

HALOCHOSCOPE

This week's question:

Fish was purchased, skinned and boned, from a non-Jewish vendor. The vendor labeled it as a type of fish that is known to be kosher. The buyer claims that he is able to recognize the fish by its normal smell and appearance. However, there were no fins or scales to identify it as such. It was then cooked. What is the status of the fish and the utensils?

The issues:

- A) *Simanei dagim tehorim*, the signs of kosher fish
- B) Buying fish without the signs
- C) The utensils

A) *Simanei dagim tehorim*

The Torah specifies signs of species that are produced in water: the presence of fins and scales. This means that any creature that grows in water must have these signs to be permitted. The terminology used by the Torah is parsed to indicate that creatures that do not thrive in live water, but in receptacles, are not forbidden without the signs. These prohibitions (or dispensations) apply to all water creatures, including fish, shellfish and bugs. [If a bug leaves the receptacle, or even if it leaves the water and goes onto the sides of the receptacle, it can attain the status of a land-based bug. This additional categorization can forbid it due to other prohibitions.]

The Talmud says that there is no fish that has scales that has no fins. Thus, while animals require two signs, fish should only require one sign: scales. The reason the Torah lists both fins and scales is discussed. The conclusion is that this is simply to increase the glory of Torah and its study. Fins are attached at one end, but can move around on their own. They are used to help the fish swim. Scales are attached on more than one side. The fins are not part of the actual bone structure of the fish. The scales that qualify a kosher fish are also not meant to be part of the skin. They are attached, rather than an outgrowth of the skin. Thus, if removal of the scales also removes some skin, the scales do not qualify the fish as kosher. The skin should be smooth with no holes after removal of the scales. The Talmud discusses species that lose their scales when they are removed from the water, and species that do not grow scales until they reach a later stage of development. Both of these are permissible.

The Talmud debates whether the Torah requires more than one scale. *Halachically*, we follow the view that a fish with one scale is acceptable. However, there is a source that indicates that the scale should be located under the fin, under the tail and under the jaw. There are three ways to view this source. In one view, it is a distinct *halachic* opinion, that is not followed *halachically*. In another it is followed. In a third view, it means that the opinion that does not require more than one scale, also requires it to be in one of

these locations. Alternatively, if there are scales on other parts of the fish, there need not be scales on these spots. However, if there are only one or two scales, they must be in these locations. Alternatively, this view requires a scale in one of these spots, but not in all three. The *halachic* conclusion of the poskim is that one scale is enough, but it is correct to require it in one of these spots.

The Torah lists species of kosher animals, besides listing their signs. A shorter list of non-kosher species that have one of the signs but not the other is also listed. All other species are automatically forbidden. The same is true of locust species. The signs of kosher species are listed, as are the four kosher species. In the case of birds, the Torah lists the forbidden species. No signs are listed. All other species are automatically permitted. However, practically, we rely only on mesorah, an oral tradition about each permissible species of bird. In addition, the Talmud records signs of kosher, or non-kosher species of fowl. The Torah does not list species of kosher fish. Only the signs are listed. Therefore, if one catches any fish that has signs of a kosher species, he may consume it.

The Talmud discusses additional signs that are known to distinguish between the kosher species and the non-kosher species. Non-kosher species can have narrow heads and can have no spine. Therefore, if a fish has no scales at this point, but has a broad head and a spine, it may be assumed that it is a kosher species. However, this distinction is not relied on exclusively. The poskim debate exactly how much credibility it is given. The consensus seems to be that if there are many pieces of fish together, some of which have scales and others of which have these other signs, the distinctions may be combined in certain ways to permit more of the pieces than would be permitted otherwise.

There are other characteristics that are more indirect. The Talmud discusses the breeding patterns of kosher and non-kosher species. Therefore, if one were able to observe the fish breeding, he could determine whether it was a kosher species. The brine or juice of kosher fish can have certain small organisms in it, whereas non-kosher species do not support these organisms. However, these indirect signs are not relied on by themselves to permit the actual fish.

Some species of fish are very distinct, even after they have lost their scales. Some species have scales that are very hard to see. If the fish are wrapped in cloth or paper, then unwrapped, one might be able to see the scales on the cloth. In these and similar cases, various leniencies are applied to permit the consumption of the fish. There is some discussion about fish that has a specific distinction, such as its color. The Talmud discusses *taris*, a type of fish that was common and recognizable (according to some, tuna). There was no known non-kosher fish that could be confused with it. Therefore, as long as it would not be broken into small pieces, one could assume that it was the kosher species. If broken into small pieces, one would need to suspect that bits of other species are mixed in with them. The implication is that the *simanim* were no longer on the pieces of kosher species. Some say that it refers to a species that is recognizable by its head and spine. Based on this, some suggest that the same kind of ruling could apply to other species that are unique. [See Shemini 11, Toras Kohanim, Re'ay 14, commentaries. Avoda Zara 35b 40a-b Chulin 59a 66a-67b, Poskim. Tur Sh Ar YD 83:1-3 114:9-11, commentaries.]

B) Purchasing fish without their signs

When purchasing pieces of fish without their signs, one relies on the word of the vendor. This is known as *aid echad neeman*, a single witness is believed. The witness must be reliable and trustworthy. He needs some of the qualifications of a kosher witness. In general, he must be Jewish and must be observant of the *mitzvos*. At the very least, he may not be known to violate the *mitzvos* relevant to the matter of the testimony. He may also not be a brazen desecrater of *Shabbos*. He may not be known to have previously deceived customers in this matter.

