

# HALACHIC AND HASHKAFIC ISSUES IN CONTEMPORARY SOCIETY

## SERIES 2: 88 - EATING MATZA BEFORE PESACH OU ISRAEL CENTER - SPRING 2024

- It is well known that there is a halachic prohibition of eating Matza on Erev Pesach.
- This halacha has, in turn, given rise to many similar or parallel minhagim before Pesach, including:
  - Not eating matza from Rosh Chodesh Nissan<sup>1</sup>.
  - Not eating matza from 30 days before Pesach.<sup>2</sup>
  - Not eating maror or eggs on Erev Pesach<sup>3</sup>.
  - Not eating lettuce on Erev Pesach<sup>4</sup>.
  - Not eating any vegetables used on Pesach starting on Rosh Chodesh Nissan.
  - Not eating fruits on Erev Pesach and the first Yom Tov because we eat Charoset at the seder.

1. וקודם שעה עשירית מותר לאכול מצה עשירה. הנה: אבל מנה שיואלץ זה בלילה אסורים לאכול כל יום ארבעה עשר (ר"ן פרק אלו עוברין בשם הרמב"ם והמגיד פ"ו). וקטן שאינו יודע מה שמספרין בלילה מיציאת מצרים מותר להאכילו. ויש נוהגין שלא לאכול חזרת בערב פסח כדי לאכול מרור לתיאצון (תש"ו ג"ה ח"ג), וכן ביום ראשון של פסח, כדי לאכול בליל שני לתיאצון. וכן נוהגין קצת למטט באכילת מנה ביום ראשון מהאי טעמא (כל ז). ויש מחמירין עוד שלא לאכול פירות כדי לאכול החרוסת לתיאצון, ואין לחוש למנהג הבוא. ויש מחמירין שלא לפרר או לשזור המנות בערב פסח שלא לאכול מהם (מהרי"י) ואין לחוש גם לזה. ...

שולחן ערוך אורח חיים הלכות פסח סימן תעא סעיף ב

*The Mechaber and the Rema agree that there is a prohibition to eat regular matza on Erev Pesach<sup>5</sup>. The Mechaber permits matza ashira (ie matza kneaded with fruit juice, eggs or wine) up to the 10th hour since that matza would not be permitted for the matzot mitzva at the seder. Ashkenazim do not normally eat matza ashira on Pesach<sup>6</sup> itself and the Rema does not specify whether it can be eaten on Erev Pesach<sup>7</sup>. The Rema also takes this opportunity to discuss other minhagim not to eat certain foods shortly before Seder, some of which he supports and other that he does not.*

- How have these minhagim expanded? Is it simply another aspect of 'chumra' around Pesach? Or is something else at work?

### A] EATING ON EREV PESACH

2. בראשון בארבעה עשר יום לחדת בערב תאכלו מצת עד יום האחד ועשרים לחדת בערב.

שמות יב:יח

*We are commanded in the Torah to eat matza on the night after 14 Nissan ('Chag HaPesach', when the korban Pesach is brought.) This mitzva appears to extend to eating matza until the end of 21 Nissan.<sup>8</sup>*

1. Cited in the Chai Adam Vol 2-3 Klal 129:13, in Mishna Berura 471:12, and in Igrot Moshe OC 1:155. See also Shvut Ya'akov 471:7 based on Shayarei Kneset Hagedola 471:3; Beir Hetiv 471:5. This minhag is based on the view of Rabbi Shimon Ben Gamliel that the review of the laws of Pesach and accompanying practices only begin two weeks prior to the Chag and not thirty days.
2. This is the custom of Chabad - Igros Kodesh 8:219 and Likkutei Mahrich, Seder Hanhagas Chodesh Nissan p. 3b. It is also cited by R. Moshe Feinstein (Igrot Moshe OC 1:155) as the minhag of some individuals. Rav Feinstein writes that it would have been logical to have prohibited matza starting thirty days beforehand, as with other matters relating to Pesach. Nevertheless, Chazal did not make such a decree due to the difficulty of it being upheld by the public. Note that some poskim have ridiculed the custom of avoiding eating matza before Erev Pesach. The Orchos Chaim Spinka (in the name of Meorei Or "Od Lamo'ed" p. 35b) writes that one should not say that many [*rabim*] are accustomed to abstain from eating matza from Rosh Chodesh, but rather one should read *rakim* [ignoramuses] are accustomed to avoid eating matza before Erev Pesach, since they are arguing on Chazal only who prohibited matza on Erev Pesach itself. See <https://shulchanaruchharav.com/halacha/avoiding-matza-from-purim-and-onward/> for a full account of the Chabad customs on this issue. According to Chabad, the minhag also applies to children over the age of chinuch and includes not eating non-shemura matza, or machine matza. Eating matzot which are actual chametz is disputed. Egg matza with a strong taste of egg or fruit juice may be eaten, as may cooked matza, such as matza balls and the like.
3. Yalkut Yosef Kitzur OC 471:8.
4. Mateh Moshe. See <https://sephardicu.com/holidays/passover/matza-on-erev-pesach-part-3/> for sources for the other minhagim listed.
5. The wording of the Rema is 'matza that one could use for the mitzva at night' is prohibited during the day. We will see below if this is the way that all mefarshim understand it.
6. See Rema OC 462:4.
7. Pri Megadim (Eshel Avraham 444:2) understands the Rema as holding that the Ashkenazi minhag is not to eat matza ashira even on Erev Pesach. The Aruch Hashulchan 444:5 permits Ashkenazim to eat matza ashira on Erev Pesach. Igrot Moshe OC 1:155 allows matza ashira only until the fifth halachic hour, ie while chametz can still be eaten. But, basically, all agree that matza ashira does not constitute 'matzot mitzva' which is prohibited on Erev Pesach. There is a further distinction between matza kneaded purely with fruit juice and that kneaded with a mixture of fruit juice and water. See <https://www.etzion.org.il/en/holidays/pesach/matza-ashira> for more on this.
8. We discussed last year whether eating matzot for all 7 days of Pesach is also a Torah mitzva - see <https://www.ou.org/holidays/matza-all-7-days-of-pesach/>.

