

# ספירם

Please be advised that the raspberries and blackberries policy described below has changed. For current guidance, please visit: [crk kosher.org/fruitsandveggies](http://crk kosher.org/fruitsandveggies)

## RASPBERRIES AND BLACKBERRIES

Rabbi Eisenbach and I visited raspberry fields and processing plants in Washington State as part of a review of the cRc policy on raspberries and blackberries. The report on that visit was divided into two parts – technical and halachic, and this article includes some of the first half and the entire second half of that report. The report was supplemented by information provided by Rabbi Fishbane from his visits to plants in Oregon and Washington.

Note: *Raspberries and blackberries plants are almost identical. This article will use raspberries as the example, but unless otherwise noted the same applies to blackberries.*

### Fruit

Raspberries and blackberries are each comprised of 2 parts, namely the drupelets and receptacle. The drupelets are the individual red or black “sacks” which collectively comprise the outside of the fruit, and the receptacle is the white internal core of the fruit. The receptacle is the only portion of the fruit which is attached to the tree/shoot, but there is an important difference between raspberries and blackberries; when raspberries are harvested the receptacle remains attached to the tree, but when blackberries are picked the receptacle stays inside the fruit. Accordingly:

- A blackberry is a solid fruit (with a soft outside) that is considerably firmer than the delicate raspberry. This allows blackberries to be washed more vigorously than raspberries without damaging the fruit.
- The hollow center of the raspberry provides an additional place for bugs to “hide”. [Of course that spot is not available until the raspberry is removed from the tree and the receptacle is pulled out.]

### Harvest

The farms we visited sold all of their berries as frozen, and therefore they harvested their fruit when it was fully ripe using a mechanical “picker”. The picker is designed to harvest ripe fruit by shaking the tree and catching all fruits that fall off. This makes it perfectly suited for harvesting berries which will be immediately frozen and must be in a fully edible condition. However, raspberries which will be sold as fresh are consumed a few days after harvesting, so the farmers would rather pick those berries when they are almost ripe (so that they will ripen before they get to the store but will have a longer shelf life). Therefore, raspberries sold as fresh must be hand-picked by employees who are trained to find almost-ripe fruit.

From our perspective, there is a significant difference between hand-picked and machine-picked fruit. Machine-picked fruit is hit by a brush, dropped to a fruit-catcher,<sup>1</sup> and air-sorted; each of these steps potentially removes bugs. In contrast, hand-picked fruit has none of these steps, and we understand that it is just picked from the cane and put into a container. Thus, machine-picking is a first reason why frozen raspberries should have fewer bugs than those sold fresh. In addition, we were told that berries sold as fresh cannot be washed at all,<sup>2</sup> because the moisture will lead to rotting of the fruit.

### Freezing

Frozen<sup>3</sup> raspberries come in a few varieties – IQF, Fresh-Pack, and Sieved – as described below.

#### IQF

The highest quality frozen berries are sold as IQF (Individually Quick Frozen), which is to say that the berry is frozen whole in a way that can (attempt to) preserve its texture, taste, and appearance. Fruit destined to be IQF must be handled gently so as to not break or damage the fruit, and this is especially true of raspberries which are quite delicate. Nonetheless, raspberries basically go through the following processes (with different companies doing them to different degrees, and some ignoring certain steps altogether):

- Cold storage
- Air sorting
- Water spray
- Visual inspection
- Final wash
- Liquid nitrogen bath
- Freezing in freeze tunnel

Some of these steps, particularly the 2<sup>nd</sup> and 3<sup>rd</sup> ones, may help remove bugs, but the others likely have little or not effect on any infestation.

<sup>1</sup> We will see below that dropping raspberries from one foot high is a great way to encourage the bugs to leave their hiding places and crawl out of the fruit. Thus, dropping them from the cane onto the fruit-catcher serves as an unintended way of removing bugs!

<sup>2</sup> This seems to be such a concern that fresh berries are only harvested when they have dried from rain and dew!

<sup>3</sup> In addition to being sold frozen, raspberries are also sold fresh and freeze-dried (and possibly even as dehydrated/heat-dried). Freeze-dried (and dehydrated) raspberries do not pose a bug concern, since mechanically-dried bugs have the same status as bugs which died more than 12 months ago (see *Darchoel Teshuvah* 84:102); details of this position are beyond the scope of this article.



## Fresh-Pack & Sieved

Fruit which is of lower quality is sold as Fresh-Pack or Sieved where the finished product is a “mush” of fruit and juice, and individual fruits are not distinguishable.

The berries go through the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> steps noted above, but each step is somewhat less rigorous than in an IQF line. After the visual inspection, the berries go into a de-stemmer which essentially gives the fruit a light grinding, thereby creating a thick liquid mixture that contains chunks of fruit and seeds. This liquid is pumped into containers (e.g. pails, bag-in-box), which are then frozen as a solid block.

It is possible that some bugs survive whole through the grinding, but it would surely seem that they are permitted based on the *sfek sfekah* of *Rashba/Shach*, noted later in this document.

In addition to the above steps, some fresh-pack berries are also sieved between the de-stemming and freezing steps. Sieving removes all seeds and basically converts the fruits into a juice; it would close to a miracle if any whole bugs survived that stage.

## Bugs in Fresh Berries

### Finding the bugs

The farms put in serious efforts to assure there are no bugs on the raspberries. They claim that their primary concern is to protect the plants from harmful insects, but they also are sensitive to not having any bugs “show” on retail products.