A gentile salesman is not trusted automatically. In some instances one may rely on his word. For example, if he is afraid of being caught and losing his business or reputation, he will be careful to tell the truth. Thus, if the matter on which he testifies can be verified independently, he will take care to verify his facts first. If he stands to gain nothing by making a false, or partially true claim, and he is unaware of the *halachic* consequences, he may sometimes be relied on. In certain instances, he might make innocent unsolicited statements without realizing that he is being relied on for *halachic* purposes.

The Talmud lists specific items that may not be purchased from a gentile. These include pieces of fish that cannot be identified by their *simanim*. The cases listed include fish that can be recognized by other identifying features, but have been broken into pieces and possibly salted together. The suspicion is that pieces of other species have been mixed with them. Two species are listed: *chilak* and *taris*. *Taris* may be purchased if the pieces are not mixed up together. If they are mixed, the suspicion is that a piece of non-kosher species is stuck to a kosher piece. *Chilak* is a small species of fish, sold in a pile. It is forbidden even in separate pieces. Firstly, it only grows its scales later on in its development. Secondly, there are other non-kosher species caught with it. For both of these reasons, it is hard to separate them from non-kosher species. A Jewish vendor would take the pain to separate them. A non-Jewish vendor would not be bothered about a small amount of foreign matter mixed in. From here we learn that other species that have scales may be purchased from a gentile vendor, even in pieces.

The brine and juice of non-kosher fish is forbidden Rabbinically. Therefore, if the types of species were pickled together, one may not eat the kosher species. If a vendor has the two species lying in the same water, one may not buy the kosher species. The prevailing practice is not to buy the kosher species even if they are lying separately on the same counter, next to each other. Some fishermen might have an incentive to sort through the catch and separate species before pickling. The presumption is that this does not matter enough, except for certain specific species. Therefore, one should not purchase the pickled fish from a gentile vendor if he sees non-kosher species lying with them. However, if it was purchased already, one may rely on the possibility that they were pickled separately.

If a vendor separates his species of fish to distinguish them, such as to sell them for different prices, one should be able to assume that he is honest about their origin. One might think that he may be relied on, even if they have no scales. However, mistakes happen, especially if other species are being sold at the same counter. The wrong species

might be put back into another pile. Since *kashrus* is no issue to the gentile, he is not meticulous to prevent this.

In addition, one may not leave pieces of fish or meat in the care of a gentile, or send pieces of fish with a non-Jewish delivery man, unless they are sealed with two seals. This is to prevent intentional exchanging. The gentile might stand to gain by exchanging them. Evidently, this institution was made even though different types of fish taste different. There are certain situations where a dispensation might apply. For example, if there is no place along the route that is secluded enough to make the switch undetected, one may assume that no switch was made. However, one may not rely on this ahead of time. In our case, the gentile vendor has no special circumstance to allow for a dispensation. There is no reason to permit pieces of his fish without *simanim*. [See References to section A, Avoda Zara 39b, Poskim. Tur Sh Ar YD 69:10 118:1 etc., commentaries.]

C) *The utensils*

A utensil used to cook forbidden foods becomes forbidden. It must be *kashered*, purged of the forbidden flavor. Under certain circumstances, while the food was forbidden, the utensil is permitted. For example, if food was only forbidden due to a certain measure of doubt. It is possible that such prohibitions do not extend to the utensil. Also, in some cases, the amount of loss is taken into account. A case in which there are many factors of doubt might be decided stringently due to the low level of loss. The food might not be worth enough to rely on a leniency. The pot might be such that it cannot be *kashered*, and leniency might be applied.

Some might suggest that in our case, the fish is 'probably' permissible. Therefore, the utensil should be treated leniently. However, the fish is not permissible. It is forbidden first and foremost because it might be a non-kosher species, a Scriptural doubt with no recognized resolution. The Torah specifies the way to resolve this doubt – by looking for *simanim*. Second, even if one knows, basically, the species, there is a Rabbinical prohibition against purchasing fish without its *simanim* from a gentile. Even with *simanim*, fish that could be mixed with fish that has no *simanim* is forbidden to be purchased. [See Psachim 30a-b Avoda Zara 75b-76b, Poskim. Sh Ar OC 451-2 YD 121, commentaries.]

In conclusion, the utensils must be *kashered*.

On the Parsha ... In the story of the *meraglim*, the Jewish people are faulted for listening to the evil reports of the ten, rather than to the positive reports of *Yehoshua* and *Kalev*. The problem is that the Israelites had sent the *meraglim* to bring back a report. It happened that ten reported negatively, while two reported positively. This was a conflicted testimony. What were they to do? Why should they prefer the reports of *Yehoshua* and *Kalev*? Upon examination, we see that neither side disputed the actual facts. The disagreement was on how to interpret them. From the way that the ten made their statements interpreting the facts negatively, the people should have immediately suspected them of having an ulterior motive. A witness with an agenda loses credibility. When the people trusted the ten, they themselves must have agreed with their agenda.

Sponsored in honor of the birth of a baby boy to Yossel and Devorah Chana Silver. Mazal Tov.

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