- Now that we do not have korbanot, teruma, and ma'aser sheni, this is the only remaining positive Torah mitzva to eat a specific food<sup>9</sup>.

3. ערבי פסחים סמוך למנחה לא יאכל אדם עד שתחשך ...

משנה מסכת פסחים פרק י משנה א

*The Mishna introduces a Rabbinic prohibition of eating on Erev Pesach from 'near to Mincha'.*<sup>10</sup>

4. גמרא. מאי איריא ערבי פסחים? אפילו ערבי שבתות וימים טובים נמי. דתניא: לא יאכל אדם בערבי שבתות וימים טובים מן המנחה ולמעלה כדי שיכנס לשבת כשהוא תאוה, דברי רבי יהודה. רבי יוסי אומר: אוכל והולך עד שתחשך. אמר רב הונא: לא צריכא אלא לרבי יוסי דאמר: אוכל והולך עד שתחשך. הני מילי - בערבי שבתות וימים טובים, אבל בערב הפסח, משום חיובא דמצה - מודה. (רש"ס - משום חיובא דמצה. שלא תהא נאכלת על השוצע וחיובא דמצה לילה הראשון חיובא דכתיב (שמות יב) צערב תאכלו מצות).

פסחים צט:

*The Gemara asks why eating on Erev Pesach should be specifically pointed out by the Mishna, since eating on every erev Shabbat and Chag is restricted (by some opinions) so that one enters Shabbat hungry to eat the seuda. The Gemara answers that ALL opinions will be stricter on Erev Pesach due to the special Torah mitzva to eat matza that evening.*

5. אמר רבי אסי - אבל מטביל הוא במיני תרגימא. רבי יצחק מטביל בירקי.

פסחים קז:

*The Gemara later clarifies that snacking on fruits and vegetables is permitted even later in the afternoon.*

6. אסור לאכול פת משעה עשירית ולמעלה כדי שיאכל מצה לתיאבון. אבל אוכל מעט פירות או ירקות. אבל לא ימלא כריסו מהם.

שולחן ערוך אורח חיים הלכות פסח סימן תעא סעיף א

7. (א) לאכול פת - היינו אפילו מצה עשירה ...  
(ב) משעה עשירית וכו' - היינו מתחלת שעה ד' אחר חלות היום. ואפילו אם התחיל לאכול פוסק כיון שכתחיל צאיסור.  
(ג) מעט פירות - וה"ה צער ודגים וזיליס וכו"ג אבל מחמשת המינים שזבזל צמי פירות אסור דסעיף.

משנה ברורה סימן תעא ס"ק א - ג

*The Shulchan Aruch rules that one may not eat 'pat' after the 10th hour of the day (in Yerushalayim just before 4pm). Effectively 'pat' means matza ashira (see above) since both chametz and regular matza would be prohibited. But one can eat other foods (eg meat, fish, vegetables, fruit etc) as long as one is careful not to become too full.*

## **B] NOT EATING MATZA ON EREV PESACH - THE SOURCES**

### **B1] THE YERUSHALMI - A RABBINIC DECREE**

8. א"ר לוי האוכל מצה בערב הפסח כבא על ארוסתו בבית חמיו. והבא על ארוסתו בבית חמיו לוקה.

תלמוד ירושלמי מסכת פסחים פרק י הלכה א

*The Talmud Yerushalmi rules that eating matza on Erev Pesach is compared to have sexual relations with one's 'arusa' in her parents' home, for which one receives lashes<sup>11</sup>!*

- How does this fit with the Mishna we saw above about stopping eating in the afternoon? Most mefarshim understand that the Bavli agrees with this position of the Yerushalmi that there is a separate prohibition to eat matza on Erev Pesach.

9. There is still a Torah mitzva to eat generally on Erev Yom Kippur and to eat in the Succah on the first night of Chag.

10. The last chapter of Pesachim deals with the halachot of the Seder night. This Mishna, which deals with behavior on Erev Pesach, underlines the importance of preparing properly for Seder. The success of Seder is to a significant degree based on the work that goes into it in advance.

11. The Yerushalmi does not explicitly state that one receives lashes for eating matza on Erev Pesach, although intimates this due to the comparison with the *arusa*. It also does not explain why one receives lashes for cohabiting with one's own *arusa*, when the man and women are already halachically married (but before nisu'in). We will look at these points below.

9. .... א"ת מאי אריא סמוך למנחה? אפי' קודם לכן מה יאכל?! חמץ אסור לאכול מדי שעות ולמעלה. ומנה נמי אסורה כדאמרינן בירושלמי 'כל האוכל מנה בערב הפסח כאלו בעל ארוסתו צבית חמיו ולוקה'. וכי תימא יאכל פירות, א"כ אפילו סמוך למנחה שרי צמיני תרגומא כדאמרינן בגמרא. ואומר ר"י דמנה עשירה וכיוצא בה שרי קודם למנחה. ונ"ל שאין לנו לריבין להידחק כל כך. דאטו תנא דמתניתין דאסור לאכול סמוך למנחה אית ליה דירושלמי? לית ליה! דאי אית ליה אי אפשר דלא הוה תני לה צמתניתין. דהשתא שאר אכילת אסר משום חיובא דמנה אכילה דמנה גופא מציעיא?! אלא ודאי כל קודם דמנחה שרי למיכל מנה.

