

SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

HAMEZ IN LAKE KINNERET AND IN THE CROTON RESERVOIR

I. The Problem

Halakhah posits two distinct prohibitions with regard to forbidden foods and two forms of *bittul* or neutralization of the prohibited foodstuffs by means of admixture with permitted foods: (1) A set of prohibitions with regard to specifically identified foods. Any of those forbidden foods loses its identity and is nullified when blended with a larger quantity of a similar, but permitted, food of similar taste, provided that the forbidden food is not recognizable in the resultant mixture. (2) A prohibition against consuming any food that has been infused with the “taste” of a forbidden foodstuff. Thus, for example, if a piece of non-kosher meat is dropped into a pot of boiling water and removed even while still intact, the water is nevertheless forbidden because the water has absorbed the flavor of the forbidden meat. Generally, if the quantity of the permissible foodstuff is sixty times that of the forbidden ingredient, and the forbidden food is not recognizable, the entire mixture is permissible.

Hamez, however, is an exception. *Hamez* is not nullified even if the morsel of *hamez* that has become mingled with other food is only a *mashehu*, i.e., infinitesimal in size, and even if the quantity of the permitted substance is a thousand times greater than the particle of *hamez*. As stated by *Shulhan Arukh ha-Rav, Orah Hayyim* 447:4, *hamez* is not nullified even if combined with a quantity of food “thousands of thousands of times greater.”

The lion’s share of drinking water in the State of Israel is derived from the Kinneret, a large fresh-water lake. As is true of lakes throughout the world, there is boating on the Kinneret as well as picnicking on its banks, not to speak of hotels and restaurants in close proximity. It is quite conceivable that at least small quantities of *hamez* may find their way into the lake and consequently into drinking water consumed on *Pesah*. In years gone by, because of this concern, some individuals used only bottled water derived from other sources or filled containers with water before Passover for drinking and use in cooking during the course of the festival. In availing themselves of the latter expedient, they relied upon the opinion

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recorded in *Shulhan Arukh, Orah Hayyim* 447:4, to the effect that *hamez* adulterated prior to the advent of *Pesah* to a proportion of less than one part *hamez* to sixty parts non-*hamez* is permissible.

For the past number of years the Israel Water Authority has cooperated by refraining from pumping water from the Kinneret into its water distribution center beginning from three days before Passover and continuing until the conclusion of the *Yom Tov*. During that period of time only water from underground wells is permitted to enter the water supply system. An accommodation of a similar nature is not feasible in many areas beyond the borders of the State of Israel that derive drinking water from reservoirs readily accessible to the public. New York City, for example, derives its water from the Croton Water Supply System, arising in a reservoir created by construction of a dam across the Croton River from which water flows into a reservoir in Central Park. Fishing is permitted in the Croton Reservoir.

The issues involved in use on *Pesah* of water derived from the Kinneret are briefly analyzed by R. Eliezer Waldenberg, *Ziz Eli'ezer*, XVII, no. 23 as well as by R. Ovadiah Yosef in a lengthy responsum published in his *Teshuvot Yabi'a Omer*, VII, *Orah Hayyim*, no. 44 and more recently by R. Asher Weiss in the addenda to his *Haggadah Minhat Asher*, responsum no. 26.

Water from a lake or reservoir might be filtered in order to remove even minute particles of solid material¹ and indeed it is likely that such filtration takes place routinely. However, that expedient may be of no avail with regard to the permissibility of water into which *hamez* has fallen. Forbidden food that is *kavush*, i.e., allowed to soak in a liquid for a period of twenty-four hours, is deemed to have been "cooked" in that liquid, i.e., it is deemed to have imparted its taste to the liquid in which it has soaked in a manner comparable to cooking, even if the liquid is cold.

