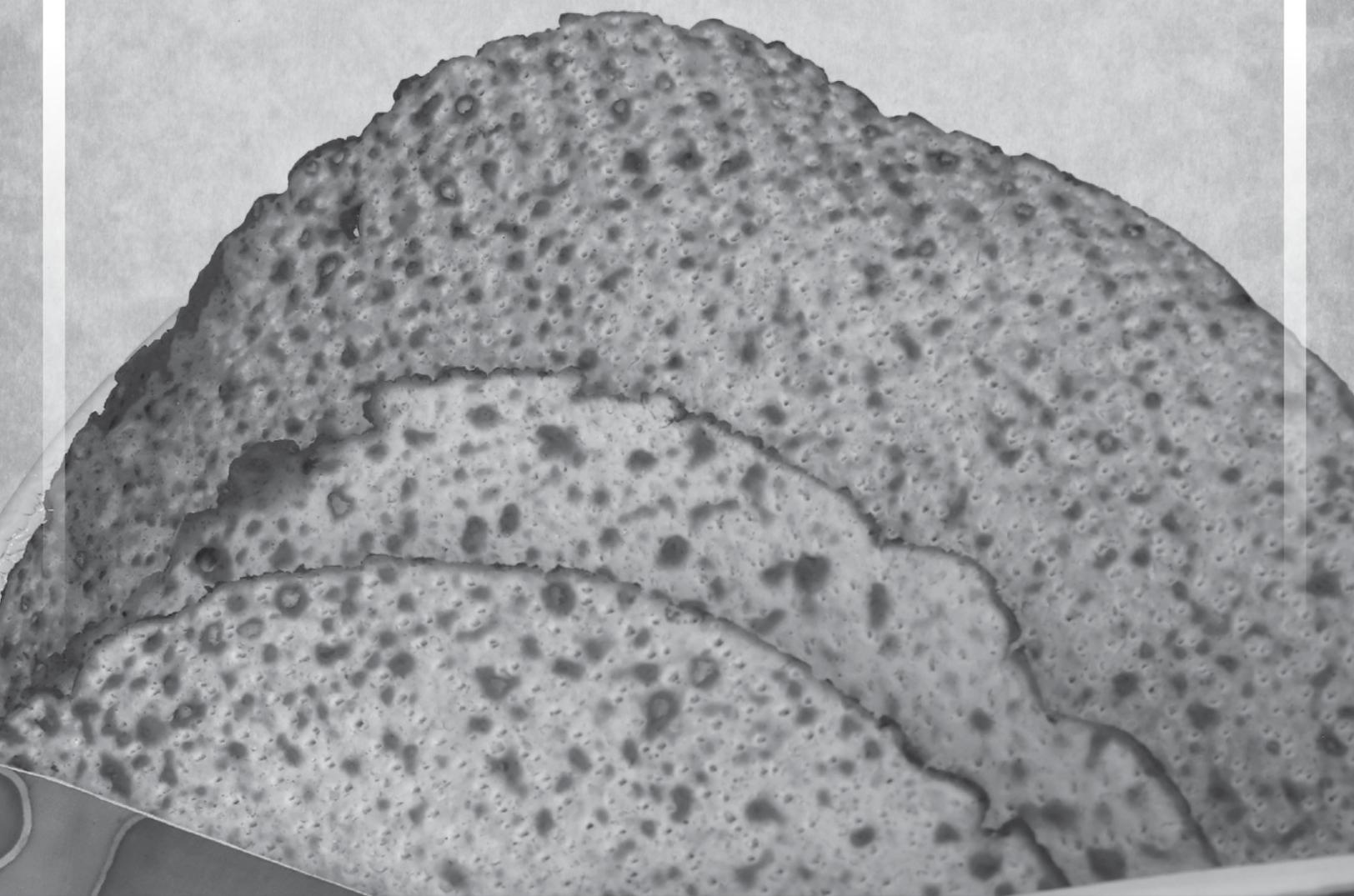


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*Inquiries into
Selected Halachos of Pesach*



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The Rabbinical Council of Greater Washington is pleased to present the inaugural issue of its *halachic* bulletin which will be published, *im yirtzeh Hashem*, semi-annually, before *Pesach* and before the *Yamim Noraim*.