At first, we did not see even one bug in the scores of berries we checked out in the fields. As we walked through the fields we kept picking berries and looking them over carefully (and even breaking apart some of them) and did not see a single insect. Our escort would show us where leaves and berries had been damaged by insects or mold, but we never actually saw any bugs.

Of course, we were quite surprised by this, and from one of the fields I called a reputable *Mashgiach* who has worked with raspberries to ask for some direction. He said that the only way to see the bugs is to put a piece of white paper onto a table, hold a berry 12-18 inches above the paper, and drop the berries (one at a time) onto the paper.<sup>4</sup> For whatever reason,<sup>5</sup> this encourages the bugs to leave the berries and walk on the paper where they are easily visible. We tried

<sup>4</sup> It was later pointed out that this exact test is described in *Chayei Adam* 143 in the parenthetical comment to **אשמנו**.

<sup>5</sup> Rav Schwartz understood that the bugs leave from fright, just like they do during milling (see *Shulchan Aruch* 84:14, *Taz* 84:19, and *Shach* 84:40). Others suggested that dropping the berries either dislodges bugs from the many cracks and crevices in the berry, or the vibration stimulates the bugs to move.

this, found that it worked quite well, and brought out 2 bugs per half-pint of blackberries and the same for raspberries. Our contact was more surprised than anyone, and said he had never tried something like that or seen such bugs in fresh berries.

### Level of infestation

The small sampling we did does not indicate the general infestation level of these fruits; we will work on the assumption that they are infested to the level of *miut hamatzui* and that they are not *muchzak b'tolaim*. This important point is by no means confirmed, but the research we and the OU have done seems to indicate that some batches/samples of berries have a few bugs in them (at approximately the level we saw), others have no bugs at all, and that this is consistent with the designation as *miut hamatzui*.

The difference between the infestation levels of *muchzak b'tolaim* and *miut hamatzui* is that the former is *assur mid'oraisah* to eat (since it is assumed that every sample has a bug), while for the latter there is merely a *chiyuv bedikah mid'rabannan* (to assure that the given sample has no bugs). While that seems like an academic point, we will see in the coming paragraphs that it has significant practical applications as well.

### Does one have to check this way

According to what we saw in the farm (and our previous experience), someone who looked carefully at dozens of raspberries would not see any bugs, and the only way to find the bugs is to drop them onto a white piece of paper. This leads to the following questions (under the assumption that the infestation level of raspberries is *miut hamatzui*, as noted above):

- Does the Rabbinic requirement to check infested fruits require one to perform the aforementioned “drop-test” or does it just require the person to perform a thorough visual inspection?
- If the person is required to and actually performed the “drop-test”, may he then eat the berries once no more bugs appear to be running out of the fruit?

A number of years ago, I discussed a very similar set of questions with a well known *Posek*, who offered what seemed like an appropriate proof that one could be lenient on both of these questions.<sup>6</sup> This

<sup>6</sup> The *Posek* is one who has given considerable thought to issues of bug infestation of vegetables, and out of respect for his privacy his name is not included in this report. He offered the following proof (much of the following text is copied directly from a report I wrote at that time): *Shulchan Aruch* (YD 84:11) discusses whether one can trust someone after others found bugs in the vegetables that the first person had checked. If one finds bugs that are clearly visible, then the person was negligent to have not found them and should no longer be trusted. If, however, the bugs were only found after the food was cooked, such that the person was not expected to have come across those bugs, then the person may still be trusted. On this last point, *Knesses HaGedolah* (84:62) comments as follows:

...הוא הדין אחר חביטתו, כאשר ראיתי בעין בירק שקורין פעטרישק"א בלע"ה... שאין רואין עליו שום תולעת, חובטין אותו על בגד שחור, נופלים ממנו תולעים עד אין מספר.

proof notwithstanding, Rav Schwartz held that since dropping the berries onto paper is a proven method of checking for the presence of bugs, one is required to take advantage of that method before eating the berries and should not rely on a mere visual inspection of the berries.<sup>7</sup> Therefore, after giving the berries a visual inspection, one should drop them onto paper (as described above) as many times as necessary until no more bugs are found; after this, one may eat the berries.<sup>8</sup>

Rabbi Eisenbach noted that the amount of raspberries or blackberries required for a food service establishment, coupled with the pressures in those kitchens, makes this “drop-method” not feasible. Therefore, we will only recommend this procedure for homemakers who are interested in eating or serving berries but will not allow certified food service establishments to serve fresh raspberries or blackberries.

### Chiyuv Bedikah on Frozen Berries

Thus far, we have established and/or assumed that:

- Fresh raspberries are infested to the level of *miut hamatzui*, such that there is a Rabbinic

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התולעים ג"כ ירוקים ואין נראין על הירקות רק על הבגד שחור. לכן בעל נפש יבדוק כל הירקות מקודם, ובפרט בעת הגשמים שמהגשמים נתהוו התולעים. וכן נמצא בכרוב שקורין אותו קרויט כשהוא כבוש...וכב' כתב' למע' שבשבר' שא"ל כך מנעת' את עצמי לאוכל ואיני אוכל כי אם הקלח.

*Knesses HaGedolah* is saying that there are bugs which are so camouflaged in parsley (פטרירשק"א) that they can only be discovered through banging the herb on a dark piece of cloth, and someone who neglects to find those bugs is not considered negligent (just like *Shulchan Aruch* ruled). It is noteworthy that *Knesses HaGedolah* does not say that one is required to “bang” parsley to find the bugs; he actually concludes with the statement that one should check all of the רקות, which implies that all that is required is to visually check the parsley.