II. Countervailing Considerations

1. Motion

Nevertheless, if all actual particles of *hamez* have been removed by filtration the residual water may be permissible. Although, *Ikkarei ha-Dat, Yoreh De-ah*, no. 7, sec. 19, disagrees, R. Joshua Weingarten, *Teshuvot*

¹ Straining is generally not an acceptable means of assuring removal of all particles of *hamez*. Nevertheless, *Pri Hadash, Orah Hayyim* 467:12, s.v. *u-mah she-katav ve-avi be-ezri*, rules that straining may be relied upon if the presence of *hamez* is not certain but merely doubtful. R. Shalom Mordecai Schwadron, *Teshuvot Maharsbam*, VII, no. 4, rules that straining through a thick cloth is always acceptable.

Helkat Yo'av, *Orah Hayyim*, no. 18, asserts that the principle of *kavush* applies only to a liquid at rest but not to a liquid that is in a state of motion. According to *Ikkarei ha-Dat*, only a stationary liquid allows a food-stuff to impart “taste” to a liquid in which it soaks. *Arukh ha-Shulhan*, *Orah Hayyim* 467:33, concurs in that opinion.

2. Added Liquid

In addition, the principle of *kavush* does not apply if additional liquid is added during the initial twenty-four hour period. R. Shlomoh Kluger, in his *Teshuvot Tuv Ta'am va-Da'at*, *Mahadura Telita'ah*, I, no. 214 and in his *Teshuvot Ha-Elef Lekha Shlomoh*, *Orah Hayyim*, no. 315, and R. Shlomoh ha-Kohen of Vilna, in a responsum published in R. Moshe ha-Kohen Kalfon's *Teshuvot Mekor Hayyim*, *Orah Hayyim*, no. 9, assert that the principle of *kavush* does not apply to forbidden food found in flowing water because the continuous flow creates a situation tantamount to adding or replenishing water within the twenty-four hour period. That view is disputed by R. Chaim Palaggi, *Ru'ah Hayyim*, *Orah Hayyim* 467:5; R. Judah Leibush Landau, *Yad Yehudah*, cited by *Darkei Teshuvah*, *Yoreh De'ah* 69:256; and R. Shalom Mordecai Schwadron, *Teshuvot Maharsham*, I, no. 186² and *Da'at Torah*, *Orah Hayyim* 467:72.³ Rabbi Ovadiah Yosef rules upon the permissive view taken in combination with the view of Rashi, *Pesahim* 39a, and other early-day authorities who maintain that the principle of *kavush* applies only to sharp or acidic liquids such as vinegar but not to water.⁴

3. Less than Twenty-four Hours

Bet Yosef, however, explains that both Rosh and *Tur* maintain that water in which *hamez* has been immersed even for a brief period and which contains no solid particles of *hamez* whatsoever may nevertheless not be used on *Pesah*. Those authorities maintain that the water absorbs and emits a *masbehu* even if the *hamez* has not soaked for twenty-four hours.⁵ *Shulhan Arukh*, *Orah Hayyim* 467:12, permits partaking of food that has been prepared with such water but adds “There is an opinion – *ve-yesh mi*

² See also *Teshuvot Maharsham*, I, no. 223.

³ Nevertheless, in *Teshuvot Maharsham*, VII, no. 4, Rabbi Schwadron expresses leniency with regard to *hamez* found in a well to which a pipe had been attached in order to cause a continuous flow of water. See also R. Eliezer Waldenberg, *Ziz Eli'ezer*, XVII, no. 23, sec. 2.

⁴ See *Me'iri*, *Hullin* 97a, s.v. *yesh be-zeh zad shevi'i* and *Shiltei ha-Gibborim*, *Avodah Zarah* 65b. See also *Shakh*, *Yoreh De'ah* 105:2.