תוספות רי"ד פסחים צט:

*The Tosafot Rid understands that the Bavli completely disagrees with the prohibition in the Yerushalmi of eating matza on Erev Pesach<sup>12</sup> and permits eating regular matza until the 10th hour!*

- However this is not the accepted halacha and other Rishonim differentiate between before the 10th hour and after:
  - large snacks/shehakol meals are permitted before the 10th hour and only smaller snacks after (Maharam Chalava).
  - matza ashira (that is disqualified from Seder) is permitted before the 10th hour but not after (Tosafot).
  - other matza that is disqualified from Seder (eg baked (and kosher lePesach) by a non-Jew without kavana le'shem mitzva) can be eaten before the 10th hour but not after (Tosafot Rid, second answer)<sup>13</sup>.

10. א"ר לוי האוכל מנה בערב הפסח כבא על ארוסתו בבית חמיו והבא על ארוסתו בבית חמיו לוקה.

רי"ף פסחים טו.

*The Rif quotes the ruling of the Yerushalmi as halacha, together with the connection to the arusa.*

11. אָסְרוּ חֲכָמִים לְאָכֵל מִצָּה בְּעֶרֶב הַפֶּסַח ... וּמִי שֶׁאֲכַל מִצָּה בְּעֶרֶב הַפֶּסַח מִכֵּין אוֹתוֹ מִכַּת מַרְדּוּת עַד שֶׁתֵּצֵא נַפְשׁוֹ. ...

רמב"ם הלכות חמץ ומצה פרק ו הלכה יב

*Rambam rules according to the Yerushalmi in Mishne Torah and adds an apparently astounding ruling - that someone who eats matza on Erev Pesach receives rabbinic lashes for rebellion **until they die!**<sup>14</sup>*

- The Torah restricts malkot for breach of a Torah prohibition to a maximum of 39 lashes. How could the halacha be stricter for the breach of a rabbinic prohibition!?

12. פירש הערוך (ערך מרד) מלקות דאורייתא הוא על חייבי לאוין צאומד ... אצל עובר על מלות עשה כגון סוכה ולולב ואינו עושה, היו מכין אותו עד שתלא נפשו בלא אומדן. ... וכן עובר על דברי חכמים היו מכין אותו בלא מספר בלא אומדן. ולמה קורין אותו מכת מרדות מפני שמרד בדברי תורה ובדברי סופרים עכ"ל. נראה מדבריו דמכת מרדות הוא עד שתלא נפשו. ואף הרמב"ם ז"ל כתב בפרק ו מהל' חמץ ומנה 'אסרו חכמים לאכול מנה בערב פסח כו' ומי שאכל מנה בע"פ היו מכין אותו עד שתלא נפשו. ולפי דבריהם יש צוה חומר בדברי סופרים יותר מדברי תורה.

ר"ן (על הרי"ף) כתובות טו:

*Rabbeinu Nissim understand that this source in the Rambam indeed teaches us that the Rabbis have greater latitude in administering Makat Mardut than Torah Malkot since there is a deeper rebellion against the halachic system.*

13. ורצנו מנוח צא ליישב קושיא זו וכתב: .... ומש"ה מכין אותו מכת מרדות - דכמבטל מלות עשה חשבינן ליה כיון שאין זה היכר, וכל ענין הלילה משום היכרא ומשום פרסומי ניסא, עכ"ל. ובספר הקובץ כתב רז"ל: מכין אותו מכת מרדות ... ועטם רצינו דהחמיר כאן מה שלא מלינו במקום אחר יראה קלת ראיא למש"כ החק יקבץ בשם יש מי שאומר - שהאוכל מנה בערב פסח הוא מהתורה. מדכתב 'בערב תאכלו מלות' ולא ציוס, ולאו הכא מכלל עשה, עשה הוא ... והוא חידוש.

חשוקי חמד פסחים צט: ד'ה לא יאכל

*R. Yitzchak Zilberstein also asks why the Rambam appears to be so harsh on this specific issue, and quotes from Rabbeinu Manoach and other later commentaries who suggest the prohibition of eating matza on erev Pesach is virtually a Torah prohibition, since it will impede the proper fulfillment of the mitzva at Seder.*

12. The wording of the Yerushalmi quoted by the Tosafor Rid is slightly different to that in our Yerushalmi and (if not simply a paraphrase) may imply that the Yerushalmi agrees that malkot is given for eating the matza on Erev Pesach.

13. The Meiri rules that any matza disqualified for Seder - eg matza ashira or matza made by non-Jews - can be eaten before the 10th hour.

14. The Rambam rules the din of 'makat mardut' (rabbinic lashes) 104 times in Mishne Torah but this is the only instance in which he adds the words 'until they die!' A simple explanation may be that these extra words are an incorrect girsa. This view is supported by Rabbi Israel Eisenstein (1837-1905) who writes in his commentary (Amudei Esh) that R. David ben Zimrah and R. David Arameh did not accept the girsa with the words "until he dies". The Frankel edition includes these words but notes that they do not appear in most manuscripts and early print editions. In fact, they were inserted in print for the first time in the 1574 Venice edition. Nevertheless, the Frankel edition justifies including them on the basis that these were in the Mishne Torah manuscripts of Rabbeinu Manoach, the Tashbetz, the Ran, the Ritva and others.

**B2] A QUASI-TORAH PROHIBITION?**

14. ואסור לאכול מצה בערב הפסח דכתיב בערב תאכלו מצות.

