

The basic principle of the prohibition of Selecting

The **Gemara** (74a) cites a *baraita* concerning the prohibition of Selecting:

The Sages taught: If there were types of food before him, one selects and eats, one selects and puts aside for others to eat. But one may not select, and if one selected, he incurs liability to bring a sin offering.

There is an obvious contradiction in the *baraita*: First it states that it is permitted to select, and then it states that it is prohibited by Torah law to select and one who selects incurs liability to bring a sin offering. The Gemara addresses this contradiction and proposes several answers:

RAV YOSEF SAID: One selects and eats **by hand**, one selects and puts aside by hand... but one may not select **with a sieve or with a sifter**, and if one selected, he incurs liability to bring a sin offering...

RAV HAMNUNA SAID: One selects and eats by removing **food from waste**, one selects and puts aside by removing food from waste. But one may not select **the waste from the food**, and if one selected, he incurs liability to bring a sin offering...

ABAYE SAID: One selects **for immediate use** and eats, and one selects for immediate use and puts aside. But one may not select **for use later that same day**, and if one selected, it is considered selecting for the storehouse and he incurs liability to bring a sin offering.

Three conditions to permit Selecting

According to many *Rishonim* (Rabbeinu Ḥananel, Rambam, Ramban, and others), the *Amora'im* disagree only regarding the interpretation of the *baraita* but not regarding the *halakha*. They all agree in principle that anyone who selects with a sieve, sifter, or another implement, **or** who selects waste from food, **or** who selects to eat the food later, incurs liability to bring a sin offering. **It is permitted to select only when all three conditions are met:**

1. One must select **by hand** and not with an implement.
2. One must remove **food from waste**.
3. One must select in order to eat the food **immediately**.

That is likewise the ruling of the *Shulḥan Arukh* (319:1–4):

One who selects food from waste... with a sieve or with a sifter is liable... but if one selected by hand in order to eat immediately, it is permitted...

One who selects food from waste by hand to put it aside even for use that same day is equivalent to one who selects for the storehouse and is liable...

One who selects the waste from the food, even with one hand, is liable.

To summarize, it is permitted to select when one selects **food by hand, and for immediate use**.

Why is it permitted to select when these three conditions are met? The plain understanding is that the action is performed in a manner that deviates from the typical manner of Selecting. However, this understanding is difficult, as performing an action that deviates from the standard is typically prohibited by rabbinic law and not permitted. Why, then, is selecting in these circumstances permitted?

There are two approaches in the *Rishonim* to explain this matter:

Rashi (74a) explains that when these conditions are met, it is not considered an act of Selecting:

However, selecting by hand is not comparable to Selecting at all...

Selecting food from waste is not the typical manner of Selecting.

And one selects and puts aside for immediate use, to eat it immediately, as it is not the typical manner of those who select.

Selecting in these circumstances is a **complete deviation** from the typical manner of Selecting; therefore, it is **permitted**. Perhaps it is the cumulative effect of all three conditions – by hand, food from the waste, immediate use – that transforms the action into one so completely different from typical Selecting that it is permitted.

Similarly, *Tosafot* (74a, s.v. *borer ve'okhel*) write:

One selects and eats food from waste. This implies that removing food from waste is **not the typical manner of Selecting**. This is difficult, as at the beginning of Chapter *Tolin* (138a) we say: What is the typical manner of Selecting? One selects food from waste. One could say that there, the reference is to a case where the amount of waste is greater than the amount of food, as then, selecting food from waste is the typical manner of Selecting...

Tosafot hold that the reason it is permitted to select under the aforementioned circumstances is that it is not the typical manner of Selecting. Consequently, *Tosafot* introduce a novel ruling, that if a person has a mixture **in which the majority is waste**, it is permitted

The reason for this leniency

Rashi and Tosafot:
It is not the typical manner of Selecting

Tosafot: When the amount of waste is greater, one should remove it

to remove specifically the **waste**, as the typical manner of selecting in this case is to remove the food. In that case, therefore, one who removes food is liable.

Ramban: It is always the food that should be removed

The **Ramban** (74a, s.v. *vehatanya hayav*) and many other *Rishonim* disagree with the novel ruling of *Tosafot*, and the authorities do not cite the opinion of *Tosafot*.⁴ The Ramban writes:

It is not reasonable, as with regard to Shabbat it is always prohibited to select waste and leave food. Although both removing waste and removing food are typical manners of Selecting, on Shabbat we exert ourselves with the permitted and do not exert ourselves with the prohibited. One who exerts himself with the prohibited and selects waste is like one selecting for the storehouse, as there is no intent to eat what he selected. Therefore, one is liable.