⁵ See *infra*, note 9.

she-omer – that forbids [such food] if this occurred during *Pesah*.” The view referenced in that phrase is the position of Rosh and *Tur*. There is a difference of opinion among latter-day authorities with regard to the weight to be assigned to a second opinion cited by *Shulhan Arukh* when the terminology “*ve-yesh mi she-omer*” is employed. Some authorities maintain that *Shulhan Arukh* cites the second view in that manner as a means of indicating that he is of the opinion that, when possible, reliance upon the lenient opinion should be avoided; others maintain that *Shulhan Arukh*’s position is that an opinion cited in that manner may be entirely ignored.⁶

4. Noten Ta’am le-Pegam

Quite understandably, in days gone by, *hamez* falling into a well or cistern was not an uncommon occurrence. There are indeed a number of early sources that discuss *hamez* found in a well on *Pesah*. Use of water drawn from such sources is the subject of discussion by numerous latter-day authorities as well. Those sources are equally relevant to water collected in an exposed reservoir. *Shibbolei ha-Leket*, no. 217; *Sefer ha-Tanya*, no. 46; *Ma’aseh Rokeah*, no. 286; *Ma’aseh ha-Ge’onim*, no. 24; Ra’aviyah, *Pesahim*, no. 418; and R. Raphael Birdugo, *Teshuvot Torot Emet, Orah Hayyim* 447, forbid use of water drawn from a well into which *hamez* has fallen. However, *Or Zaru’a, Avodah Zarah*, no. 268, expresses doubt with regard to whether the “taste” contributed to water by *hamez* improves or spoils the taste of the water.⁷ Rema, *Orah Hayyim* 447:2, rules that *hamez* that is *noten ta’am le-pegam*, i.e., *hamez* that mars the taste of the mixture, does not render the mixture impermissible.⁸ Since the issue is a matter of doubt, *Or Zaru’a* permits reliance upon the minority opinion of *She’iltot de-Rav Aha’i Ga’on* cited by *Mordekhai, Pesahim* 2:568, who rejects the concept of *mashehu* with regard to *hamez* and maintains that even *hamez* is nullified in a quantity of food sixty times greater than itself.

5. Flowing Bodies of Water

There are additional grounds for leniency with regard to *hamez* that finds its way into flowing bodies of water such as rivers. The permissibility of

⁶ See sources cited by *Yabi’a Omer*, VI, *Yoreh De’ah*, no. 5, sec. 2 and *ibid.*, VII, *Orah Hayyim*, no. 44, sec. 15.

⁷ See also *Magen Avraham* 447:6.

⁸ Cf., however, the conflicting opinions recorded by *Tur Shulhan Arukh* 447. *Bi’ur Halakhah* 447:2 asserts that whether *hamez* is *noten ta’am le-pegam* is a subject of controversy only with regard to pungent *hamez* but not with regard to ordinary bread and the like.

water drawn from rivers on *Pesah* was the subject of an exchange between R. Joshua Babad, author of *Sefer Yehoshu'a*, and R. Jacob of Lissa, renowned as the author of *Havvat Da'at* and *Netivot ha-Mishpat*. *Sefer Yehoshu'a*, no. 5, reports that the water supply of the city of Dubno came from a river that also propelled the water wheels regularly used by flour mills for grinding wheat throughout the year, including the week of Passover. In the process significant quantities of *hamez* found their way into the river.

The text of R. Jacob of Lissa's responsum has not been published, but he is quoted by *Sefer Yehoshu'a*, no. 9, as commenting cryptically that "*nahal shotef ein bo afilu ta'am mashehu*—there is not even the taste of a *mashehu* in a flowing river." Rivers differ from wells and cisterns in that (a) rivers are in a constant state of flux and (b) the water of a river is much more copious than that of a still body. The thrust of R. Jacob of Lissa's comment seems to be that a *nahal shotef*, i.e., a flowing river, washes away the *hamez*, not that the *hamez* is nullified.⁹ *Sefer Yehoshu'a* seems to accept that argument in theory but regards it to be of no avail in the situation of concern to him. *Sefer Yehoshu'a* points out that "just as the river flows without interruption, similarly a *mashehu* of *hamez* is discharged constantly each and every moment into all new water as it comes, and not from one or two mills but from all the mills surrounding the river in which there is constant grinding without interruption."

