



Bishul Akum: Non-Jewish Employees in Restaurants and Hotels

Our Sages decreed that kosher food cooked by non-Jews, called *bishul akum*, is prohibited for consumption. Early rabbinic authorities dispute whether this decree is relevant when non-Jews serve as maids or butlers in Jewish homes, suggesting two main reasons to be lenient. Firstly, consider the case of a non-Jewish slave who is owned by a Jew and consequently obligated to keep certain mitzvot, including Shabbat. *Bishul akum* does not apply to such a slave. Perhaps a non-Jewish servant has a similar halachic status. The second reason for leniency is a more psychological one. Since the basis for *bishul akum* is to prevent unnecessary mingling which could lead to intermarriage, perhaps where the cooking is not of a social nature, but rather the product of an obligatory or contractual relationship, it is not part of the decree.

Most early authorities, including *Rambam*, offer no leniencies regarding the situation in which the non-Jew is cooking, and generally don't distinguish between a slave, a servant, an employee, and a non-Jewish acquaintance. The *Shulchan Aruch* rules like those authorities (YD 113:4). Later authorities (see *Ta"z* and the *Vilna Gaon* on YD 113:4) add that the *Shulchan Aruch* is stringent even in a case of

need or an *ex post facto* situation.

REMA'S POSITION

Rav Moshe Isserles [*Rema*], the leading Ashkenazic authority who wrote his interpolated commentary on the *Shulchan Aruch*, presents a seemingly perplexing ruling on this subject. At first, he writes that in case of need, or if the food was made already, one can rely on the opinion of *Ramban* that servants are not part of the decree of *bishul akum*. He then writes that in a case where a non-Jew is working in a Jewish home and there is a likelihood that the family will adjust the fire, (when a Jew adjusts or lights the fire, this mitigates the *bishul akum* prohibition), one can be lenient and *a priori* let a non-Jew cook for them (*lechatchila*).

Many authorities try to explain *Rema's* wording and final ruling. The *Shach* (113:7) questions how *Rema* first relies on the *Ramban*, since in the time of *Rema* there were no longer non-Jewish slaves in the halachic sense, rather they would work for a period of time with wages, not as actual slaves. He then adds that *Rema's* "leniency" if a Jew adds to the fire seems irrelevant, since *that* case would already not be considered *bishul akum*!

Among the numerous explanations of *Rema's* ruling (see *Shach* YD 113:7), there are



two that fit particularly well with the wording and logic of *Rema*. The *Aruch HaShulchan* (113:4), among others (see *Chochmat Adam* 66:7), explains that all these factors are needed in order to understand the ruling: 1) The non-Jew must have some type of servitude as a cook; 2) The cooking must take place in a Jewish home; and 3) The fire must be adjusted by a Jew. In a previous article, we cited the ruling of the Tosafist, R. Avraham Ben David, who maintained that when a non-Jew cooks in a Jew's home or establishment, there is no *bishul akum*. The *Rema* does not accept this ruling, since non-Jewish butlers are not similar to the slaves of our Sages. However, in a case where there is some type of servitude or compulsion, such as a butler having a contract for a year which can't be broken, or a prisoner in a jail, AND the home is of Jewish ownership, one can be lenient in an *ex post facto* scenario or perhaps in dire need.

The additional third condition creates a *lechatchila* ruling, meaning one can rely on it from the outset. In a case where there is servitude (even partial), a Jewish home and a Jewish member of the household will adjust the fire, one may initiate such a scenario *a priori* and not be concerned about *bishul akum*. It seems that in a case where a Jewish member of the home *normally* stokes the fire to make sure the food is cooking, even if it did not happen, one may still be lenient from the outset (see *Chochmat Adam* 66:9).

Another explanation found in the *Shach*

is similar to the *Aruch HaShulchan* but with one very important difference. According to the *Shach*, in the *ex post facto* leniency cited initially by the *Rema*, the primary factor is the Jewish home. The *Shach* explains that even in a case where there is no slavery involved, *Rema* relies on the ruling of R. Avraham Ben David [disregarding the employment status of the non-Jew]. *Rema* decided to mention the ruling about the non-Jew's status, even though it seems out of place, since *Shulchan Aruch* there is talking about the halacha of a non-Jewish slave.

HOTELS AND RESTAURANTS

A direct practical difference between the *Shach* and the *Aruch HaShulchan* is the case of non-Jewish workers in modern, Jewish-owned establishments, such as restaurants and hotels. Although workers in such establishments are in no way obligated to work there and can quit as they please, according to the *Shach*, in a case where food was already produced it is permitted to consume as long as the establishment is owned by a Jew. The *Aruch HaShulchan* would disagree and even in an *ex post facto* scenario the food would be prohibited, based on his opinion that both conditions are required, i.e. Jewish-owned and at least a minimal servitude. Later *poskim* rule like the *Aruch HaShulchan*, and as such, food cooked by non-Jewish workers in Jewish-owned hotels and restaurants is subject to the decree of *bishul akum*, even in an *ex post facto* situation. (See responsa *Teshuvot VeHanhagot* 1:439; *Levushei Oz*, p.539; *HaHalacha BaMishpacha*, p.203.)

IN SUMMARY:

- Early authorities dispute whether household servants are included in the decree of *bishul akum*.
- *Shulchan Aruch* rules that all non-Jews, regardless of their occupation or professional relationship, are included in the decree of *bishul akum*.
- *Rema* is lenient in certain cases when a servant or maid is cooking in a Jewish home.
- Non-Jewish workers in hotels, restaurants and factories are included in the decree of *bishul akum*, even in an *ex post facto* case. ■

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