

HALOCHOSCOPE

Ain isur chal al isur, something already forbidden for one reason cannot become forbidden for a second reason. *Nevailah* is the meat of an animal killed without conforming to the laws of kosher *shechita*. This is forbidden to eat, but its benefit is permitted. When it is cooked with other food, the results are also forbidden due to absorbed *nevailah* flavor. If it is cooked with milk, the result should have the status of *nevailah*, but not of the secondary *isur basar bechalav*. Therefore, its benefit should be permissible.

However, *ain isur chal al isur* can be overruled. If the second *isur* is greater than the first in some aspects, it takes effect on top of the first. The question is, if the second *isur*, in our case *basar bechalav*, would also forbid benefit, could this be considered a greater *isur*? The poskim maintain that the benefit *isur* is really a stronger form of the general eating *isur*. It cannot take effect again. The vast majority of the products in our case are already forbidden due to *nevailah*. Accordingly, there is no *hana'ah* prohibition. [See Tur Sh Ar YD 87:1-6, commentaries. Tzitz Eliezer XVII:33. Halochoscope IX:42.]

D) Lying and deceiving to save a person from sin

There could be a simple way for the aid to avoid the entire situation. He could tell the older person that the particular food he or she asked for is not available. This would involve saying something untrue. He could possibly find a vaguer way to say it, like: "I don't know whether I can get/find that!" While he did not lie outright, he did deceive the person. If he does it right, he could convince them that there is a better choice, that he happens to know is kosher. He never tasted the non-kosher one to be able to say with any certainty that the kosher one is comparable. If the person understands that the issue is the *kashrus* of the item, saying that there is a kosher alternative could help or hinder. As a more extreme solution, the aid could simply buy a kosher substitute without telling.

The issue with this 'simple' solution is that he needs to lie or deceive. Do the ends justify the means in this case? The Torah permits falsifying in order to preserve peace. The Torah also permits it in certain other situations. Sometimes, it is considered a type of *mitzvah*. Does our case qualify?

While our exact case is not discussed by the poskim explicitly, we may derive the ruling from explicit cases. The poskim permit lying to save oneself from doing something forbidden, even if it is a personal stringency. The poskim also permit lying to prevent others from a violation. In our case, the aid wishes to save himself from violating *lifnei ivair*. Our case has the additional feature of lying to save another from a violation, which is also permitted. Therefore, if it will not backfire, he may indeed try this solution. [See e.g. Shabbos 12b Nedarim 21b etc. Baba Metzia 23b, Poskim. Tur Sh Ar OC 565:6 YD 232 CM 228, commentaries. Sdei Chemed Klalim Shin 27-28. Etc.]

In conclusion, there is likely to be an issue of *lifnei ivair* in this case. There could be an obligation of *tochacha*. In all likelihood, there is no issue of benefit from meat and dairy mixtures. The aid may say something untrue to prevent the violation.

Sponsored in the *zechus* of a speedy *refuah shelaimah* for Menacham Manale ben Rochel Devorah and for Yosef Yitzchok ben Yehudis Chaya besoch *shear cholei Yisroel*.

© Rabbi Shimon Silver, August 2014.

Subscriptions and Sponsorships available. (412) 421-0508. halochoscope@hotmail.com

This week's question:

Someone is employed to help an elderly person, who is Jewish but not observant. Sometimes, he does her shopping, with or without her. She buys non-kosher foods, including items that have meat and dairy ingredients. Let us assume that this will not take place where there is an issue of *maris ayin*, appearance of impropriety. What is the aid allowed to do? May he intentionally buy her alternative items, on false pretenses?