Nevertheless, in that responsum, as well as in responsum no. 5 and somewhat more tentatively in his appended *Pesakim u-Ketavim*, no. 556, *Sefer Yehoshu'a* offers a closely related line of reasoning. *Sefer Yehoshu'a* asserts that, although even a minute quantity of *hamez* renders a mixture impermissible by virtue of rabbinic decree, that is so only in circumstances in which, were the quantity of *hamez* to be significantly

⁹ Understood in this manner, R. Jacob of Lissa's concern seems to be primarily with minute particles of *hamez* present in the water and is coupled with the declaration that swiftly coursing *hamez* does not impart even a *ta'am mashehu*.

The concept of a *mashehu* of *ta'am* is difficult to fathom. A minute particle, despite its infinitesimal size, does exist in a quite literal sense. However, in what sense can a "taste" that cannot be perceived be regarded as a "taste"? Nevertheless, as has been stated, according to many authorities, *hamez* dipped into a liquid, even if the *hamez* is removed instantaneously, renders the water impermissible. See *Shulhan Arukh, Orach Hayyim* 467:12 and *Mishnah Berurah* 467:56 and 467:62. It might be argued with scientific cogency that "taste" is possible only because some residual molecules of the actual substance are present. If so, those molecules may also be present in a concentration too attenuated to be perceived as a "taste" but forbidden as a *mashehu*, albeit a subclinical *mashehu*. If so, R. Jacob of Lissa is contending that even those molecules are swept away by a coursing river.

greater, the “taste” of *hamez* would indeed be perceived. The edict prohibiting a *mashehu*, he assumes, is designed to prevent carelessness that might lead to consuming a foodstuff infused with an actual taste of *hamez*. Rivers, contends *Sefer Yehoshu’a*, are simply too huge for the taste of any quantity of *hamez* that might find its way into their waters ever to be perceived.¹⁰ In his *Pesakim u-Ketavim*, *Sefer Yehoshu’a* emphasizes that “dust” of *hamez* is swept downstream while grains of *hamez* are consumed by fish. A similar argument is advanced by *Yad Yehudah*, *Hilkhot Shehitah*, addenda, p. 150b.

R. Chaim Judah Leib Litwin, *Sha’arei De’ah*, I, no. 21, focuses upon the rapid exchange of water as water courses down a riverbed. *Sha’arei De’ah* describes a distillery positioned on the bank of a river that continuously discharged *hamez* into the river. *Sha’arei De’ah* contends that situations of that nature were not encompassed within the edict prohibiting mixtures containing even a *mashehu* of *hamez* because “a *mashehu* was prohibited only in instances in which the *mashehu* has some significance in that it might impart taste in its place,” i.e., it might impart taste *in situ* rather than in some far-off locale. R. Joseph Zechariah Stern, *Teshuvot Zekher Yehosef* relies upon *Sefer Yehoshu’a* and *Sha’arei De’ah* in permitting use of such water on *Pesah*.

6. Sefek Sefeika

Moreover, as earlier noted, the principle that a *mashehu* of *hamez* renders an entire mixture impermissible is itself the subject of some disagreement. The Gemara, *Pesahim* 29b, posits a dispute among the Amoraim with regard to nullification of *hamez* that becomes mixed with a different type of non-*hamez* food. The issue is whether the mixture is forbidden only if the “taste” of the *hamez* may still be detected, i.e., the taste of the *hamez* is not overpowered by a taste of a different type of food in a quantity at least sixty times as great, or if the mixture is forbidden even if only a *mashehu*, i.e., an infinitesimal quantity of *hamez*, is present. The Gemara, *Pesahim* 30a, rules in accordance with the stringent view.

¹⁰ Although this writer is unaware of any published source, it is widely reported in the name of one renowned decisor or another that water derived from such sources is permitted because “even a *mashehu* requires a *shi’ur*,” i.e., that the term “*mashehu*” denotes a minute but not infinitesimal quantity and the small amount of *hamez* that might fall from a river or reservoir becomes diluted to the point that it is no longer even “minute.” Absent any source that might serve as authority for a literal understanding of that assertion, it must be assumed that the statement is simply a *bon mot* expressing the position that the rabbinic edict does not pertain in circumstances in which the quantity of water is so great that there is no chance that *hamez* might result in a *noten ta’am*.