ספר הרוקח הלכות פסח סימן רפ

*The Rokeach (R. Elazar of Worms, 12/13th century) understands that, implicit in the wording of the mitzva to eat matza on the night after the 14th is a prohibition to eat it earlier on the day of the 14th.*

15. (ח) וְאָכְלוּ אֶת-הַבֶּשֶׂר בַּלַּיְלָה הַזֶּה צְלִי-אֵשׁ וּמִצּוֹת עַל-מֵרְרִים יֹאכְלֶהוּ:

שמות יב

*The Torah also instructs that the korban Pesach, matza and maror must be eaten at night<sup>15</sup>.*

**C] NOT EATING MATZA ON EREV PESACH - THE REASONS****C1] CHAVIVUT HAMITZVOT**

16. פסק (ירושלמי רפ"ז) ואסיר למיכל מצה מבעוד יום מקמי דליקדיש ואומר הגדה והלל שנאמר (שמות יב:יח) בערב תאכלו מצות כדו שיהא חביב עליו, משל לארוס שבא על ארוסתו בבית חמיו.

ספר הלכות גדולות סימן יא - הלכות פסח פרק כל שעה עמוד קעג

*The Behag (9th century Babylon) rules like the Yerushalmi, bringing the mashal of the arusa, and also quotes the pasuk in the Torah to eat matza in the evening. He gives a specific reason for the prohibition - so that matzot on Seder night will feel special. There is clearly an Torah imperative of 'chavivut hamitzvot' - to maximize the simcha and enjoyment in mitzvot<sup>16</sup>. This can be achieved by refraining from eating matza on Erev Pesach so as to make the taste and experience extra special at Seder.*

**C2] TO MAKE A CLEAR 'HEKER' FOR THE MITZVA**

17. אָסְרוּ חֲכָמִים לְאָכֵל מִצָּה בְּעֶרֶב הַפֶּסַח כְּדִי שְׂיִהְיֶה הַפֶּר לְאֲכִילָתָהּ בְּעֶרֶב. ....

רמב"ם הלכות חמץ ומצה פרק ו הלכה יב

*Rambam gives a different reason for the prohibition of eating matza on Erev Pesach - so that it will be clear that the matza eaten on the night of Pesach is for a mitzva (and not just a continuation of regular eating.)*

- The focus here is on the need to fulfil mitzvot with proper kavana - leshem mitzva. If a person simply continued eating matza from Erev Pesach this kavana may be lacking<sup>17</sup>.
- On the other hand, with most time-bound mitzvot there is no parallel rabbinic decree to increase chavivut hamitzvot or to make a heker. For instance there is no prohibition on sleeping in the succah on the night before Succot in order to make a *heker* that the mitzva on Succot is *lishma*, or to increase one's enjoyment of the mitzva.

**C3] NOT TO BE DISTRACTED FROM BRINGING THE KORBAN PESACH**

18. ... דגרסינן בירושלמי 'מכשיר היה ר' יהודה בן בתירה בפסח ששחטו שחרית' וכו'. תני ר' יהודה בן בתירה אומר בין חמץ ובין מצה אסורה. פירוש - חמץ קודם ארבע שעות ובין מצה כל היום אסור דאתי לאימנועי מלעבד פסחא.

ראב"ה חלק ב - מסכת פסחים סימן תקכה

*The Ra'avya<sup>18</sup> understands that Chazal were concerned that a person may wash and start a seuda on matza and then forget to bring the korban Pesach.*

- We see this halacha in practice today concerning starting a meal before shaking lulav or hearing shofar. It applies even to rabbinic mitzvot such as hearing megilla and lighting chanuka candles.
- But why would this reason apply today now that we have no korban?

15. See R. Menachem Kasher (first miluim to Parshat Bo #31) who suggests that this verse may introduce a negative mitzva (not to eat them on Erev Pesach) implied from the positive mitzva. If so, is matza on Erev Pesach an 'issur'? If so, is it prohibited even in a small amount? Could it be used as lechem mishna (where Erev Pesach is on Shabbat).

16. This itself is derived from the Torah mitzva of Ahavat Hashem - see <https://rabbimanning.com/ahavat-hashem/>.

17. We see other examples of rabbinic decrees based on heker - for instance not to blow the shofar on Erev Rosh Hashana (aside from other reasons given for this). This in turn may be based on an understanding of the Torah mitzva to eat on Erev Yom Kippur as a heker so that the fasting on Yom Kippur will be clearly seen as for the Torah mitzva.

18. R. Eliezer ben R. Yoel Halevi - 12th century Germany.

19. העושה מלאכה בערב פסח מחצות ולמעלה, היו משמתין אותו. ואפילו לעשות בחנם אסור. ויש מי שאוסר אפילו על ידי אינו יהודי. ויש מי שמתיר (וכן הוא המנהג).

שולחן ערוך אורח חיים הלכות פסח סימן תסח סעיף א

20. (א) מחצות ולמעלה - הטעם מפני שהוא זמן שחיעת הפסח שכ"א מישראל חייב בו, ויום שמציאין קרבן הוא כיו"ט. ולכן אסור מד"ס במלאכה ואפילו בזכ"ז דליכא קרבן עדיין האיסור במקומו עומד.

משנה ברורה סימן תסח ס"ק א

*The Shulchan Aruch rules<sup>19</sup> that there is a prohibition on doing melacha on the afternoon of Erev Pesach and someone who ignores this is placed in cherem! The Mishna Berura explains that this is due to the Yom Tov status of Erev Pesach afternoon - which is Chag HaPesach - and this status did not change even when the Temple was destroyed.*

21. א. בזמן שבית המקדש היה קיים אסרו חכמים לכל אדם מישראל לעשות מלאכה בערב פסח מחצות היום ולמעלה לפי שמחצות ואילך הוא זמן הקרבת הפסח. וכל אדם שמקריב קרבן בכל ימות השנה אותו היום הוא יום טוב שלו מדבריהם ואסור לו לעשות מלאכה באותו היום כעין יום טוב. לפיכך בערב פסח מחצות ואילך שהוא זמן הקרבת הפסח לכל ישראל הרי הוא יום טוב שלהם ואסור בעשיית מלאכה אף למי שפטור מהקרבת הפסח כגון שדר בחוץ לארץ כיון שהוא יום טוב לרוב ישראל המקריבים בו פסח.