According to the Ramban, selecting food from waste is as typical a manner of Selecting as selecting the waste from the food. The reason that it is permitted to select food from waste, by hand and for immediate use, is not because it deviates from the typical manner of Selecting, but because one is **engaged with permitted items** and preparing food. Whether the amount of food is greater or the amount of waste is greater, it is always necessary to remove food that one seeks to eat and not remove waste.

Ramban and Rabbeinu Hananel: The reason it is permitted is because it is the typical manner of eating

According to the Ramban, the reason that it is permitted to select when the three conditions are met is not because it deviates from the typical manner of Selecting, but because under those circumstances selecting in this manner transforms the selecting into the **typical manner of eating**. Removing food by hand and eating it immediately is considered part of the process of eating and is not included in the prohibition of Selecting.

This principle also appears in the commentary of **Rabbeinu**

4. See, however, *Nishmat Adam* (16:2), who writes that when the amount of waste is greater, it is appropriate to be stringent in accordance with the opinion of *Tosafot* and refrain from selecting food from the waste.

Ḥananel (74b), that the leniency is because it is the **typical manner of eating**:

What is the reason that it is permitted? It is because the Torah prohibited planned, creative labor, and this is not planned, creative labor, **as the intent in this labor is for the sake of eating alone.**

This is also the understanding in the **Commentary attributed to the Ran** (74a, s.v. *ulevo bayom*):

There is no room to question Abaye's statement: Since for use on that same day one incurs liability to bring a sin offering, how is it permitted to select for immediate use? Isn't cooking prohibited even for immediate use? The reason is that since it is only for immediate use, **one is merely engaging in eating...**

These principles are essential in order to understand the reason that selecting is permitted for immediate use. These are **two fundamentally different approaches**: According to one approach (Rashi and *Tosafot*), this selection is permitted on the basis of the standard halakhic construct of an action that deviates from the norm: If there is a minor deviation, the action is prohibited by rabbinic law; if there is a major deviation, it is permitted. The second approach, of the Ramban and others, understands that **since the Torah permits a person to eat and to prepare for eating in the standard manner**, when one is engaged in eating and preparation for eating, there is no prohibition at all.⁵ Obviously, even according to this approach, it

Two fundamental approaches to understanding this leniency

5. Those who adopt this approach are apt to permit other actions. For example, the **Responsa of the Rashba** (4:75) introduces a novel ruling: Just as it is permitted to select for immediate use, so too, it is permitted to **grind for immediate use**, as "provided that one is eating immediately, **in the typical manner that people eat...**" it is permitted (see below, pp. 977–984). Conversely, the **Rid** (*Sefer HaMakhria* 23) writes that it is permitted by Torah law to select food from waste even if it is not for immediate use. This novel ruling can be understood only according to the approach that it is permitted because it is not the typical manner of Selecting, as any selection that is not for immediate consumption is certainly not the typical manner

is only preparations directly related to eating that are permitted, not all preparations, e.g., cooking.

This dispute may have practical ramifications regarding the definition of selecting for immediate use (see below, pp. 866–869). First, however, several significant principles regarding the labor of Selecting must be clarified.

of eating. The Rid indeed writes elsewhere (*Piskei HaRid* 74a, cited below, p. 1008) that the reason the selection is permitted is because it deviates from the typical manner.

See also the *Olat Shabbat* (320:14) and the *Taz* (320:4), who rule that even according to Rabbeinu Tam, who prohibits squeezing unripe fruit into food (see *Shulḥan Arukh* 320:5), it is permitted to do so for immediate consumption. This seems to imply that the leniency of an action for immediate use applies to Squeezing as well, which is a subcategory (*tolada*) of Threshing, and this could be explained as being due to the fact that it is the typical manner of eating. However, it appears that the *Olat Shabbat* and the *Taz* understood that Rabbeinu Tam prohibits squeezing unripe fruit due to the prohibition of Selecting and not due to the prohibition of Threshing. That is why they permitted squeezing for immediate use.

In general, Sephardi authorities are more inclined to adopt the approach that the leniency is because it is the typical manner of eating (Ramban, Rashba, Ran, and later authorities: *Ben Ish Hai* and Rav Ovadia Yosef; see below, pp. 854–855, 871 for the parameters of immediate use). The Ashkenazi authorities are more inclined to adopt the approach that the leniency is due to deviation from the typical manner (Rashi and *Tosafot*, and later authorities: the *Mishna Berura*, *Hazon Ish*, and others). Therefore, they are more stringent regarding selecting while eating (see pp. 866–871). However, this is not a clear-cut distinction, as the Rema ruled leniently regarding grinding for immediate use (see p. 979).