The articles herein are *halachic* in nature and address contemporary issues and questions revolving around *Yom Tov* observance. Their purpose is not only to increase general knowledge about the topics at hand but also to provide a portal for in-depth *Torah* study and analysis. As such, references to original sources are provided and readers are strongly encouraged to explore them on their own. The reader will note that final *halachic* positions – *psakim* – on particular issues are based on the author's analysis of the topic. The bulletin does not seek to present itself as the final *halachic* authority on any question. For that please consult with the author or with your local Rav.

Questions, comments, and suggestions are most welcome and may be sent to vaadbulletin@gmail.com.

Wishing you all a *Chag Kasher v'Sameach*,

Rabbi Moshe Walter

Woodside Synagogue Ahavas Torah

To Clean or Not to Clean, That is the Question

An Analysis of the Halachic Requirements of Bedikas Chametz and a How-To Guide To Pre-Pesach Cleaning.

Rabbi Moshe Walter

Woodside Synagogue Ahavas Torah

For centuries, the Laws of *Bedikas Chametz* were not an area of *Hilchos Pesach* that were approached with anxiety or trepidation. Jews lived in small homes, owned small lots, and did not have a great many possessions. Even those Jews who were better-off financially did not have pantries full of food, or fridges or freezers altogether. Kitchens in general were very small, did not have a sitting area, had limited preparation area, and minimal to no cooking, frying, or baking capability. As such, every home was able to easily fulfill the opening statement of the *mishnah* in *Pesachim* which states, “On the night of the fourteenth of *Nissan* we search for *chametz*.”¹

Times have changed. Apartments and homes are larger than ever, and are quickly filled with a variety of accessories that are standard for today’s day and age. Kitchens and eating areas are especially large in many Jewish homes, while pantries, drawers, fridges, and freezers are lined with an assortment of fresh food, prepared food, and perishables. As a result of this phenomenon the following relation would seem to be true: the larger the home and kitchen, the more possessions owned, the more extensive the cleaning and *bedikas chametz* process becomes. Because of the extensive cleaning that is required to establish a *chametz*-free home, it is no longer possible to clean one’s home in entirety on the evening of the 14th of *Nissan* as the *Mishnah* states.² Weeks before, in anticipation of *Pesach*, Jews the world over meticulously clean and scour, rinse, and wash upstairs and downstairs, inside and out to enter the holiday of *Pesach* *chometz*-free.

The incredible enthusiasm that Jews exhibit to create a *chometz*-free home in the 21st century often causes confusion as to what really has to be cleaned for *Pesach* and what can often turn into a “spring cleaning”. Furthermore, many who insist on doing more cleaning and being “*machmir*” or stringent enter the *seder* exhausted which results in not enjoying or properly fulfilling the biblical and rabbinic *mitzvos* performed throughout the evening.³ The pressure of pre-*Pesach* cleaning can often reach unnecessary and overwhelming heights while curbing one’s excitement and anticipation toward the holiday of *Pesach*. What follows is

¹ *Pesachim Perek 1, Mishna 1. Maseches Pesachim 2a.*

² See *Shulchan Aruch Orach Chaim siman 433 seif 11* that even if one begins to clean one’s home in advance of the night of the fourteenth of *Nissan* (which is the required time to check the home for *chametz*) nonetheless one must still do a bona fide *bedikas chametz* on the eve of the fourteenth of *Nissan*. See *Shaar HaTziyon Siman 432 #12* and *Sefer Halichos Shlomo, Pesach* chapter 5 seif 1 as to how to accomplish this.