In fact, the *Posek* said that banging would not be considered a good bedikah, as there would be no clear way to establish how many “bangs” are required to consider the parsley clean; therefore *Knesses HaGedolah* does not suggest that as the proper method. Rather, what appears to have occurred is that the people were used to eating parsley after giving it a mere glance and not seeing a bugs. The banging experiment demonstrated to them that there really were many bugs in the herb (but they were just camouflaged), and that served to encourage the people to henceforth check parsley very thoroughly. So, *Knesses HaGedolah* is saying that now that the banging test showed that there were bugs, people should check in the regular manner (i.e. via visual inspection) and find the bugs.

[A number of issues remain unresolved: (a) Why does *Knesses HaGedolah* only suggest a thorough checking for a *ba'al nefesh*, and not for everyone? (b) Would a visual check of *Knesses HaGedolah*'s parsley find all of the camouflaged bugs, or would it just find the forbidden/more-obvious ones? (c) What if the banging had only showed a few bugs (instead of תולעים אין מספר), and someone performing a visual check would not be able to find those bugs? Would one be required to “bang” or do something else to find the bugs, or would they be considered “not visible”, as they are too camouflaged to be seen by the naked eye? These questions require further study.]

Thus, it would seem that this *Posek* sees *Knesses HaGedolah* as ruling leniently on both questions which we posed above. Namely, the Rabbinic requirement is to perform a visual inspection of the fruit and one does not have to find bugs via dropping, banging or similar methods, and secondly, such methods are inherently flawed in that they do not lend themselves to a quantifiable requirement.

<sup>7</sup> Rav Schwartz viewed this as being an example of לברר which is (essentially) a variation on the standard *chiyuv bedikah*. This is somewhat similar to *Shulchan Aruch* 84:10 & 13 which requires filtering to remove bugs before consume certain liquids.

<sup>8</sup> Rav Schwartz implied that once the drop-test shows no more bugs this indicates that in fact the berries are now bug-free. Others suggested that if no more bugs are coming out then that at least indicates that the infestation level is now below that of *miut hamatzui*.

requirement to check them for infestation before eating.

- Although the bugs cannot be seen by visually inspecting the fruit, there is a way to get them to run out of berries.
- One is required to use that alternate methods to discover if the specific batch of berries he is holding is infested.
- Harvesting, processing, and freezing IQF raspberries includes steps which might remove some of the bugs. [We have seen that there is no legitimate concern of bugs in fresh-pack frozen berries, and this section will therefore focus on IQF berries.]

Since the only way to actually see the bugs in raspberries is to get them to run out of the fruit, and since freezing a batch of raspberries will kill just about every bug that is in them, there is no simple way to check frozen raspberries for infestation. Skilled *Mashgichim* check IQF raspberries by soaking the berries in water for a few minutes, lightly stirring them to dislodge any bugs, removing the fruit, and then checking the (dirty) water for bugs. Not only is this method difficult and time consuming, but it renders the fruit inedible. The *Poskim* I spoke to were unanimous that such extreme methods are well beyond what *Chazal* required for a “*bedikah*”, and some even suggested that a method that renders the fruit inedible misses the entire point of a *bedikah*.

If so, should we say that since IQF raspberries are permitted on a *d'oraisah* level, then in cases where *bedikah* is impossible there is not even a Rabbinic *chiyuv bedikah*? Would *Chazal* impose an impossible checking requirement which leaves the person no choice but to not eat the food?

At first glance, it would appear that the answer to these questions is that since it is impossible to check the IQF berries, one may eat them without checking (relying on the *d'oraisah* halacha that they are permitted). However, Rav Doniel Neustadt showed a clear proof that this is not true (at least for *Ashkenazim*), as follows:

There are many ways that any animal can become a *terifah*, but most of those are so unlikely to occur that one is not even required to check for them in a standard, healthy animal. On the other hand, a *miut hamatzui* of animals are *terifos* due to defects in their lungs, and therefore the lungs of every animal are checked after *shechitah*.<sup>9</sup> What if a dog ate a cow's lungs before the *shochet* was able to check them?

<sup>9</sup> *Shulchan Aruch* YD 39:1.

*Shulchan Aruch*<sup>10</sup> says that the cow may be eaten with the assumption that the lungs did not have any defects. This is because the Rabbinic requirement to check the lungs only applies as long as it is physically possible; however since in this case the lungs are unavailable we rely on the *d'oraisah* halacha which permits the cow. However, *Rema* rules that one may not eat the cow unless it is a situation of *hefsed gadol*.<sup>11</sup> *Shach*<sup>12</sup> explains that the *machmirim* agree that checking for lung defects is merely a Rabbinic requirement, and that logically such a requirement should not extend to cases where the lung was lost; nonetheless, as a means of enforcing the original requirement to check for common *terafos* (i.e. those which are *miut hamatzul*), *Chazal* decreed that if the lungs are lost, then the animal is forbidden.

