a Jew who does not keep kosher (1)], must the food be wrapped and sealed to ensure [for kashruth reasons] that it was not tampered with?

DISCUSSION: The answer depends on the exact circumstances. The chief concern when sending un-sealed food with a non-Jew is that there is a remote chance that the non-Jew will take the kosher food for himself, replace it with similar looking non-kosher food, and deliver that food to the unsuspecting recipient. Admittedly this is improbable - but definitely possible and, in fact, on record;(2) thus Chazal required food delivered by a non-Jew to be packaged with a tamper-proof seal.(3)

But we are only concerned about this possibility when there would be a motive -personal benefit or monetary gain - for the non-Jew to do so. If, for instance, the order was expensive steak which the delivery person may want but can't afford, it is possible that he would be overcome by his desire for the steak, eat it and replace it with a cheaper cut of non- kosher meat. He has now "gained and benefited" by eating a superior- tasting steak for the cheap price of an inferior cut of meat and no one is the wiser. The halachah demands, therefore, that the restaurant seal the order with a tamper-proof seal before handing it over to be delivered.

But when the delivery person would have no benefit or gain from the kosher food, there is no such requirement. We are not concerned that the delivery person will purposefully and spitefully exchange kosher food for non- kosher just to cause the Jew to sin.(4)

It follows, therefore, that if the take-out order is merely an ordinary pizza pie or a bucket of french fries, "standard" items available anywhere and everywhere, the delivery person would have no motive to switch the kosher items with non-kosher ones(5) and we are not concerned that he would do so.(6)

QUESTION: What if the restaurant failed to properly seal an order of food that was delivered by a non-Jew [or a Jew who does not keep kosher] - may the food be eaten?

DISCUSSION: It depends: If the recipient has no idea of how the food should look, e.g., never before did he order this particular food and he does not know what to expect, then the food may not be eaten, even b'diavad.(7) [Keep in mind, though, that this applies only when the order included a type of food which the delivery person may want for himself and will be able to replace with a cheaper,

non-kosher item, as mentioned above.]

If, however, the recipient has ordered this particular food many times before and can easily identify it as a product of that particular kosher restaurant (tevius ayin), then the food is permitted to be eaten without hesitation. Even l'chatchilah one may order food from a restaurant that does not properly seal its food, provided that he can clearly and positively recognize and identify that food as kosher.(8)

QUESTION: Is taping the package of food considered "tamper-proof" or must it be professionally sealed?

DISCUSSION: Taping the package is sufficient if it is taped in such a way that if tampered with, some of the packaging would tear along with the tape. The package should be taped in at least two separate spots.

Alternatively, the restaurant can tape the package with tape that bears the company logo, and stick it on the package in such a way that would make it impossible to open the package without tearing the tape. Here, too, the package should be sealed in two spots.(9)

QUESTION: Does food left in a public place, e.g, a hospital refrigerator or a company dining room, also need to be wrapped with tamper-proof seals so that we can be certain that it was not exchanged for non-kosher food?

DISCUSSION: No, it does not. The previously mentioned requirement to seal food applies only to food which is placed under the auspices of a non-Jew, either to deliver or for safekeeping. In such a case, we fear that the non-Jew will help himself to the food and later figure out how to replace what he ate. But when the food is off limits and not supposed to be touched by the non-Jew at all, we are not concerned that he will steal the food and then decide later that he must return its equivalent.(10)

It is permitted, therefore, to leave food in a closed or well-wrapped package which is clearly marked as private property, in a public refrigerator or pantry, even though it is not sealed in a manner which is tamper-proof.

QUESTION: If a spoon or a fork accidentally fell into the garbage on Shabbos, is it permitted to remove it?

DISCUSSION: It depends on where in the garbage bag the spoon or fork landed. If it landed way into the bag and got mixed with the garbage, one may remove it only if it will be washed and used immediately. Otherwise, it is considered as if one "selected" an item on Shabbos for later use, which is a violation of the Shabbos Labor of borer, Selecting, and strictly forbidden Sifting through the garbage and then pulling the spoon out could also be a violation of muktzeh. Garbage, generally, is "severe muktzeh"(11) and may not be directly moved with one's hands even for the purpose of locating a missing utensil.

It is advisable, therefore, to leave the lost spoon in the garbage until after Shabbos is over.