³ There is a *halachic* basis and precedent for being stringent in cleaning for *Pesach*. The Tur, *Hilchos Pesach siman 442 #6* writes that those whose custom it is to scrape the walls and chairs that *chametz* came in contact with can find support to their practice from the *Talmud Yerushalmi* which states that one whose home is plastered with dough must destroy the dough. See *Beis Yosef*. Bach ibid concludes that this proof is not conclusive. See *Mishna Berurah* ibid #28 and *Shaar HaTziyon #52*. It is not this author’s intent to abolish *minhagim* which have been passed down by *Klal Yisrael* from generation to generation, nevertheless, some practices in the pre-*Pesach* cleaning today are not an actual continuation of old *minhagim*. Furthermore, stringencies in this area can often lead to leniency in how one manages to enjoy and fulfill the *mitzvos* on *seder* night as a result of exhaustion due to unnecessary pre-*Pesach* cleaning.

an attempt to chronicle the relevant source material and present the *halachic* requirements and guidelines to cleaning for *Pesach* and the *mitzvah* of *Bedikas Chametz*.

There are a total of five negative biblical commandments not to eat, own, or find *chametz* on *Pesach*, and one positive commandment to nullify one's *chametz*.⁴ The negative commandment not to eat *chametz* or leaven carries with it the punishment of *Kares*.⁵ Besides the Biblical prohibition to nullify one's *chametz*, *Chazal* added a rabbinic injunction to search and destroy all *chametz* in one's possession to guarantee that one not come to eat any *chametz* or transgress the negative commandment not to see or not to find *chametz*.⁶ Although one does not transgress the negative commandment not to see or find *chametz* (*Ba'al Yeraeh* and *Ba'al Yematzeh*) unless the *chametz* is the measurement of a *kazayis* (olive), most *halachic* authorities are of the opinion that one is required to search and destroy *chametz* that is less than the measurement of a *kazayis* lest one come to eat it.⁷

As a result of these prohibitions of *chametz* on *Pesach*, Jews have historically been extraordinarily diligent, careful, and *machmir* to clean the home very well in preparation of *Pesach*.⁸

The *Mishnah* in *Pesachim* states: "Any place into which *chametz* is not usually brought does not require searching."⁹ The *Mishnah's* statement raises two questions:

1. Why does the *Mishnah* add the word "any" to preface its statement, would it not have sufficed for the *Mishnah* to say that "a" place into which *chametz* is not brought does not require searching?
2. The *Mishnah's* statement is written in the negative, what then is included in the inverse of the statement that would require searching?

The *Gemara* in *Pesachim* addresses these two points.¹⁰ The word "any" serves to include that holes in the wall of a house that are very high or very low, the roof of an annex, the roof of a tower shaped closet, a cattle barn, chicken coops, a storehouse of straw, storehouses of wine, and storehouses of oil are all exempt from searching for *chametz*.

Three additional exemptions emerge from the examples that the *Gemara* gleans from the word "any" that may not have been obvious were the *Mishnah* to have used the word "a" instead.¹¹

1. Places that are difficult or cumbersome to store *chametz* are exempt from searching for *chametz*.
2. Certain places where animals are found are exempt from searching for *chametz* because the animals will consume the food.
3. Places that are not common for food to be brought are exempt from searching for *chametz*.

⁴ *Rambam Sefer HaMitzvos, Lo Taaseh* #197,198,199,200,201. Ibid, *Aseh* #156. See as well *Koseres* of Rambam to *Hilchos Chametz U'Matzah*. *Sefer HaChinuch* follows the position of the Rambam. See *mitzvos* 9,11,12,19,20,485.

⁵ See *ibid*.

⁶ *Rashi Pesachim 2a d"h Bodkin, Tosofos ibid d"h Ohr, Ran to Rif ibid 1a. Mishna Berurah siman 431 seif katan 2.*

⁷ *Chayei Adam Klal 119 seif 6, Shulchan Aruch HaRav siman 442 seif 28, Chazon Ish Orach Chaim siman 116 #13 D"H V'hagra, Sefer-Machaneh Yisrael of the Chafetz Chaim chapter 10. Mishna Berurah ibid. #33 cites a machlokes achronim about this point, and does not seem to take a position. See Sefer Halichos Shlomo, Pesach chapter 5 Dvar Halachah #10 who understands Mishna Berurah siman 433 Shaar HaTzion #33 to be taking the lenient position.*

⁸ See footnote 3.