All agree that the stringency with regard to nullification of *hamez* is rabbinic in origin. Various rationales for that edict are propounded by early-day authorities: (1) *Hamez* is in the category of a *davar she-yesh lo matirin*, i.e., food products that, even if not nullified, will become permissible of their own accord. The general rule is that a *davar she-yesh lo matirin* is not subject to nullification. Since the prohibited compound will become permissible of its own accord, the Sages saw no need to sanction nullification. Many authorities assert that, since *hamez* is automatically rendered permissible, at least biblically, upon conclusion of the holiday it must be classified as a *davar she-yesh lo matirin*.¹¹ (2) The prohibition is designed as a safeguard against transgression in situations in which actual nullification has not occurred. According to this view, the safeguard was instituted with regard to *hamez* but not with regard to other forbidden foods because of the particular severity of the biblical prohibition, viz., (a) consumption of *hamez* on Passover carries with it the punishment of *karet* or excision, which includes death at the hands of Heaven, and (b) even mere possession of *hamez* during the course of the holiday is forbidden. (3) Because *hamez* is consumed throughout the year with complete impunity there is relaxed vigilance with regard to *hamez* during Passover. Imposition of the rabbinic stringency concerning a *mashehu* serves to increase vigilance.¹²

¹¹ See Rambam, *Hilkhot Ma'akhalot Asurot* 15:9. That view is disputed by many authorities, including *Shulhan Arukh, Orah Hayyim* 447:2-3. *Yeshu'ot Ya'akov, Orah Hayyim* 467:3, explains that those authorities do not regard *hamez* as a *davar she-yesh lo matirin* even though it becomes permissible after *Pesah* because, since it is forbidden to retain *hamez* in one's possession during the week of Passover, the *hamez* itself never actually becomes permissible.

Rabbi Yosef suggests that, if the reason that even a mixture containing a *mashehu* of *hamez* is forbidden is because it is a *davar she-yesh lo matirin*, the prohibition would not apply to *hamez* that has fallen into flowing water. R. Ezekiel Landau, *Zlah, Beizah* 3a, maintains that the principle of *davar she-yesh lo matirin* does not apply to moving a mixture containing a small quantity of *mukzah*, despite the fact that the prohibition against *mukzah* lapses upon the conclusion of *Shabbat* or *Yom Tov*. *Zlah* reasons that, whereas food can be consumed only once, objects can be moved from place to place repeatedly. The restriction against moving an object on *Shabbat* or *Yom Tov*, he contends, cannot be regarded as a lapsing restriction on the basis of the fact that the object may be moved on the morrow. Tomorrow's movement of the object is an act entirely distinct from today's act; since the object might be moved both today and tomorrow, tomorrow's movement is not a substitute for today's foregone movement. *Mutatis mutandis*, the water available after *Pesah* is not the water the use of which was foregone during *Pesah* and allowed to flow away. See also R. Joshua Weingarten, *Teshuvot Helkat Yo'av, Orah Hayyim*, no. 18.

¹² See, *inter alia*, *Tosafot, Pesahim* 30a and *Hullin* 97a; Rosh, *Pesahim* 2:5 and *Avodah Zarah* 5:29; Ramban, *Milhamot ha-Shem, Pesahim* 30a. For diverse ramifications

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However, Rav Aha'i Ga'on,¹³ cited by *Tosafot*, *Pesahim* 29a and *Hulin* 97a, rules that *hamez* may be nullified in precisely the same manner as other prohibited foods.¹⁴ *Ba'al ha-Ma'or*, *Pesahim* 30a, reports that the controversy between Rav Aha'i Ga'on and early-day authorities arose because the word "*mashehu*" is not found in authoritative manuscripts of the Talmud but was an interpolation of some scholars during the post-talmudic period.