If, however, the spoon fell into the garbage but landed on top, it is permitted to remove it even without using it immediately, for the spoon and the garbage did not get "mixed" and the Shabbos Labor of Selecting is not violated. The issue of moving muktzeh is also not applicable, since the spoon can be lifted out without any garbage being directly moved.(12)

The same halachos apply when a small kiddush cup [or any small utensil] gets rolled up into a disposable plastic tablecloth. If the kiddush cup is mixed together with the leftover garbage, it may not be removed unless it would be used immediately.

If, however, it got rolled up into the tablecloth but did not get mixed together with the garbage, one may remove it, as no Shabbos prohibition (neither the Labor of Selecting nor the prohibition of muktzeh) is being transgressed.

QUESTION: Is it permitted to shave or take a haircut on the evening of Lag ba-Omer or does one need to wait until the morning?

DISCUSSION: The Rama(13) says that haircutting may not take place on Lag ba-Omer until "Lag ba-Omer itself, not the evening [before]." The poskim debate what the Rama meant: Some(14) say that he meant to exclude the evening before the day of Lag ba-Omer. In their view, haircutting may begin only on the morning of Lag ba-Omer.

This interpretation is based on the fact that Lag ba-Omer itself is still included in the days of mourning over the death of the disciples of Rabbi Akiva. The halachic principle of miktzas hayom kekulo - a small part of the day is considered like a whole day - permits us to lift the mourning restrictions after a small part of the day has passed in mourning.

Other poskim(15), however, reject this interpretation of the Rama's ruling. In their opinion, the Rama meant to exclude only those who permit haircutting before the night of Lag ba-Omer has actually begun (tzeis ha- kochavim). Once it is definitely night, however, Lag ba-Omer has begun and haircutting is permissible.

Both of these views are quoted in the Mishnah Berurah, who does not render a clear decision on this issue. In many communities it has become customary, based on the previously mentioned view, not to take a haircut or a shave until the morning of Lag ba-Omer. But in an area where a clear custom does not exist, or in case of necessity, one may be lenient and take a haircut or a shave immediately upon nightfall of Lag ba-Omer(16). [Concerning weddings, however, there are poskim who hold that they should not be held on the evening of Lag ba-Omer,(17) while others are lenient in regard to weddings as well.(18)]

FOOTNOTES:

1 A Jew who does not eat kosher, even if he is a tinnok shenishbah, is still considered as a non-Jew

concerning these halachos; see Shach Y.D 118:4.

2 See Chochmas Adam 70:1. See also Aruch ha-Shulchan Y.D. 115:6.

3 Avodah Zarah 39a, quoted in Y.D. 118:1.

4 Y.D. 18:2 and 10 and Aruch ha-Shulchan 30.

5 Obviously, if he simply wanted some "standard" food, he would purchase some himself.

6 See Kaf ha-Chayim 118:114.

7 Shulchan Aruch Y.D. 118:7 rules that b'diavad, food delivered by a non-Jew who passed through a "public domain" en-route to his delivery stop may be eaten, since we assume that the delivery person will not dare to switch the kosher food for non-kosher for fear of being caught in the act by passersby. Nowadays, however, when deliveries are usually made by car and the delivery person can do what he wants in the privacy of his vehicle, this ruling no longer applies; based on Beis Shelomo 187 and Mabit 208, quoted by Chelkas Binyomin on Y.D. 118:7, Biurim s.v. mutar.

8 See Taz Y.D. 118:8 and Aruch ha-Shulchan 12 and 37. See also Avnei Yashfei, vol. 2, pg. 123, quoting Harav Y.S. Elyashiv.

9 Y.D. 118:3 and Kaf ha-Chayim 37.

10 See Tuv Ta'am Voda'as 3:2-17, quoted by Chelkas Binyomin 118:6.

11 See The Weekly Halachah Discussion, vol. 2, pgs. 334-339 for an elaboration of this term.

12 Orchos Shabbos 3:20.

13 O.C. 493:2.

14 Levush, Gra, Machatzis ha-Shekel, and others.

15 Chok Yaakov, Mor u'Ketzia, Eliyahu Rabbah, and others.

16 See Kaf ha-Chayim 493:30.

17 See Mishnah Berurah 493:11 quoting the Eliyahu Rabbah. See also Teshuvos Chasam Sofer O.C. 142.

18 Igros Moshe O.C. 1:159; Chelkas Yaakov 1:97.

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