*Shulchan Aruch*<sup>13</sup> discusses a similar case as relates to produce which must be checked for bug infestation before eating. He rules that if someone cooked the vegetable without checking it, and now, due to the cooking, cannot possibly check it, he may eat the vegetable. The logic is the same as above, checking vegetables that are infested to the level of *miut hamatzui* is only a Rabbinic requirement, and in cases where that requirement is no longer possible, one is permitted to eat the vegetable without checking it. Based on what we have seen regarding *terafos* we would expect that *Rema* would be *machmir* on this case as well, but in fact he is not. *Shach*<sup>14</sup> (as per *Pri Megadim*) answers that there are actually two different reasons to permit the cooked vegetables:

- The vegetables can no longer be checked.
- There is a *sfek sfekah* on the vegetables; the first *safek* is if there ever was a bug in this sample, and the second *safek* is whether the cooking broke apart the bugs such that they are no longer *beryos* and can therefore be *batel b'shishim* in the vegetables.

Although *Rema* does not hold of the first reason (as we saw regarding *terafos*), he would permit the vegetables based on the second reason.

Thus, Rav Neustadt said that although it is not possible to check an IQF raspberry for infestation, *Rema* holds that the berry remains forbidden since there was a time when it could have been checked.<sup>15</sup> This proof

<sup>10</sup> *Shulchan Aruch* 39:2.

<sup>11</sup> *Rema* also permits eating the animal in the case of those types of animals which statistically have a low percentage of lung defects.

<sup>12</sup> *Shach* 39:8.

<sup>13</sup> *Shulchan Aruch* YD 84:9.

<sup>14</sup> *Shach* 84:29.

<sup>15</sup> I.e. since one could have checked the berry before it was frozen (using the drop-method outlined above), one may not eat the berry even after it is frozen and unable to be checked. Presumably, if there was no way to even check fresh berries (as we considered in the previous section of the text), berries would

seems very clear and directly addresses the questions posed above.

On the other hand, there are a number of reasons to consider being lenient even according to *Rema*:

- *Shach* suggests that even *Rema* permits the vegetables in cases where there is a *sfek sfekah*, and it may well be that a similar *sfek sfekah* applies in our case as well. *Shach's* second *safek* (that the bugs may have been broken apart) does not apply to the case of IQF berries since the processors are careful to handle the fruit very delicately. However, we have seen that there are a number of processing steps which might remove the bugs from the raspberries, and that itself can possibly serve as the second *safek* (see the footnote).<sup>16</sup>
- Although *Rema* is *machmir* that a cow whose lung which can no longer be checked is forbidden, he concludes by saying that in cases of *hefsed gadol* one can be lenient. Rav Elyashiv<sup>17</sup> suggests that if a given food cannot easily be checked for bugs and will therefore become forbidden for an entire year/season (as per *Rema*), that qualifies as a *hefsed gadol*, and even *Rema* would agree that one could eat the food. It may be that the same logic can be applied to our case; i.e. if following *Rema* will mean that there is no way to eat IQF berries, then that may qualify as *hefsed gadol* and be permitted. [However, this logic would not apply if pre-checked IQF berries were available with *hashgachah*.]<sup>18</sup>

be permitted even according to *Rema*, much in the way that milk is permitted even though no one checks that the cow is not a *terifah*.

<sup>16</sup> The most obvious question on the *sfek sfekah* proposed in the text is that it appears to be a *sfek sfekah* *משום אחד*, which most *Poskim* hold is invalid (see *Shlach, Dinei Sfek Sfekah* #11). In fact, in discussing a similar situation, *Minchas Shlomo* (2:61:A:3 or 2:63:A:3 depending on the edition) rules that this is not a *sfek sfekah* (without specifically noting whether it is or is not considered *משום אחד*). However, a reason to consider that this is not an example of *משום אחד* is that *Shach* (ibid. 11-12) rules that it is not considered *משום אחד* if one of the *sfekos* permits more cases than the other (and he says this even in cases where the question at hand does not affect the "other" cases). Our case seems to qualify for this because based on the (lenient side of the) second *safek*, i.e. perhaps the processing is capable of removing bugs that are already on the fruit, potentially permits all of the fruit. [In addition, *Shach* 13-15 cites many cases of valid *sfek sfekos* which imply that it would apply to the *sfek sfekah* proposed in the text as well. It is also noteworthy that although *Minchas Shlomo* says that such a case is not a *sfek sfekah* he does conclude that paragraph in a manner which implies that the food may be permitted anyhow if it appears to be bug-free. His words are: *נראה דיכולים לסמוך תמיד בדברים הנראים יפה מבחון אם גם בכאלה יש מיעוט המצוי.*

*Shach* (ibid. #15) explains why the *sfek sfekah* noted in the previous text (which *Shach* himself records in 84:29) is valid in spite of the requirement that a *sfek sfekah* be *מתהפך* (see *Shach* #13-15), and it would appear that his logic would apply to the *sfek sfekah* proposed in the text as well.

*Poskim* and others with whom I discussed this *sfek sfekah* with had different opinions as to whether it is valid, and Rav Schwartz was inclined to accept that our case does qualify as a *sfek sfekah*.

<sup>17</sup> *Kovetz Teshuvos* 1:74 (end); his words are *ולאסור כל המין אין לך הפסד גדול מזה*. Rav Elyashiv suggests this to explain a ruling of *Tuv Ta'am V'daas* regarding a year when chickpeas were infested and the only way to check them was to cut each one open. It is interesting to note that in explaining this, Rav Elyashiv says (a) requiring people to cut open each chickpea is onerous enough to qualify as "impossible to check", and (b) not being able to eat chickpeas for one year is considered *hefsed gadol*.

<sup>18</sup> In fact, Rabbi Bistricher told me that Rav Schachter holds that if a pre-checked brand exists then the consumer's *chilyu bedikah* essentially requires him to purchase the certified/pre-checked item.