Accordingly, Rabbi Ovadiah Yosef permits water originating in the Kinneret on the basis of a *sefek sefeika* or "double doubt," *viz.*, perhaps the normative rule is in accordance with Rav Aha'i Ga'on who maintained that *hamez* is nullified in a quantity sixty times larger than itself and, even if not, perhaps the rule is in accordance with the authorities who maintain that the rabbinic edict prohibiting a *mashehu* does not extend to situations in which it is not conceivable that there might be a quantity of *hamez* sufficient to infuse the mixture with "taste." Although neither position is accepted as normative, Rabbi Yosef argues that, applying the principle of *sefek sefeika*, when both considerations are present, those positions, taken cumulatively, may be relied upon.¹⁵

flowing from these various rationales see *Magen Avraham* 447:8. See also R. Schneur Zalman Ashkenazi, *Teshuvot Torat Hesed*, *Orah Hayyim*, no. 20.

¹³ Cf., *She'iltot de-Rav Aha'i Ga'o*, *Parashat Zav*, no. 80 and the commentaries thereto.

¹⁴ See the list of authorities cited by R. Ovadiah Yosef, *Yabi'a Omer*, VI, *Orah Hayyim*, no. 44, sec. 6, who espouse the position of Rav Aha'i Ga'on.

¹⁵ Rabbi Yosef's conclusion is subject to challenge on two grounds: (1) Many latter-day authorities declare that an opinion rejected by both *Shulhan Arukh* and Rema is to be entirely dismissed and does not rise to the level of a doubt. (2) The principle of *sefek sefeika* is valid only if it is *mithapekh*, i.e., either of the two doubts may be formulated initially and then, even if dismissed, followed by the second. In the case under discussion it might be argued that (a) perhaps *hamez* is not subject to the prohibition of *mashehu* and (b) even if it is subject to the prohibition, perhaps the prohibition does not extend to particles of *hamez* found in bodies of water in which it cannot conceivably contribute a taste. However, the *sefek sefeika* cannot cogently be formulated in the converse order, i.e., (a) perhaps the prohibition of *mashehu* of *hamez* does not apply to large bodies of water and (b) if it does, perhaps there is no rule of *mashehu* with regard to *hamez*. Rabbi Yosef cites a long list of opposing authorities who reject each of those principles and consequently does apply the canon of *sefek sefeika*.

It may further be objected that, according to the authorities who maintain that *hamez* is a *davar she-yesh lo matirin*, a *sefek sefeika* is of no avail. See *Mordekhai*, *Avodah Zarah* 3:841 and Rema, *Yoreh De'ah* 110:8; cf., however, *Shakh* 110:57 and *Pri Hadash*, *Yoreh De'ah* 110:43. Those authorities maintain that *sefek sefeika* does not apply to a *davar she-yesh lo matirin* for much the same reason that such substances are not subject to nullification, *viz.*, there is no reason to enter into an area of doubt since the matter will, with time, become permissible as a matter of certainty. However many

7. *Mashehu in Water Attached to the Ground*

A number of authorities, including *Aveni Nezer*, *Orah Hayyim*, no. 374, secs. 7-8; *Yad Yehudah*, *Hilkhot Shebitah*, addenda, p. 150b; *Teshuvot Zekher Yehosef*, no. 171; and R. Shimon Grunfeld, *Teshuvot Maharshag*, II, no. 129,¹⁶ permit water drawn from a well into which *hamez* had fallen on the basis of a comment of Ritva, *Avodah Zarah* 47a. The Gemara questions whether water spouting from the ground in a manner akin to a geyser that has become the object of idolatrous worship may be used in conjunction with a sacrifice. The issue is whether the object of adoration is solely the water present at the moment of adoration or whether the entire flow of water is deified. If the object of worship is only the water immediately present, asserts the Gemara, that water rapidly flows downstream and is replaced by different, untainted water. However, if the entire stream of gushing water is the object of deification, all the water is prohibited. Ritva objects that, in either event, use of the water should be forbidden since a deified object serves to render any mixture into which it falls impermissible even if the volume of the forbidden entity is only a *mashehu*. Ritva's response is that the prohibition of *mashehu* does not apply to any object attached to the ground. Similarly, the earlier-cited authorities conclude, a *mashehu* of *hamez* cannot render water forbidden if the water into which it flows is attached to the ground.

