

## Additional points regarding the *halakha* of immediate use

It is permitted to select **for others** who are eating immediately, as implied by the anecdote of **Rav Beivai** cited in the Gemara (74a, see pp. 827–828), and the **Rema** (319:1) rules accordingly.<sup>23</sup> The **Ben Ish Hai** (Year 2, *Beshallah* 3; *Rav Pe'alim*, vol. 1, chap. 12) rules that in selecting **on behalf of others**, it is permitted to select a quantity greater than the quantity required, to honor one's guests:

It is permitted to select for others

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23. It should be noted that **Mahari Abulafia** (cited in the **Responsa of the Maharitatz** 23; *Baer Heitev* 319:2) writes that this is the very uncertainty discussed in the Gemara ad loc., whether it is permitted to select for others **when they will not eat with that person**. Accordingly, one should be stringent regarding uncertainty of this kind. However, in practice there is room for leniency, as it is permitted to select even for one's animal (*Tosefta* 17:6, **Responsa of the Rashba**, vol. 4, 75; **Rema** 321:12). *Tosafot* (s.v. *velo yadana*) also interpret the uncertainty in the Gemara differently, namely that the reference is to selecting not for actual immediate use. Accordingly, the *Mishna Berura* (319:6) rules that it is permitted to select for others even if one does not intend to partake with them.

If one selects [enough for] a full dish in order to present it to the guests for their immediate enjoyment, and at the time of selection he knows for certain that the guests will not finish all the food on that dish, or even one-third of it, and it is necessary to select the entire amount in order to fill the dish in the guests' honor, as it is embarrassing to present a half-empty dish before them, my final conclusion is to permit this, as the entire platter is considered necessary for that meal, and it is permitted to do so.

The reason is that honoring the guests is also an essential element of a meal, and therefore the selecting is performed for the sake of the meal.

The status of food  
selected in a  
prohibited manner

The *Beur Halakha* (319:1, s.v. *haborer*) cites a dispute regarding the status of food selected in a prohibited manner on Shabbat:

See the *Peri Megadim*, who writes that if one selected, *bediavad* (after the fact) it might be prohibited to use the selected item on that Shabbat, as he would be benefitting from a labor on Shabbat... However, according to what the Vilna Gaon wrote above (318:1), there is no need for stringency regarding labors performed unwittingly other than cooking *bediavad*.

According to the *Peri Megadim* (*Eshel Avraham* 319:1), consumption of food selected in a prohibited manner is on that Shabbat, whereas the *Beur Halakha* writes that one may rely on the opinion of the Vilna Gaon (318:1), who permits partaking of the product of unwitting labor on Shabbat.<sup>24</sup> In practice, there is another reason for

24. The *Beur Halakha* holds that one may rely on the opinion of the Vilna Gaon, particularly with regard to labors other than Cooking. He is apparently referring to labors that involve no fundamental change in the item itself and are reversible. With regard to labors of this kind, one may factor in the opinion of the *Ritva* (*Eiruvin* 41b; see also *Beur Halakha* 218:1, s.v. *aḥat*, citing *Ḥayei Adam*) that the prohibition of benefitting from the product of a prohibited labor on Shabbat does not apply in instances where the object did not change.

leniency here: Since one could have selected in a permitted manner, there is no benefit from a prohibited action on Shabbat.<sup>25</sup>

If one selected for later, rather than for immediate use, **can the prohibition be rectified** by eating the food immediately? The *Ben Ish Hai* (*Rav Pe'alim* 1:12) rules that the prohibition cannot be rectified in this manner, as when the selection was performed, the action constituted a labor. In contrast, some maintain that eating the food immediately would rectify the prohibition. In practice, it is preferable to **remix** the components of the mixture. In doing so, perhaps this rectifies what the person had done, and certainly there is no drawback in doing so, even according to the *Ben Ish Hai* (see *Yalkut Yosef* 319:11).

With regard to one who selected for immediate consumption and ate the food, but some remained, the *Mishna Berura* (5) rules this it is not a problem:

If the intent is that food will remain after the meal or for another meal, one incurs liability to bring a sin offering. However, if food happened to remain after the meal from what the person selected, this is of no consequence, as the selection was already performed in a permitted manner.

In other words, since the intent was for the purpose of the meal, and the food selected was indeed used for that meal, the labor of Selecting was not performed here, as opposed to a case where one selected and then opted not to eat.<sup>26</sup> This implies that selecting

What should a person do when selecting to leave for later?

There is no obligation to finish the food that was selected for consumption

25. However, it is possible that this reason by itself is not sufficient, as there might be a **penalty** imposed on the product of prohibited labor on Shabbat (*maaseh Shabbat*), even if no tangible benefit is derived from the violation. A more extensive treatment of this topic is beyond the scope of this chapter. The Maharsham (*Daat Torah* 319) rules leniently in this regard, and the *Yalkut Yosef* (319:15) is lenient even in cases of deliberate violation.

26. According to the *Peri Megadim* (*Mishbetzot Zahav* 319:2), one who selects for immediate use and then opts not to eat the food is not liable, as when selecting was done the intent was permitted. However, it is prohibited to do so *lekhathila*; rather, one should eat the food immediately. The *Mishna*

If one selected for immediate consumption, and changed his mind and did not eat

just before a meal need not be performed for exactly the amount required; rather, it is permitted to prepare abundantly any amount that the person thinks might be required for the meal. However, the *Mishna Berura* adds (based on the *Tur*) that if one acts with subterfuge and intentionally prepares an excessive amount, the person incurs liability to bring a sin offering (see *Yalkut Yosef* 319:1).

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*Berura* (*Shaar HaTziyun* 5) cites the ruling of the *Peri Megadim* and adds that proof is required before adopting it in light of a ruling with regard to the labor of Trapping: The *Shulhan Arukh* (316:6) writes about the case of a person who was sitting by the entrance of a house when a wild animal entered, and another person joined him, after which the first person left. The second person may continue sitting there, despite the fact that this person's presence at the entrance prevents the animal from fleeing, because the prohibition was not violated initially when this person sat at the entrance. The *Mishna Berura* contends that the same applies to the case at hand: Since the person did nothing wrong at the time of selecting, failure to eat the food cannot establish a retroactive violation. Nevertheless, the analogy of the *Mishna Berura* is questionable, as the case of Trapping involves one who merely sat and did not perform an act of trapping at all, while in this case, the person clearly performed an act of Selecting, only with the intention to eat immediately. Therefore, it may be that it is permitted only if one actually ate the food immediately. Of course, it is possible to assert that selecting for immediate use cannot be characterized as an act of Selecting at all. *Shevitat HaShabbat* (*Borer, Be'er Rehovot* 9) also cites this distinction, adding that the *Beit Yosef* (319, s.v. *veshiur le'altar*) implies that one who does not eat incurs liability to bring a sin offering. The *Beit Yosef* writes: "Similarly, if one selects before the meal, [the food] must be eaten during the first meal, and if one leaves some of it until getting up from the meal, it is not called for immediate use and the person is liable." However, *Shevitat HaShabbat* notes that some explain this statement of the *Beit Yosef* otherwise (see *Yalkut Yosef* 319:12). In summary, according to the *Mishna Berura*, it might be that it is permitted for one who selected for immediate use to reconsider *lekhatfila* and keep the food for later, while according to the *Peri Megadim*, this is prohibited by rabbinic law, and some maintain that according to the *Beit Yosef* it is prohibited by Torah law.