- We saw above that *Shach* explains why *Rema* does not argue on *Shulchan Aruch's* lenient ruling regarding vegetables which were cooked before being checked. The footnote presents an alternative answer to that question, and that answer would clearly extend to our case as well.<sup>19</sup>

Rav Schwartz's opinion was that one could be lenient and therefore permit IQF raspberries.

He further noted that from a halachic perspective it would even be acceptable for us to certify IQF berries if we would first ascertain that the farm we were certifying was, in fact, being very particular to do everything possible to rid the fruits of bugs. Thus, one of the farms we visited has a very extensive insect control system in order to qualify as a vendor for national brands, and Rav Schwartz would be comfortable certifying their products, but other farms may not be as particular and would not qualify. However, it was pointed out that many reputable *hashgachos* will not certify IQF raspberries unless they have made special checks to assure they are insect-free, and therefore it might be inappropriate for us to certify a manufacturer based on the letter of the law which permits it. Rav Schwartz was sensitive to this concern and accepted the suggestion.

## Conclusions

Based on the above, it would seem that our policy regarding raspberries and blackberries should be:

- Fresh raspberries and blackberries may be infested with bugs and therefore may not be used unless they are first checked.
- To check these berries one should:
  1. Put a white piece of paper onto the table.
  2. Visually inspect the berries for bugs.
  3. Hold the berries 12-18 inches above the paper.
  4. Drop the berries one at a time onto the paper.
  5. Check the paper for bugs.
  6. If bugs are found on the paper, repeat steps 3-5.

<sup>19</sup> Rav Heinemann has a well-known position that certain infested vegetables are permitted because (in brief) (a) the bugs are hopelessly lost in those vegetables, thereby qualifying the mixture as a *ta'aruvos*, (b) the only reason the bugs are not *bateil* is because of the Rabbinic rule that *berayah* cannot be *bateil*, (c) there is only a *safek* if there are any *berayos* in the *ta'aruvos*, and (d) therefore we may apply the rule of *safek d'rabannan l'kulah*. At an AKO Conference in 2005, a number of *Poskim* involved in *kashrus* debated with Rav Heinemann about this position, and their main argument was that many people can easily spot and remove the bugs from the vegetable under discussion; therefore point "b" (and possibly point "a") is incorrect.

Without discussing the merits of those positions, it seemed that all agreed that Rav Heinemann's logic would be correct if, in fact, it was impossible to find (and remove) the bugs. If so, it would seem that this could serve as an alternative explanation for why *Rema* does not argue on *Shulchan Aruch's* ruling regarding a vegetable cooked before being checked. Once the vegetable is cooked, and the bugs cannot be found, we can permit the vegetable based on the rule of *safek d'rabannan/berayah l'kulah*, even though it is not permitted based on the inability to perform *bedikah*. [This would be along the lines of *Shach* 39:8, who notes that although *Rema* is *machmir* regarding a lost lung, the *chiyuv bedikah* is a *d'rabannan*; therefore *Rema* agrees that any (other) *safek* is *l'hakel*.] This line of reasoning would apply to IQF raspberries, even if *Shach's* *sfek sfekah* does not (as discussed in a previous text and footnote).

- This method of checking will not be allowed at food service establishments due to the amount of berries required and the pressures in those kitchens. Therefore, food service establishments will not be allowed to serve fresh raspberries or blackberries.
- Frozen raspberries and blackberries may be used in all forms, including IQF, fresh-pack, and juice. Checking the berries before use is (not possible and) not required.
- Theoretically, we could certify IQF raspberries and blackberries under given conditions (outlined in the report), but as a matter of policy we would only certify them if a *Mashgiach* was on hand at the farms to assure that the lot in question is free of bugs.



## RASPBERRIES AND ARLAH

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Raspberries<sup>20</sup> are grown for the fresh fruit market and for commercial processing into individually quick frozen (IQF) fruit, purée, juice, or as dried fruit used in a variety of grocery products. These popular fruits can be eaten fresh or made into jams, jellies, syrups, compotes, pastries, juices, and many other foods. Besides their excellent flavor, raspberries and blackberries provide vitamin A, vitamin C, and dietary minerals.<sup>21</sup> Raspberries can be cultivated from hardiness zones 3 to 9.

Raspberries are a biennial, summer-bearing crop. The root system is perennial, and plants are capable of living for several years. Their growth habit is to produce vegetative primocanes the first year, which then become flowering and fruiting floricanes the second year, and then die. Each established field will contain both primocanes and floricanes at the same time.

<sup>20</sup> The raspberry (plural, raspberries) is the edible fruit of a multitude of plant species in the subgenus *Idaeobatus* of the genus *Rubus*; the name also applies to these plants themselves.

– "In a horticultural sense, neither raspberries nor blackberries are true berries. Both produce aggregate fruits composed of many small, single-seeded drupelets held together with microscopic hairs. The drupelets form around the outside of a receptacle, or core. When raspberries are picked, the cluster or drupelets that we call a raspberry slips off the receptacle, leaving the core behind. In blackberries, the receptacle breaks off where it connects to the stem and remains inside the 'berry' ". - [Growing Raspberries and Blackberries in the Inland Northwest and Intermountain West](#), by Danny Barney, Michael Colt, Jo Ann Robbins, and Maurice Wiese. University of Idaho. 1999, pg 4. - This fact makes the raspberry harder to check for insect infestation due to its fragile nature.