The issues:

- A) *Lifnei ivair*, the restriction against aiding another in sinning; *mumar*, what is considered a brazen violator
- B) *Tochacha*, rebuking in an ongoing situation
- C) *Hana'as basar bechalav*, forbidden benefit from meat-dairy mixtures
- D) *Genaivas daas*, deceiving, and *sheker*, lying, to save another from sinning

A) *Lifnei ivair*; *mumar*

The Torah forbids placing a stumbling block before the blind. This is interpreted three ways as a Scriptural *mitzvah*, with one Rabbinical extension of them. Scripturally, one may not be the accessory to enable another to sin. For example, a *nazir* has banned himself from wine. One may not pass him wine to drink. The archetypal case is a *nazir* on one bank of a river who wants wine on the other bank. The *nazir* cannot reach the wine. The person who passes it to him is directly for the *nazir* getting the wine and later drinking it. Second, one may not do something that will cause another person to sin in reaction. For example, one may not discipline an older child. He will react disrespectfully to his parent. Third, one may not offer someone advice against his own best interests. He is 'blind' in the matter, and one may not cause him to 'stumble'. In all cases, the helper or advisor has done no wrong directly himself. The other person might have violated or acted on the advice. The helper/advisor is not financially liable, nor obliged to atone for the consequences. Nonetheless, the Torah holds him partially ethically liable for the other person's actions. Rabbinically, this extends to forbid helping another in the process of sinning. Thus, even if the other could have sinned without the help, the helper is *mesayaia* or *mechazaik*, supporting the sinner. The classic example would be when the wine is on the same bank of the river as the *nazir*. He could have reached it himself. The person who passed it to him just helped.

There is an opinion that the lesser rule of *mesayaia* does not apply to a *mumar*, habitual and conscious violator. This description of a non-observant Jew is fraught with difficulties nowadays. Most of the non-observant Jews do not even realize how non-observant they are. They are under the impression that their 'version' of Judaism is a valid alternative, and many of them consider themselves 'religious' but not Orthodox. Thus, they

are not considered *mumar*, because their sinning is *shogeg*, unintended. Therefore, even those who relax *mesayaia* for a true *mumar* would forbid it here. In addition, it is unclear whether the consensus would rely on those opinions.

In our case, one could argue that the aid is violating true *lifnei ivair*. The senior citizen might have no way to get the non-kosher food without the help of the aid. It is a modern-day version of 'two sides of a river'. In many situations, the person would be able to acquire the non-kosher foods through someone else, such as a store employee. Nonetheless, this aid is being hired specifically to perform this kind of task.

Lo sachanifu, do not flatter, includes the prohibition against verbally praising a violator. One might tell him "That is OK for you. You did nothing wrong!" *Chanufah* is morally so evil, that its violators are considered one of the four types that are rejected from Hashem's presence. Some consider it a Scriptural *mitzvah*, derived from the prohibition against shielding a murderer. The reason it is considered so evil is because people perpetuate the evil that was already perpetrated, and make it hard for the world to see wrong from right. One may not condone a sin, even if the situation makes it hard to admonish the sinner. Rather, one should remain silent. However, in many situations, silence is interpreted as a passive approval. In such cases, there is no choice but to voice one's disapproval. Hopefully, one should manage to word it in a way that is not counterproductive. Is there some way that this aid can perform his job without being in violation of these precepts? [See e.g. Psachim 40b Gitin 61a Avoda Zara 65b Nidah 61b Tosefta Makos 3, Poskim. Tur Sh Ar OC 266 (MA8) 301:8 303:2 YD 151:3 etc., commentaries. Chofetz Chaim, Psicha, Lavin 16, commentary. Tzitz Eliezer XVII:36.]

B) Tochacha long term

When dealing with a sinner, habitual or one-time, one must admonish. This is a Scriptural *mitzvah*. Nonetheless, the Talmud says that one must always use two hands for this – the left hand to push away and the right hand to draw near. Pushing away means that one should not turn a blind eye to the violation, and there should be consequences. These include criticism, that might need to be harsh and rejecting, including excommunication. On the other hand, one must make an effort at the very same time to encourage the sinner to repent. This will require opening one's arms and welcoming him afterwards. This is all part of the Scriptural *mitzvah* of *tochacha*, admonishing a sinner.

