

SHE'AILOS U'TESHUVOS

by Rabbi Doniel Neustadt

QUESTION: In last week's Yated Reader's Write forum, a reader quoted a Medrash Tanchuma that states that is preferable to patronize a Jewish business. What are the specifications of this Halachah?

DISCUSSION: Rashi in Parashas Behar(1) quotes a similar Chazal, in the name of Toras Kohanim, which states that one should patronize a Jew whenever possible. Although this is not recorded as law in the Rambam and Shulchan Aruch, the Chafetz Chayim(2) rules that one should follow this policy. Even if the Jewish-owned business is located a bit farther away and it will take longer to shop there, it is still a mitzvah to give preference to the Jewish-owned establishment.(3)

One must shop at Jewish-owned store, however, only when the price is the same or slightly higher. If the price is much higher, then there is no mitzvah to patronize it. The poskim do not give a precise definition of what is considered "much higher" and what is considered "slightly higher,"(4) and it may, therefore, be up to each individual to decide this for himself.

When judging what is considered much higher or slightly higher, the judgment may be based on the total outlay of money, not on the price differences per item. For instance, if shopping at the non-Jewish store will yield an overall savings of twenty dollars, even though the savings per item is only a few cents, twenty dollars may be considered a significant difference and it would be permissible to shop at the non-Jewish store.(5)

The same ruling applies to differences in service. If there is only a slight difference, then it is a mitzvah to support the Jewish businessman. If there is a great disparity, then it is not a mitzvah.

QUESTION: It has recently been announced that this year's Chadash season has begun. Is one required to accept upon himself the prohibition of Chadash? Why are some observant Jews more lenient than others in regard to this mitzvah?

Discussion: Chadash ("new" grain) is grain(6) that was planted after the annual sacrifice of the Omer was brought on the 16th of Nissan. The Torah (7) prohibits eating such grain until the following 16th of Nissan, when the Omer sacrifice was brought once again. Although we have no Korban Omer today, we must still wait until the second day of Pesach(8) of the following year in order to eat grain planted during or after Pesach of the previous year(9).

Thus, in order to avoid the prohibition of chadash, we must ascertain exactly when the grain was planted, since any grain which grew after the 16th day of Nissan is prohibited to eat until the

following 16th day of Nissan. There are many people who meticulously observe this mitzvah.

The majority of observant Jews, however, follow the centuries- old custom of being lenient in regard to this halachah. Most of the major kashruth organizations in the United States do not require grain to be yashan (old) before certifying a product as kosher. Over the years, various poskim have attempted to explain the laxity in observing this halachah. Let us list some of the explanations which they suggest:

1. It is difficult to ascertain exactly when the grain was planted. Often, there is doubt whether the grain is from this year's crop (thus possibly being prohibited chadash) or last year's (permitted yashan). Additionally, even if the grain is from this year's crop there is still a possibility that it may be yashan - for grain to be considered chadash, the seeds must take root after the 16th of Nissan. Thus there is a "double doubt" (s'feik s'feika) concerning the grain:

1) Is the grain this year's or last year's.

2) Even if it is this year's, it may be that it was planted shortly before the 16th of Nissan which allowed the seeds to take root before the deadline (10), and it would thus be permitted. Generally, one may be lenient when a "double doubt" applies to any given prohibition (even when the prohibition is Biblical in nature)(11). Nowadays, this approach is difficult to rely upon, since it is almost always possible to ascertain the planting dates and growing stages of all grain products(12).

2. Some Rishonim are of the opinion that the Biblical prohibition of chadash applies only in Eretz Yisrael. The Rabbis extended the prohibition to nearby countries only, such as Egypt and Babylonia. Other countries were never included in the Rabbinic decree. Although many other Rishonim disagree(13), the lenient view has become the customary practice(14) since it was difficult in those days to obtain yashan wheat at all times.