– It should be noted that mulberries (*Morus*) are a fruit that is similar to that of raspberries and blackberries. The fruit of this tree has often been confused with the raspberry and blackberry. The mulberry, however, grows on a tree according to all opinions, and in *חזק לארץ* if one knows for certain that he has a tree within the years of *arlah* he may not eat that fruit. Also, certain species of black raspberries (*Rubus leucodermis*, native to western North America) grow similar to raspberries, while other species [*Rubus occidentalis*, native to eastern North America (these are the commercially available black raspberries)] grow more like a regular bush.

<sup>21</sup> [Growing Raspberries](#).pg 5



Some *Poskim* view the raspberry as a doubtful tree, due to it having characteristics of both a tree and a non-tree.<sup>35</sup> The results of such an identification are that raspberries grown in *Eretz Yisroel* are forbidden while those grown in *chutz la'aretz* are permitted.<sup>36</sup>

Some note that the discussion of defining the raspberry plant may depend on how the primocanes grow. If the new shoots emerge from above-ground they are considered as a continuation of the previous growth and the plant is a halachic tree. If, however, the primocanes emerge from the roots below-ground the raspberries will fall under the above dispute regarding their status as a tree.<sup>37</sup> Some sources note that some raspberries may produce new canes above the surface.<sup>38</sup> This is not the case in the raspberries produced commercially in the United States.<sup>39</sup>

If one were to consider the raspberry to be a halachic tree, consumption of the raspberry would be forbidden entirely. This is because each cane is viewed as a separate tree and since the cane does not last three years, the fruit will always be *arlah*.<sup>40</sup> Others, however, consider the entire plant to be one tree, irrespective of the fact that new canes grow from the roots, as this is the way this tree grows.<sup>41</sup>

## Conclusion

One may consume commercially available raspberries and blackberries (grown in *chutz la'aretz*) for the following reasons:

- Raspberries do not grow on a halachic tree.
- The classification of the plant raspberries grow upon is in doubt, and the application of *safek arlah* in *chutz la'aretz* will permit their consumption.
- Raspberries may grow on a halachic tree, but may nevertheless be consumed after the plant has grown for three years. Since raspberries older than three years are also available the principle of *safek arlah* in *chutz la'aretz* again will permit their consumption.<sup>42</sup>



<sup>35</sup> כוכב מיעקב ס' טז, שו"ת צור יעקב ס' קצב

<sup>36</sup> ספק ערלה בחו"ל לקולא לוקלא ספק.

<sup>37</sup> שו"ת כוכב מיעקב (רב יעקב ווייצנפלד, תרצג) סימן טז

<sup>38</sup> (Primocanes may emerge from above ground if the floricanes were not cut flush with the ground. - ה' עמ' קמט - גליון התורה והארץ - תרצ"ג)

<sup>39</sup> E-mail correspondence with Carl Swartz (Marlys Lange, Atwater, CA). Personal communication with Teryl Roper (University of Utah-Logan).

<sup>40</sup> כוכב מיעקב טז. ונראה שכן הסכים החזו"א (ערלה יבג ד"ה ונראה דגזע).

<sup>41</sup> מנחת שלמה קמא ע"ס ק"ח. (וע' משפטי ארץ פ' א הערה 16 מה החזו"א יענה להרשב"א) (אכן ע' ס' ותן ברכה שמביא מרש"א לברך על פטל האדמה מספק)

It can also be inferred from the numerous *Poskim* who discuss the appropriate bracha for raspberries without mentioning that one may not eat them as they are forbidden due to *arlah*.

See also מלכאל דברי who notes that if the raspberry were to be considered a tree, its fruits would forever be forbidden only because of *maris ayin* as the plant grows anew every year.

<sup>42</sup> "Most blackberries and raspberries take three years from planting to reach maturity and remain productive for eight to twelve years. Because disease and pests can gradually build up, many home and commercial growers replant about every ten years." - *Growing Raspberries and Blackberries*, pg 3. Commercial growers however, plant mature root stock that will produce primocanes the same year they are planted and will fruit the following year.

## סימן קי"ב סעיף ז'

פת בעל הבית אסורה לעולם אפילו קנאה פלטר ממנו ואפילו שלחה לישראל לביתו, וכן אפילו שלחה אותה ישראל לאחר אסורה לעולם, ושל פלטר מותרת לעולם אפילו קנאה בעל הבית ממנו, שלא הלכו באיסור זה אחר מי שהפת בידו עכשיו אלא אחר מי שהיה לו בשעה אפ"ה.

## CHANGES IN STATUS

### Pas bal habayis from a paltar

א) This halacha is a *machlokes* between *Rashba* and *Ra'ah* (*Toras HaBayis* III:7 pages 92b-93a), as follows:

ב) *Pas bal habayis* is forbidden because eating the non-Jew's bread may lead to friendly relations but when the non-Jew is a *paltar* there is no concern and the bread is permitted.

- According to the *sevara* of the *gezairah* and exception it would seem that the decision as to whether a food is *pas bal habayis* or *pas paltar* should be made at the time one buys the bread. If one buys it from a *paltar* then there is no *kiruv hadas*, and it should be permitted, even if the bread happened to be baked by a non-*paltar*; if one buys it from a non-*paltar* it should be forbidden if the bread happened to be baked by a *paltar*.
- On the other hand, *gezairos d'rabannan* are created for a reason, but typically once the rules are "set" they apply even in cases where the reasons do not apply anymore. If one takes that approach, *pas akum* is a status associated with a bread at the time it is baked, and it is at that time when the decision has to be made as to whether it is *pas paltar* (permitted) or *pas bal habayis* (forbidden), and we ignore who one happened to purchase the bread from.