⁹ *Perek 1, Mishna 1, Maseches Pesachim 2a.*

¹⁰ *Maseches Pesachim 8a.*

¹¹ *Pesachim ibid.*

The common denominator between these three examples are that they are places that are assumed to be *chametz* free and, as such, do not require any *bedikah* (search) to take place.

The *Gemara* mentions a second ironclad rule based on the third example listed above. Although places where it is not common for food to be brought are exempt from searching, if at times food may have been brought or can be brought, then that area requires a regular *bedikah* (searching).

The third and final rule is that any place where food is stored, eaten, or brought is required to be searched for *chametz*. This rule is the inverse of the *Mishnah's* statement, and includes all obvious places where food has been throughout the course of the year. The *Mishnah* and *Gemara* need not elaborate on this rule because through the process of elimination based on what has been included in the first two rules any obvious place where food has been, must be checked.

These three categories that the *Gemara* outlines are not challenged, and are further supported by the *Rishonim* and codified in *Shulchan Aruch*.¹² Because the *Gemara* only articulates the basic rules outlined above, and only lists some examples of places that do and do not have to be checked for *chametz*, many *Rishonim* and *Achronim* have written more expansive lists of places that should be checked for *chametz*. The following are a number of contemporary examples that the *Rishonim*, *Shulchan Aruch*, *Ramo*, and *Achronim* have placed an emphasis on to check for *chametz*.

1. Kitchen and all eating areas – must be cleaned thoroughly as they are certainly considered places unto which *chametz* is brought.¹³
2. Living room, bedrooms, basement¹⁴ – do or do not have to be cleaned of *chametz* based upon the house rules as to where food is brought. If one never brings food into these areas then they do not have to be cleaned and searched for *chametz*.¹⁵ If one snacks and/or brings food into these places from time to time then they require a thorough cleaning.¹⁶ Children's bedrooms and or a home with children changes the rules since there is a strong assumption that children carry, store, or move food around the home. As such, many places that may have ordinarily been deemed as being “*chametz* free” are redefined and must be carefully checked.¹⁷
3. Closets, drawers, and bookshelves should be handled and treated as articulated in #2 above.
4. Floors – As we don't have earthen floors with deep cracks in them, it is sufficient for tiled floors or covered floors to be swept and washed with a household floor cleaner. Cracks and spaces between tiles do not have to be checked after.¹⁸
5. Toys – should be checked for *chametz*, but need not be scrubbed incessantly.¹⁹

¹² *Pesachim* ibid, and *Shulchan Aruch Orach Chaim Siman* 433.

¹³ As explained in the third rule in the text above

¹⁴ Maharil, Hilchos Bedikas Chametz 3, Tur siman 433 seif 3, Beis Yosef ibid, Bach citing Kol Bo, Pesach beginning of siman 48 Shulchan Aruch siman 433 seif 3, Shulchan Aruch HaRav siman 433 seif 12 and 13.

¹⁵ Mishna *Pesachim* Perek 1, Mishna 1.

¹⁶ Mishna *Berurah* siman 433, #13.

¹⁷ *Shulchan Aruch* siman 433 seif 3 states that one is required to search all areas that are suspect to *chametz* having been brought. A home that ordinarily may not have *chametz* and does not require to be searched has a different *halachic* precedent then a home with one child or a house full of children.

¹⁸ *Mishna Berurah* siman 442 #33.

¹⁹ Ibid. If *chametz* is ruined or not fit to eat one has fulfilled his obligation.

6. Clothes that have pockets, knapsacks, lunchboxes, etc. where one (especially children) has placed *chametz*, or may have placed *chametz* should be checked for *chametz*.²⁰
7. There are differences of opinion regarding whether books and *seforim* are required to be checked for *chametz*.²¹
8. A backyard, patio, and open porch do not have to be checked for *chametz* because it is assumed that local animals and birds have disposed of whatever *chametz* may have existed.²²
9. Cars must be cleaned and checked for *chametz* as they are classified as places unto which food has been brought.²³
10. A *Shul* and *Beis Medrash* are required to be cleaned of *chametz* followed by *bedikas chametz*.²⁴
11. Any area of a home (ie: food pantry, kitchen utensils, particular room, etc. that will be sold to a non-Jew does not have to be cleaned for *chametz* provided that it is properly closed off and sealed for the duration of the holiday.²⁵

²⁰ Darchei Moshe and Ramo *siman* 433 #11 citing Mahari Vayil *siman* 193. See Magen Avraham *ibid* #22, Chok Yaakov *ibid* #26, Gra D"V H'V'hakisim, *Mishna Berurah* #47, 48.