ב. ואף לאחר שחרב בית המקדש ובטל קרבן פסח אף על פי כן לא נתבטל איסור עשיית מלאכה כיון שנאסר במנין חכמים על כל ישראל וכל דבר שנאסר במנין חכמים על כל ישראל אף שאח"כ נתבטל הטעם שבגללו אסרוהו אף על פי כן לא נתבטל האיסור עד שנתוועדו במנין כמנין הראשון להתירו בפירוש.

שולחן ערוך הרב אורח חיים סימן תסח סעיף א

*The Shulchan Aruch Harav explains that any day on which a person brought a korban became a Yom Tov for them, with a prohibition on performing melacha. Since so many Jews brought a korban on Erev Pesach, this became a Yom Tov for all the Jewish people, and this decree remain in place even when the Temple no longer exists.*

#### C4] HALACHIC IMPLICATIONS TO THE DIFFERENT REASONS

• As with many conceptual *chakirot* as to why a prohibition is in place, there will be a number of practical halachic *nafka minot* which depend on the reason applied.

##### (a) Which Types of Matza Are Prohibited on Erev Pesach?

- According to some mefarshim (Maharsah) matza ashira is permitted on Erev Pesach since it tastes very different to regular matza (chavivut).
- According to others (Rambam, Meiri) matza ashira is permitted on Erev Pesach since it cannot be used for the mitzva (heker).
- What about matza ashira which DOES taste like regular matza?
- What about kosher matzot baked by non-Jews which could not be used for the Seder but does taste like regular matza?<sup>20</sup>
- What about cooked matza (eg kneidlach)? Are we allowed to taste them on Erev Pesach?

22. .... אזל חס בשלה וכמו שנוכחין צמדינותינו לעשות כדורים ממנה שקרוין קניידלעך או מנה מצושלת צכלי ראשון מותר לאוכלה קודם שעה עשירית דזכר צודאי לא מיקרי מנה וכדמזכר צסימן תס"א.

משנה ברורה סימן תעא ס"ק ב

*The Mishna Berura follows the reasoning of the Rambam<sup>21</sup> (and Rema) and rules that kneidlach MAY be eaten on Erev Pesach since cooked matza is not valid for the Seder. However, other poskim disagree<sup>22</sup>.*

##### (b) From What Time is Matza Prohibited on Erev Pesach?

- Most poskim understand that the prohibition starts on the morning of Erev Pesach (which would serve as a heker).
- Some poskim<sup>23</sup> understand that it starts the night before<sup>24</sup> (perhaps due to chavivut, which could also explain the minhagim to refrain from eating matza even earlier.)

19. See also Mishne Torah Hilchot Yom Tov 8:17 where the Rambam stresses the higher status of Erev Pesach over every other erev Chag due to the centrality of the Korban Pesach.

20. Rema OC 471:2 indicates that the key reason is that of the Rambam - whether the matza is valid for Seder. However R. Zvi Pesach Frank (Mikrei Kodesh #25) cautions that we should be concerned for the other reason (of taste) and not eat matza on Erev Pesach which was baked by non-Jews.

21. The Vilna Gaon actually holds that even the Rambam would prohibit cooked matza on Erev Pesach, perhaps since it has a 'shem matza'.

22. R. Shlomo Kluger OC 328 rules that kneidlach are prohibited since they taste of matza. Most poskim rule that baked matza products - eg matza meal cakes - may not be eaten on Erev Pesach.

23. See Magen Avraham 471:6.

24. R. Chaim Brisker brought a proof against this position from the Mishna which relates the 4 questions on Seder, including - 'on all other nights we may eat chametz or matza'!

## D] EATING MATZA EARLY AND THE COMPARISON TO ERUSIN

- As we saw above, the Yerushalmi compares eating the matza early to a couple cohabiting after the erusin but before the nisu'in. Clearly, the mashal relates to someone 'jumping the gun' and not being able to wait until the appropriate time.

### D1] THE IMPORTANCE OF KEDUSHA IN MITZVOT

23. אמרו חז"ל - האוכל מצה בערב פסח כבועל ארוסתו בבית חמיו. כלומר דכמו שהבועל ארוסתו בעודה בבית חמיו לוקה עליה מכת מרדות מדרבנן על שמראה גודל תאוותו. ושהוא להוט ושטוף בזימה ולא יוכל להתאפק עד שמכניסה לחופה שמברכין עליה ז' ברכות. כן הוא האוכל מצה בערב פסח מראה תאוותו ורעבתנותו, שאינו יכול להתאפק להמתין עד הלילה שיברך ז' ברכות קודם שיאכל המצה - כגון ברכות יין, קידוש, זמן, נטילת ידים, בורא פרי האדמה דירקות, וברכת המוציא, וברכת על אכילת מצה. לכן לוקין אותו עליו ג"כ מכת מרדות מדרבנן אם אוכל ביום קודם ברכו כל הברכות הללו.

לבוש אורח חיים סימן תעא סעיף ב

*The Levush stresses the lack of self-control shown in both cases - of the matza and the arusa. Even if a couple are halachically married through erusin, Chazal required 7 berachot to be said before they could consummate the marriage. So too 7 berachot<sup>25</sup> are made at the Seder before we can eat the matza.*

### D2] LECHEM ONI/ONA AND THE LOVE BETWEEN GOD AND THE JEWISH PEOPLE

- The Torah calls the matza at Seder 'Lechem Oni' - the bread of poverty/affliction.
- But the Haggada also makes the midrashic connection between Oni - affliction and Ona - the intimacy between husband and wife.