ג) *Rashba* says that the *sevara* is to follow latter approach, and he offers a proof, as follows:

ד) *Gemara, Avodah Zara 65b* says that *yayin nesech* fell onto someone's storehouse of wheat. The *Gemara* rejects the idea that one can sell the wheat to a non-Jew, because of a concern that he might resell it to a Jew who will not know the *yayin nesech* fell into it and will, therefore, use it as kosher. Therefore, the *Gemara* says that the Jew may grind it into flour, bake it into bread and sell that bread to non-Jews in a private manner such that no Jews are aware of it.

- Why may you sell the bread to a non-Jew privately and not let Jews know about it? *Rashba* says that the clear implication is that if no Jews know about the sale, they will not buy the bread from the non-Jew since it will be *pas akum*, but if they would know he bought it from a Jew there would be no *issur* of *pas akum* such that they would buy it from the non-Jew and end up eating non-kosher (i.e. *yayin nesech*).
  - Even if the non-Jews would know that the bread originally came from a Jew they should still not be allowed to eat it because they are getting from an *akum* (who is a *bal habayis*) and eating bread from him will engender close relations? The fact that a Jew would (think they would) be permitted to eat the bread if he knew it had come from a Jew, proves that the decision as to whether a bread is *pas akum* is made at the time of baking. Therefore if the bread is made by a Jew, another Jew is allowed to eat it even if he happens to be getting it from a non-Jew.
  - The *Gemara* proves that one can follow the latter approach in cases where that allows one to be lenient; *Rashba* says that logically we should follow the same approach if it leads to a strict interpretation as well. Therefore, if an *akum bal habayis* bakes bread and gives it to a *paltar*, a Jew may not buy it from the *paltar*, since it is considered *pas bal habayis* (based on when it was baked) and not *pas paltar* (in spite of it being sold by a *paltar*).
  - *Rashba* throws in a last "proof", that if one were to follow the former approach, then *pas akum* would only be forbidden to the Jew who personally got the bread from the non-Jew. However, if he then gave it to another Jew that second Jew should be allowed to eat it since at this point the bread causes no good feelings between the (second) Jew eating it and the non-Jew! Clearly this cannot be true, and the reason is because we follow the latter approach.
- n) *Ra'ah* agrees with the proof from the *Gemara* but not with *Rashba's* application. *Ra'ah* argues that bread baked by a Jew is completely permitted and there is no way to later attach an *issur* of *pas akum* to it even if a non-Jew happens to take possession of it. On the other hand, bread baked by a non-Jew is inherently forbidden even if it is baked by a *paltar* (!), and simply due to the importance of having bread available and the lack of *kivvah* to a *paltar*, *Chazal* chose to remove/suspend the *issur* if one is buying it from a *paltar*. That *heter* (a) starts with the assumption that the bread is forbidden and (b) is completely dependent on the time of purchase. Accordingly, if one purchases *pas bal habayis* or *pas paltar* from a *paltar*, the *heter* of *paltar* comes into play, and the bread is permitted. However, if one purchases *pas paltar* or *pas bal habayis* from a *bal habayis*, there is no *heter*, and the bread is forbidden!
- *Ra'ah* brings a proof to this approach from what we saw in *Shulchan Aruch* 112:4 that if a Jewish baker comes to a town, the *pas paltar* in town is forbidden until the Jew sells out all of his *pas Yisroel*. That is to say that even if the *paltar akum* baked bread before the Jew arrived, the bread is not viewed as being permitted, since *pas Yisroel* is now available; when the Jew leaves all of the *pas paltar* becomes permitted, including the bread baked while the Jewish baker was in town. This shows that all bread baked by a non-Jew is forbidden, and the dispensation of *pas paltar* is granted at the time the Jew purchases from the non-Jew.
  - *Ra'ah* takes this so far as to ask what the halacha is if a Jew sends a non-Jew to buy bread from a *paltar akum*. He considers that since the Jew is getting the bread from a non-*paltar* messenger it should be forbidden (since the "time of purchase" is considered to be when the bread reaches the Jew because אין שליחות לעכו"ם). *Ra'ah* rejects that for a tangential reason, but it demonstrates how far he takes this approach.
- i) So, in essence, *Ra'ah* holds that the *pas akum* status is determined at the time of baking, but the *pas paltar heter* status is determined at the time of purchase. *Rashba* holds that both statuses are determined at the time of baking (or that there are just two statuses – *mutar* and *assur* – not three).
- r) As an aside – one might think that *Rashba* and *Ra'ah* are arguing in the same *machlokes* in which *Shulchan Aruch* and *Rema* argued about as to whether *pas paltar* is just a leniency for when one has no other option (*Shulchan Aruch*) or for all situations (*Rema*), and in which *Rashba* would follow the latter approach (i.e. *pas paltar* is now completely permitted, so it depends on the time of baking) while *Ra'ah* would follow the former (so the decision to permit is made at the time of purchase). However, this is clearly impossible to say, because this *Rashba* is written immediately after he says that *pas paltar* is only permitted in situations where there is no *pas Yisroel* available (like *Shulchan Aruch*).
- n) Our halacha is an acceptance of *Rashba's* approach, that both statuses are determined at the time of baking.
- It is worth noting that *Shulchan Aruch* 112:3 is a seeming contradiction to this halacha, because in that halacha he rules like one of *Ra'ah's* points – that if a *paltar* invites a Jew to eat in his

house the bread is forbidden as *pas bal habayis*, which indicates that bread which was *pas paltar* at the time of baking can become forbidden if it is eaten in a private home.