3. Some poskim rule that the prohibition of chadash applies only to Jewish- owned grain. Grain products belonging to a gentile were never included in the prohibition(15). The above leniencies are exactly that - leniencies. Mishnah Berurah(16) rules that those who rely upon them are relying on accepted authorities and one need not object to their practice. He nevertheless recommends that one should be strict and not rely on the above leniencies since there are poskim, notably the Gra, who treat the prohibition of chadash as a Biblical prohibition, even outside of Eretz Yisrael and even if the grain is owned by gentiles(17).

Mishnah Berurah(18) rules that even those who are strict in the observance of chadash may use dishes in which chadash was cooked, provided that 24 hours elapsed since the cooking of the chadash grain.

Jewish-owned grain in Eretz Yisrael is prohibited according to all the poskim, since none of the above leniencies apply(19). In fact, however, the entire problem does not really exist in Eretz Yisrael today, since the planting season is in the beginning of the winter and harvesting is generally done

after Pesach. In the United States, however, the various grains are planted and harvested throughout the year, making the problem much more acute.

[Note that in the U.S., in almost all cases, spelt and rye are winter crops (permitted yashan wheat) while barley and oats are almost always spring crops and are subject to the restrictions of chadash. Wheat comes in both winter and spring varieties. High gluten wheat, used mostly in bread, challah and pizza, is generally from chadash spring wheat. Low gluten wheat, generally used for cookies, matzah and pretzels, is almost always from yashan winter crops. Durum, another type of wheat used mainly in pasta, is generally from spring crops(20)].

FOOTNOTES:

1 25:14. It is also quoted as practical halachah in Teshuvos Tashbatz 3:151 and Teshuvos Rama 10.

2 Ahavas Chesed 5:7 and Nesiv ha-Chesed 12.

3 Maharam Shick C.M. 31.

4 See Minchas Yitzchak 3:129, who remains undecided on this issue.

5 See Kol ha-Torah, vol. 42, pg. 305.

6 Wheat, barley, oats, spelt and rye. Corn, rice and other grains, as well as legumes, are not included.

7 Vayikra 23:14.

8 Outside Eretz Yisrael the date is the 17th of Nissan, the third day of Pesach.

9 O.C. 489:10; Y.D. 293:1.

10 The poskim (see Shach, Nekudos ha-Kesef, Dagul Mervavah, Aruch ha- Shulchan Y.D. 293 and Mishnah Berurah 336:33) debate how long it takes for seeds to take root after planting. Some rule that it takes two weeks. Consequently, any grain planted two weeks or less before Pesach may be chadash. Others are more lenient and allow seeds planted up to three days before Pesach to be considered yashan. See also Minchas Yitzchak (6:43).

11 This argument to permit chadash is advanced by the Rama (Y.D. 293). Many other poskim are critical of this approach for various reasons.

12 Mishnah Berurah 489:45. In the U.S. where all grains are dated and encoded, the information needed is easily accessible; see Igros Moshe Y.D. 4:46-4.

13 See Beiur ha-Gra (Y.D. 293:2) and Sdei Chemed on Chadash.

14 See Aruch ha-Shulchan (Y.D. 293:6,19) who strongly relies on this.

15 This is the view of the Bach (Y.D. 293). The Ba'al Shem Tov is quoted by his disciples as having ruled like the Bach, which partly explains why many poskim in Eastern Europe ruled leniently

regarding chadash.

16 489:45.

17 In addition, some poskim (see Chasam Sofer, Toras Moshe on Parashas Bo; Da'as Torah 453:4) warn against using chadash wheat when baking matzos for Pesach, even for those who are lenient during the rest of the year.

18 Ibid. 48.

19 The status of gentile-owned grain that was shipped to Eretz Yisrael and baked there by Jews is debated by the poskim. Some are strict (Achiezer 2:39) while others are lenient (Har Tzvi 2:70).

20 Information supplied by the Orthodox Union (Daf ha-Kashrus, Jan. 1998).

Weekly-Halacha, Text Copyright © 2005 by Rabbi Neustadt, Dr. Jeffrey Gross and **Torah.org**.
Weekly sponsorships are available--please send email to the moderator, Dr. Jeffrey Gross
jgross@torah.org.

Rabbi Neustadt is Rav of Young Israel in Cleveland Heights. He may be reached at 216-321-4635 or
at jsgross@core.com.