24. (ז) וּנְצַלְק אֱלֹהֵי אֲבֹתֵינוּ וַיִּשְׁמַע ה' אֶת-קִלְנוּ וַיֵּרָא אֶת-עֲנִינוּ וְאֶת-עַמְלָנוּ וְאֶת-לַחְצָנוּ:

דברים כ"ז

*The pesukim of Mikre Bikurim that we say at the Seder state that God saw our 'oni'.*

25. וַיֵּרָא אֶת-עֲנִינוּ. זוּ פְּרִישוֹת דָּרָךְ אֶרֶץ, כְּמָה שֶׁנֶּאֱמַר: וַיֵּרָא אֱלֹהִים אֶת בְּנֵי-יִשְׂרָאֵל וַיַּדַּע אֱלֹהִים.

הגדה של פסח

*The Haggada darshens<sup>26</sup> the word 'onyeinu' to be the inability of husband and wife to be together and many commentaries on the Haggada connect this to the mitzva of 'ona'.<sup>27</sup>*

- As such, waiting to eat the Lechem Oni after 7 berachot is a moment of deep love between God and the Jewish people. The reading of Shir HaShirim is also testament to Pesach as a chag of teshuva me'ahava.

## E] EARLY PESACH, MINHAG YEHUDA AND ECHOS OF AN ANCIENT DISPUTE?

26. ההולך לשחוט את פסחו ולמול את בנו ולאכול סעודת אירוסין בבית חמיו ונזכר שיש לו חמץ בתוך ביתו - אם יכול לחזור ולבער ולחזור למצותו יחזור ויבער. ואם לאו מבטלו בלבד ...

משנה מסכת פסחים פרק ג משנה ז

*Interestingly, another source in the Mishna which mentions one's in-law's home is a reference to Erev Pesach! If one remembered on Erev Pesach that they had chametz in their possession, they should go home to destroy it. But if they were in the middle of a mitzva (such as someone on the way to bring the korban Pesach, perform a brit mila on their son or eat their seudat erusin in their in-law's home) and could not get back home and return in time to do the mitzva, they can nullify the chametz in their mind.*

27. (מז) סעודת ארוסין. דכולה מלוא נינהו.

תפארת ישראל [יכין] שם

*All three of these activities are mitzvot.*

25. This idea is also brought in the Rishonim, see Ra'avya 2:525.

26. See also Yoma 74b, Pesikta Zutrata Devarim 46a and other midrashim which reflect this.

27. See for instance Meyuchas LeRashi, Abudarham and many others. The word 'lechem' is used in the Torah as a mashal for sexual relations - eg Bereishit 39:6 and Rashi ibid. Note also the expression 'pat besalo' used often by Chazal (eg Yevamot 37b). See also Shabbat 140b, Ketubot 65b and Sanhedrin 75a for uses of 'bread' as a euphemism for sexual relations. The symbolism of the positions of the two loaves of bread at the Shabbat meal also have sexual and kabbalistic resonance.

28. למול את בנו ולאכול סעודת אירוסין. הפסח והמילה שניהם צמלות עשה שיש צהם כרת, לכך סומם התנא. ומפני שטיקר המסכתא איירי צפסח לא הקדים סעודת אירוסין. ועוד יש רבותא צה כשאין שהות, דאעפ"י שאין צה מלוא כל כך כמילה ופסח, מצטלו בלצו ואינו חוזר.

הון עשיר מסכת פסחים פרק ג משנה ז

*Other mefarshim point out that mila and korban Pesach are the only positive mitzvot which carry the penalty of karet! So it is a little surprising that eating the seudat erusin at one's in-laws - a far lesser mitzva - should be listed with them.*

## E1] THE PROHIBITION OF ARUSA

- An 'arusa' is a wife following erusin but before nisu'in. Today, we perform both of these ceremonies together but in the time of Chazal they were often months apart. After erusin (the gift and acceptance of the ring before witnesses) the couple are halachically married on a Torah level (and would require a get to divorce).
- Nevertheless, the Rabbis prohibited a man and woman from engaging in sexual relations until after nisu'in.

29. כלה בלא ברכה אסורה לבעלה כנדה, מה נדה שלא טבלה אסורה לבעלה, אף כלה בלא ברכה אסורה לבעלה

מסכתות קטנות מסכת כלה פרק א הלכה א

*Chazal rule that a kalla before her 'beracha' - ie sheva berachot under the chuppa - is as prohibited to her new husband as a nidda.*

30. הארוסה אסורה לבעלה מדברי סופרים כל זמן שהיא בבית אביה. והבא על ארוסתו בבית חמיו מכין אותו מכת מרדות.

רמב"ם משנה תורה הלכות אישות פרק י הלכה א

*The Rambam rules this as a rabbinic prohibition<sup>28</sup> and if the couple engaged in sexual relations in her parents' home<sup>29</sup> this would result in makat mardut - lashes for rebellion against the rabbis.*

31. והבא על ארוסתו כו'. זה מצוה צירושלמי:

מגיד משנה הלכות אישות פרק י הלכה א

*The Magid Mishne quotes the source of this halacha as the Yerushalmi but does not specify where. Later mefarshim quote the source as the Yerushalmi in Pesachim concerning not eating matza on Erev Pesach!*

32. זה נלמד מנוסח ברכת האירוסין – 'ואסר לנו הארוסות', כלומר מדרבנן. שגזרו על יחוד פנויה ואף ארוסה לא התירו עד שתכנס לחופה וכמו שאמרו במסכת כלה – כלה בלא ברכה אסורה לבעלה כנדה.