- We discussed this seeming contradiction when we learned 112:3.

### Edible raw & oleh al Shulchan melachim

ט) The halacha given in *Shulchan Aruch* is not so relevant to most people; however, a *bishul akum* extension of it was not at all practical to *Poskim* until very recently but nowadays it seems quite relevant..

י) *Bishul akum* does not have the leniency of *paltar* but has two other *kulos* – *ne'echal chai* and not *oleh al shulchan melachim*. What is the halacha if the non-Jew cooked the food in a country where the food is commonly eaten raw and/or not served at *shulchan melachim*, and the Jew eating it is in a country where it is not eaten raw and/or is served at *shulchan melachim*? Of course, until recent times, this question had no practical application, but in our day when food is shipped all around the world it is quite relevant.

- For example:

- In the USA button mushrooms are eaten raw but it seems that in *Eretz Yisroel* they are only eaten cooked.
- In Mexico corn tortillas are *oleh al shulchan melachim* but, at least until recently, they were not *oleh* in the USA.
- Artichokes are not edible raw in North America and Spain (two big producers), but it seems that they are in Egypt (another big producer).
- Chumus is *oleh al shulchan melachim* in *Eretz Yisroel* but not in the USA.
- Dayan Falk (*Am HaTorah* III:11 page 79) cites *Shevet HaLevi* VI:108:6 that sardines are *oleh al shulchan melachim* in *Eretz Yisroel*, and of course that is not true in the USA.

יא) Using the example of mushrooms, we can ask the following question: what is the halacha if mushrooms are cooked/canned in a country where they are not edible raw, and I buy them in the USA where they are?

- Should I say that the non-Jew who cooked them rendered them *bishul akum* since in his location they are not edible raw, and therefore they are forbidden even in the USA where they are edible raw?
- Or should I say that we understand that foods which are not edible raw are excluded from *bishul akum*, since they do not create closeness

as the non-Jew did not do so much for the Jew, which should depend on the Jew who consumes the food? If the Jew gets nothing from the cooking because the food was edible raw to him, the *bishul* of the non-Jew does not create closeness which might lead to *chasnus*, and the food should be permitted.

- Dayan Falk suggests yet a third possibility – maybe at the time of cooking (in either location) they are simultaneously rendered *bishul akum* for *Eretz Yisroel* and permitted for the USA! This possibility seems quite far-fetched, and even he quickly rejects it.

יב) Seemingly, our halacha is saying that decisions as to whether a food is *pas/bishul akum* are made at the time of cooking/baking, such that if the food is edible raw and *oleh* at the time of cooking it is forbidden regardless of where it is eaten; if it is not edible raw and/or *oleh* at the time of cooking the food is permitted even if the person consuming it benefitted from the cooking.

יג) The truth is that it would seem that in the case of *bishul akum*, even *Ra'ah* should agree that we consider the time of cooking, for the following reason:

- *Ra'ah* agreed to the proof from *Gemara, Avodah Zara* that *pas/bishul akum* status is determined at the time of baking/cooking and only argued that *pas paltar* is a "*heter*" which is given to forbidden *pas* at the time of purchase. Thus, even he should agree that a qualification which is built into the original halacha of *bishul akum* (i.e. edible raw or not *oleh*) should be determined at the time of cooking, and not at the time of consumption.

יד) It is worth noting that when the OU *Poskim* were asked this question, Rav Belsky took an approach which is along the lines of *Ra'ah* and would disagree with my previous statement. Rav Belsky said as follows:

- Foods which are not *oleh al shulchan melachim* are inherently *bishul akum* but are temporarily permitted because they are not formal enough. Accordingly, when they come to a place where they are formal, they revert to being forbidden.

I do not know what the source for that position is, since the simple understanding is that if the food is not *oleh*, then the non-Jew did not do me such a great favor such that it does not lead to closeness, much like why foods which are edible raw are excluded. However, even if it is correct, it is almost exactly what the *Ra'ah* said regarding *pas paltar* (the food is forbidden but a special *heter* applies later on), and *Shulchan Aruch* rejects that opinion.

- Foods which are edible raw in some countries are actually considered *ne'echal chai* even in countries where they are not eaten raw, based on *Shach* 113:19. We will discuss that *Shach* in *Shulchan Aruch* 113:15 to see how/where it applies and will see that what Rav Belsky is suggesting is not so simple.
- Their ruling does not cite our halacha, which seemingly presents a clear proof as to how one should judge such situations.

10) One last example worth noting is bagels (which we noted in 112:6b might be discussed here). Traditionally, bagels are cooked in water and then baked. *Chelkas Binyamin* 112:6 s.v. *kichlich* points out that if the cooking would render them passably edible, they would be forbidden as *bishul akum*; the fact that they later become *pas paltar* would therefore not be a reason to be lenient.

- This is in line with our halacha, that once the food earns a forbidden status it cannot become permitted later on.
- However, as a rule I do not believe the bagels become at all edible during the cooking stage (as *Chelkas Binyamin* seems to correctly change the wording of *Iggeros Moshe* YD II:33 to read), such that this question is just a theoretical one.
- It is also worth noting that the more modern way to create bagels is to just blast steam into the oven for 30 seconds at the beginning of the baking process (instead of cooking them), and of course that does not cook them at all.