If one comes across a person in the midst of transgressing, there is a positive *mitzvah*, *hochaiah tochiach*, you shall surely admonish your fellow. This applies even if the same sinner has been admonished many times before, even in the midst of this same activity. Accordingly, the observant Jew is obliged to say something to the non-observant Jew, if he is present when the non-observant senior citizen is actively engaged in eating the non-kosher food. By the same reasoning, it is even more important to prevent it from ever happening. This obligation applies to all bystanders, and regardless of whether the violators are aware of their transgression.

There are limitations to the *tochacha* obligation. If the person will not listen anyhow, it depends on the severity of the violation. If it is indirectly Scriptural, or Rabbinical, one should rather not admonish. *Mutav sheyiheyu shogegin*, rather let them violate it unintentionally, rather than brazenly and intentionally. Since they probably do not know

of the violation, they will be considered *shogegin*. If they are informed, and then choose to continue with their behavior, it will be *maizid*, intentional. If it is an openly Scriptural *mitzvah*, one admonishes anyhow, to fulfill his personal obligation. Due to explicit nature of the law, it is assumed that they know about it already. In the case of non-observant Jews, this poses a problem. Some of them are wise enough to know about the explicit *mitzvos*, but believe that they are not bound by them. Their brand teaches that these do not apply. Others are truly unaware. Yet others are knowledgeable carefree violators. If they are brazen, they are *mumarim*. They know better, learned in their youth and rebelled, succumb to temptation, or simply became lax.

One need not admonish one who by nature does not accept it. It is sometimes a *mitzvah* to remain silent. According to many poskim, one need not admonish a *mumar*, who shows contempt for the Torah. The Torah uses the term, *amisecha*, your friend, interpreted as *am she'itecha*, the people who are with you in their Torah observance.

In accordance with the earlier dictum, part of *tochacha* is to draw the violator closer to Torah observance. No-one is abandoned. Therefore, if one is able to deal carefully with a violator in the longer term, he might be able to fulfill his obligation and also bring the non-observant to observance. This might require maintaining an open friendship. The position of an aid is an opportunity and a challenge. It is better that this observant hold on to the position, if the alternative is a non-Jew or another non-observant Jew. By keeping the job, he will be able to save the elderly person from many sins, even if he cannot always do so. However, there are rules about how to draw close with the right hand. One may not place himself in a situation in which he compromises his own observance. The Talmud debates whether it is preferable for a more observant person to violate a minor matter in order to save a less observant person from a more major matter. There are even instances of *avairah lishmah*, a transgression for altruistic reasons. However, our case would not fit those guidelines. [See Parshas Kedoshim 19:14 17. Shabbos 4a 54b-55a 69a Eruvin 32b Beitza 30a Yevamos 65b Sotah 47a Kidushin 32a Baba Metzia 31a Sanhedrin 107b, Poskim. Tur Sh Ar OC 608:2 YD 240:11 20 242:14 22 243:7 245:9 334:42 48, commentaries. Halochoscope XVI:27.]

C) Hana'as basar bechalav

The aid gets paid for doing his job. The Torah prohibits cooking mixtures of meat and milk three times. The oral tradition is that this refers to cooking, eating and benefiting from the cooked mixture. The restrictions on benefit apply to Scripturally forbidden forms of the mixture. This is actual meat and milk cooked together, and each of them cooked in utensils of the opposite type. A minority view also forbids benefit from Rabbinically forbidden mixtures. We do not follow this. Thus, if the mixture was not cooked together, it is not forbidden. In most instances, prepared and processed foods were mixed before the cooking stage. This could include canned goods. They are prepared in a sterilizer, and are considered cooked by most poskim. In some instances, the ingredients could be added after the cooking. In many cases of apparently neutral foods, the utensils would be considered meaty or dairy. If, the utensils already became forbidden due to usage with a mixture, the resulting mixture is forbidden to eat, but its benefit is usually allowed. In our case, the aid gains from providing the forbidden food to the elderly person.