כסף משנה הלכות אישות פרק י הלכה א

*The Kesef Mishne points out that the bircat erusin stresses this through the wording 've'asar lanu ha'arusot'.*

## E2] MINHAG YEHUDA - TO COHABIT WITH AN ARUSA IN HER FAMILY HOME!

33. האוכל אצל חמיו ביהודה שלא בעדים אינו יכול לטעון טענת בתולים מפני שמתייחד עמה ...

משנה כתובות פרק א משנה ה

*The Mishna records the custom of Judea which permitted<sup>30</sup> a man and his arusa<sup>31</sup> to have yichud before the chuppa. On that basis, he could not claim after the chuppa that she was not a betula since we assume that they may have engaged in marital relations prior to nisu'in.*

28. According to a minority position, this could even be a Torah prohibition - see Shita Mekubetzet Ketubot 7a.

29. If they had sexual relations in the husband's home, this could constitute an act of nisu'in as a consummation of the marriage (see Ran Ketubot 73a). Having relations in the parents' home shows that it was intended to be an act of *znut* and not a consummation of the marriage.

30. Some mefarshim read the Mishna in a more limited manner, as simply preventing a *ta'anan betulim* in Judea because the people were lenient on yichud before the chuppa, but not because this was permitted by the rabbis.

31. The status of arusa is only achieved after the kiddushin. Before the kiddushin, the couple are merely betrothed and would be prohibited to have sexual relations. In modern Hebrew the word 'arusa' is used for a fiancée but this is NOT the correct usage in halacha. As to the nature of the halachic prohibition of sexual relations before marriage see <https://outorah.org/p/79792/> and <https://rabbimanning.com/wp-content/uploads/2021/01/Pilegesh-Part-1.pdf>

34. ... וכן כל שאר הנשים לא יתארסו ולא ינשאו עד שיהיו להן שלשה חדשים ... רבי יהודה אומר הנשואות יתארסו והארוסות ינשאו חוץ מן הארוסות שביהודה מפני שלבו גס בה ...

משנה מסכת יבמות פרק ד משנה י

*A woman may not remarry (with nisu'in) within three months of the death of or divorce from her husband in case she is pregnant, which could cause confusion as to the identity of the father. But she may enter into erusin within those three months since we assume she will not have sexual relations with her new husband before nisu'in. Except for in Yehuda where this assumption cannot be made!*

35. גמ'. ... ביהודה נמי מקומות מקומות יש. כדתניא, א"ר יהודה: ביהודה בראשונה היו מייחדין את החתן ואת הכלה שעה אחת קודם כניסתן לחופה כדי שיהא לבו גס בה. ובגליל לא היו עושין

כתובות יב.

*The Bavli records that this was NOT the custom in the Galil nor in some places in Judea. The Bavli also understands that the origin of the Judean custom to allow the couple to be together before the nisu'in was so that they would be more familiar with each other after the nisu'in and able to consummate the marriage.*

36. האוכל אצל חמיו ביהודה. כשכיו עושין סעודת אירוסין צצית אזי הכלה זיכודה היו נוכגים שחארום מתייחד עם ארוסתו כדי שיכא לזו גס צה ...

ר' עובדיה מברטנורא כתובות פרק א משנה ה

*Some commentators understand that this yichud took place at the actual erusin celebratory meal in the home of the wife's parents<sup>32</sup>.*

• This is precisely the case that the Yerushalmi ruled was prohibited! Was the ruling of the Yerushalmi in Pesachim a response to the custom in Judea<sup>33</sup>?

37. גמ' בראשונה גזרו שמד ביהודה. שכן מסורת להם מאבותם שיהודה הרג את עשו דכתיב (בראשית מט:ח) וְדָךְ בְּעֶרְףְּ אֵיבֹיֶךָ. והיו הולכין ומשעבדין בהן ואונסין את בנותיהן. וגזרו שיהא איסטרטיוס בועל תחילה. התקינו שיהא בעלה בא עליה עודה בבית אביה ... מכל מקום אין סופה להיבעל מאיסטרטיוס? אנוסה היא ואנוסה מותרת. ... אף על פי שבטל השמד המנהג לא בטל. כלתו של רבי הושעיה נכנסה מעוברת.

תלמוד ירושלמי מסכת כתובות פרק א הלכה ה

*The Yerushalmi gives a more sinister explanation to the Judean custom. It brings a midrashic tradition that Yehuda killed Esav at the show-down before the burial of Ya'akov at Ma'arat Hamachpela<sup>34</sup>. During the Hadrianic persecutions, the Romans responded to this by enslaving the Jews and raping their daughters. Part of this was the decree of *ius primae noctis*<sup>35</sup> - that a soldier<sup>36</sup> would have sexual relations a bride on the night before her wedding. As a consequence, the Judeans permitted the woman to be with her husband at the earlier stage of the erusin, presumably to make her less likely to be taken by the Romans. Furthermore, even if she was later raped by a Roman soldier she would still remain permitted to her husband.<sup>37</sup> The Gemara concludes that even when the Roman persecution ended, the custom in Judea continued, to the extent that Rabbi Hoshaya's daughter-in-law went to the chuppa visibly pregnant<sup>38</sup>!*

32. See also Ketubot 7b where Abaye understands that Sheva Berachot were said at the erusin in Judea precisely because of this case where the couple would then enter into yichud. However, see Tosefta Ketubot 1:6 which suggests that, even in Judea, the yichud was only permitted 3 days before the chuppa, or a 'short time' before the chuppa. Again, the Tosefta states that this was not the custom in the Galil.

33. See Mishna Ketubot 4:12 where the custom in Galil is associated with that in Yerushalayim, leaving the Judean custom as a minority and, perhaps by implication, rejected position.