The many authorities who dismiss that conclusion contend that Ritva's comments are limited to the prohibition against benefiting from items consecrated to pagan worship. A deified object that is attached to the ground is not prohibited. They understand Ritva as declaring that there can be no prohibition against deriving benefit from a deified stream of water because the prohibition, including the prohibition against benefiting from a *mashehu*, can apply only to water detached from its source. If so, there is no basis for applying Ritva's comments to *hamez*. The ruling of *Tur Shulhan Arukh*, *Orah Hayyim* 467, certainly implies that wells can become contaminated by *hamez*.

scholars, including R. Isaac Elchanan Spektor, *Teshuvot Ein Yizhak*, *Orah Hayyim*, no. 16, *anaf* 2, sec. 8, maintain that the refusal of those authorities to apply the principle of *sefek sefeika* in instances of a *davar she-yesh lo matirin* is limited to a *sefek sefeika* regarding matters of fact but that a *sefek sefeika* with regard to acceptability of halakhic opinions is operative even with regard to a *davar she-yesh lo matirin*. See also *Pri Hadash*, *Orah Hayyim* 497:2 and *Sha'agat Aryeh*, no. 90.

¹⁶ See also R. Chaim Hizkiyahu Medini, *Sedei Hemed*, *Ma'arekhet Hamez u-Mazah*, no. 4, sec. 15 and R. Joseph Engel, *Bet ha-Ozar*, no. 58, sec. 3.

8. *Abandoned Hamez*

There is yet an additional basis for leniency in at least some circumstances. Numerous authorities maintain that the rule of *mashehu* does not apply to *hamez* owned by a non-Jew.¹⁷ They reason that the rule forbidding even a *mashehu* was instituted as a penalty levied upon individuals who do not properly dispose of their *hamez* prior to Passover.¹⁸ That penalty was not imposed upon non-Jews, who have no such obligation. *Sha'arei Teshuvah, Orah Hayyim* 467:30, observes that the same rationale applies to *hefker*, i.e., to *hamez* that is abandoned by its owner and becomes *res nullius*.¹⁹ Since such *hamez* has no owner and need not be destroyed, there is no reason to impose the penalty of *mashehu*. *Hamez* cast into the Kinneret is abandoned and hence, argues *Ziz Eli'ezer*, a *mashehu* of that *hamez* cannot render other foods or beverages impermissible.²⁰ *Ziz Eli'ezer* appears to be concerned only with regard to *hamez* that falls into the Kinneret before Passover, apparently regarding it as unthinkable that any Jew would have remnants of *hamez* in his possession during *Pesah*. Would that such were the case! But, unfortunately, such a possibility must be considered. Since abandonment of *hamez* during Passover has no effect and its prohibited status remains unchanged by such an act, the rule of *mashehu* would continue to apply.

9. *Rivers and Oceans — A Reductio ad Absurdum*

Quite apart from the reasons heretofore discussed, *Sha'arei De'ah* comments that it would be absurd to espouse the position that river water is

¹⁷ See, for example, *Avnei Nezer, Orah Hayyim* no. 374; R. Aryeh Leib Frankel-Teumim, *Gur Aryeh Yehudah, Orah Hayyim*, no. 49; R. Shlomoh Kluger, *Teshuvot Shenot Hayyim*, nos. 300-301; R. Raphaël Birdugo, *Mishpatim Yesharim*, I, no. 362; R. Shalom Mordecai Schwarzdron, *Da'at Torah, Orah Hayyim* 467:12; *idem, Giluy Da'at, Yoreh De'ah*, p. 218, sec. 12; and *idem, Teshuvot Maharsham*, I, no. 223 and VII, no. 4. That view is rejected by, among others, R. Joseph Saul Nathanson, *Teshuvot Sho'el u-Meshiv, Mahadura Shtetia'ah*, no. 31; R. Judah Leibush Landau, *Yad Yehudah, Yoreh De'ah* 88:2; *Teshuvot Torat Hesed, Orah Hayyim*, no. 21, sec. 2; and *Teshuvot Binyan Shlomoh*, no. 24, s.v. *ve-ha*.