34. See Midrash Socher Tov 18:32 which records a midrash that Yehuda killed Esav when the latter wanted to kill Ya'akov at Yitzchak's funeral. See also Sifrei Devarim 348 and Yalkut Shimoni 162. In the tradition of the Bavli (Sota 13a) Esav was killed by Chushim ben Dan at Ya'akov's funeral.

35. For other references to *ius primae noctis* in the commentators see Rashi to Bereishit 6:2 (s.v. *ki tovot*), based on Bereishit Rabba. See also Rashi to Shabbat 23a (s.v. *hayu beoto hanes*) who understands that this was also a catalyst for the Chasmonaim rebellion against the Greeks. See also

<https://www.talmudology.com/jeremybrownmdgmailcom/tag/Jus++Primae++Noctis> for a broader analysis by Dr Jeremy Brown of whether the concept of *ius primae noctis* is in fact a myth, at least in medieval Europe. Dr Brown also references a fascinating article - *Premarital Cohabitation in Ancient Judea: The Evidence of the Babatha Archive and the Mishnah (Ketubbot 1:4)* by Prof. Tal Ilan, available at

<https://static1.squarespace.com/static/54694fa6e4b0eae4530f99d/t/54cfdc3ce4b0416d14b15b01/1422908476675/Premarital+cohabitation+-+Harvard+Theolog.+Review+1993.pdf>. The article examines the relevant sources and also a marriage contract dating from the early 2nd century discovered by Yigael Yadin which indicates that the bride and groom had cohabited prior to the chuppa.

36. In the version of the Bavli (Ketubot 3b) the right to *ius primae noctis* was limited to the governor (hegmon). This may be a toned down version of the original account in the Yerushalmi which was even grimmer.

37. The Gemara goes on to discuss what was done in the case of a Cohenet, who would not be permitted to her husband if raped.

38. The Korban Ha'eda explains that she was pregnant from R. Hoshaya's son since yichud was permitted before the chuppa. Rabbi Hoshaya lived in the early 3rd century CE in Caesarea. Yerushalmi Ketubot 4:14 notes that Caesarea followed the custom of Judea.



38. הבעל ארוסתו בבית חמיו - פליגו בה רב ושמואל. חד אמר הולד ממזר, וחד אמר הולד שתוקי.

מסכתות קטנות מסכת כלה רבתי פרק א הלכה טז

*The early Amoraim in Bavel<sup>39</sup> are however strongly against this minhag of Yehuda and designate a resulting baby as illegitimate, perhaps even a mamzer!*

### E3] MINHAG YEHUDA - TO BE LENIENT ON EREV PESACH AFTER THE CHURBAN

39. .... ביהודה היו עושין מלאכה בערבי פסחים עד חצות ובגליל לא היו עושין כל עיקר. והלילה בית שמאי אוסרין ובית הלל מתירין עד הנץ החמה.

משנה מסכת פסחים פרק ד משנה ה

*The Mishna records that in Judea the people were unusually lenient about performing work on Erev Pesach morning. In the Galil they were stricter and prohibited work in the morning. Beit Shamai even prohibited work the night before.*

- Does this reflect a certain laxness in Judea towards the minhagim relating to korban Pesach (and Chag HaPesach) after the Churban?<sup>40</sup>
- Could this have caused some in Judea to make 'early Pesach' and eat matza before nightfall since there was no korban Pesach?

40. והגדת לבנך. שומע אני מראש חדש ת"ל ביום ההוא. אי ביום ההוא יכול מבעוד יום. ת"ל בעבור זה - בשעה שיש מצה ומרור מונחים לפניך על שולחןך.

מכילתא דרבי ישמעאל בא - מסכתא דפסחא פרשה יז

*Chazal even record a derasha refuting a hava amina that one might indeed eat matza earlier in the afternoon of 14th! Interestingly, it also makes no mention of the korban, implying that it relates to a post-churban reality.*

41. ערבי פסחים סמוך למנחה לא יאכל אדם עד שתחשך. ואפילו עני שבישראל לא יאכל עד שיסב ולא יפחתו לו מארבע כוסות של יין ....

משנה מסכת פסחים פרק י משנה א

*The Mishna in Pesach could also now be read more consistently as referring to the Seder night - don't start early, lean and drink 4 cups<sup>41</sup>.*

- On that basis, the strong statement of the Yerushalmi - that someone who eats matza too early is comparable to someone who has sexual relations with their arusa in her parents' home - is now clearer. Both practices may have been widespread in Judea, and the Tannaim (following minhag Galil) set out to end both of these customs.

39. See also Yevamot 69b where this source is discussed.

40. This analysis is based on a shiur by R. Haim Ovadia - see <https://sephardicu.com/holidays/passover/matza-on-erev-pesah/>. R. Ovadia suggests, in the name of his teacher Prof. Yitzchak Gilat, that the Judea and Galilee regions differed sharply in their commitment to rituals revolving around the Temple. While it would be logical to assume that the Judeans would be more zealous in preserving the memory of the Temple, in fact the opposite was true, and the Galileans were the ones who kept Temple-related practices with greater devotion. R. Ovadia speculates two potential reasons for this (i) Historically, Judea and Jerusalem were cosmopolitan, and their inhabitants were more influenced by the Greek and Roman cultures. They were therefore more liberal in their attitude to some practices which they considered antiquated or narrow-minded; (ii) Emotionally, the shock of losing the Temple was much greater for those living in its vicinity, and they therefore were the first ones to despair and give up hope of its rebuilding.

41. This interpretation is different than the Talmudic one which, somewhat awkwardly, disconnects the first statement (as relating to the afternoon before Pesach and the importance not to over-eat) from the later two (which relate to the Seder night). R. Ovadia suggests that this could be because by the time of the Talmud the movement to make Seder earlier has already died out.