¹⁸ See *Tosafot, Hullin* 97a. However, Rashi, *Avodah Zarah* 74a, and *Tosafot, Avodah Zarah* 66b, assert that the reason for the stringency of *mashehu* is the severity of the punishment for consuming *hamez* on *Pesah*.

¹⁹ See also *Gur Aryeh Yehudah, Orah Hayyim*, no. 49.

²⁰ *Ziz Eli'ezer* suggests that the government may own the lake and hence automatically acquire title to any object abandoned in its confines. [That assertion is questionable since the area is a *hazer she-einab mishtameret*, i.e., open and unprotected, and consequently acquisition of title is not automatic.] For that reason *Ziz Eli'ezer* recommends that the State of Israel include any *hamez* that may be in the Kinneret in its sale of *hamez* prior to Passover.

routinely contaminated by a *mashehu* of *hamez*. R. Shlomoh Yehudah Tabak, *Teshurat Sha'i, Yoreh De'ah*, no. 13, transposes that reaction into a formal halakhic argument in contending that rivers could not have been included in the rabbinic edict banning a *mashehu* of *hamez* because such legislation would represent “an edict that the majority of the community could not sustain,” a consideration that serves as a limitation upon the legislative power of rabbinic authorities.

In a similar but broader vein, *Arukh ha-Shulhan, Orah Hayyim* 467:33, advances a novel and intriguing argument in permitting even water derived from wells having a subterranean source. *Arukh ha-Shulhan* takes it for granted that the waters of an entire ocean cannot be rendered impermissible on Passover. Presumably, *Arukh ha-Shulhan* was mindful of the ruling of the Mishnah, *Pesahim* 21a, with regard to disposal of *hamez*. In disagreement with the opinion of R. Judah who requires *hamez* to be burned before the advent of Passover, the Sages permit crumbling the *hamez* and casting it into the wind or throwing it into the sea. According to the authorities who maintain that *hamez* cannot be nullified before *Pesah*, the net effect would be to prohibit use of the water of the ocean in which the *hamez* had been thrown. Moreover, the Gemara, *Hagigah* 22a, states that, but for the rule that the forty *se'ah* of a *mikveh* must be contained in one place, a pool containing a lesser amount of water would suffice because “the earth in its entirety is perforated.” The import of that statement is that all waters are interconnected. The underground source of any well or pool is connected with other water, which, in turn, reaches a river and rivers ultimately flow into the ocean. Thus, the water of the ocean is effectively in contact with the water of the well. Hence, if the ocean becomes contaminated by a *mashehu* of *hamez*, all water coming into contact with the ocean should also be prohibited with the result that absolutely no water would be permitted on *Pesah*.²¹ That *reductio ad absurdum* leads *Arukh ha-Shulhan* to the conclusion that the Sages could not have prohibited rivers or wells into which a *mashehu* of *hamez* has fallen. Their edict banning a *mashehu* of *hamez*, he concludes, must have encompassed only water detached from its point of origin.

²¹ *Ziv Elie'zer*, XVII, addenda, p. 182 cites a responsum of R. Chaim Berlin, published in *Sefer Zikaron: Ginzei Mo'adim* (Jerusalem, 5746) p. 143, in which Rabbi Berlin makes the same observation in the name of his father, the *Neziv*, R. Naphtali Zevi Judah Berlin.

TRADITION

III. Conclusion

The contemporary rabbinic scholars who have discussed this question agree that there are ample grounds to dispel any concern regarding a *mashehu* of *hamez* in modern-day water supplies. Assuming that water entering municipal water systems is filtered in order to remove any solid particles, the weight of authority supports the conclusion that, because of the various considerations discussed above, there is no concern with regard to the “taste” of a *mashehu* of *hamez* in flowing bodies of water.