²¹ The basis for disagreement is based upon sources quoted in footnote 6 as to whether crumbs less than the size of an olive have to be destroyed. *Sefer Maaseh Rav* of the Gra # 178 states – "(one must check) even in *seforim* that were used during the meal." See Orchos Rabeinu, *Pesach* #21, *Responsa Ohr L'tzion* volume 1 *siman* 32, and *sefer Halichos Shlomo*, *Pesach* chapter 5 seif 6. It is advisable that *bentchers* used during the year should be put away for *Pesach*.

²² *Maseches Pesachim* 8a, *Rambam Hilchos Chometz U'Matzah* chapter 2 *Halacha* 4, *Shulchan Aruch siman* 433 #6. A covered porch may be different. See *Siddur Pesach K'hilchaso* chapter 12 seif 5.

²³ See *sefer Siddur Pesach K'hilchaso* chapter 13 seif 10, Nitaey Gavriel, *Pesach* volume 1, Chapter 21.

²⁴ *Talmud Yerushalmi*, *Pesachim* chapter 1, *Halacha* 1, Tur and Beis Yosef *siman* 433 #10. *Shulchan Aruch* *ibid*. See Chok Yaakov *ibid* #22, and *Mishna Berurah* #43.

²⁵ *Mishna Berurah siman* 436 #32, *Halichos Shlomo*, *Pesach* Chapter 5 *Halacha* 3, and *ibid*, *Dvar halacha* #6.

Kitniyot: It's Not the Same as Chametz

Rabbi Dr. Barry Freundel
Keshet Israel Congregation

Jews who have even a nodding acquaintance with the laws of Pesach know that Ashkenazim (Jews whose origin is in Europe) refrain from eating things like rice, corn, peanuts and beans on that holiday, while Sephardim (Jews from Spain and the countries around the Mediterranean). However, the whys, wherefores and full parameters of this prohibition are not familiar to many people. This article is an attempt to help fill in that information.

The story of *kitniyot* begins with the text from which I derived the name of this article. It reads:¹

אורז ודוחן - לא. מנהגי מילי? אמר רבי שמעון בן לקיש, וכן תנא דבי רבי ישמעאל, וכן תנא דבי רבי אליעזר
בן יעקב: אמר קרא לא תאכל עליו חמץ שבעת ימים תאכל עליו מצות דברים הבאים לידי חימוץ אדם יוצא
בהן ידי חובתו במצה, יצאו אלו שאין באין לידי חימוץ אלא לידי סירחון.

But not rice or millet (they are not prohibited on Passover as they are not *chametz*). From where do we know this? — Said R. Simeon b. Lakish, and so too the School of R. Ishmael taught, and also the school of R. Eliezer b. Jacob taught, Scripture says, You shall eat no leavened bread with it, seven days shall you eat unleavened bread with it, [with regard to] commodities which come to the state of leaven, a man discharges his obligation with unleavened bread [made] from them; therefore these [rice and millet] are excluded, which do not come to the state of leaven but to the state of decay.

The Talmud then records a disputant to this position:

דלא כרבי יוחנן בן נורי, דאמר: אורז מין דגן הוא, וחייבין על חימוצו כרת... ואדם יוצא בו ידי חובתו בפסח.

[This] does not agree with R. Johanan b. Nuri, who maintains: Rice is a species of corn, and *kareth* (being cut off) is incurred for [eating it in] its leavened state. ... and a man discharges his obligation with it on Passover.

Despite the position taken by Rabbi Yochanan ben Nuri, our custom regarding *kitniyot* is not simply a stringency that seeks to include Rabbi Yochanan ben Nuri's opinion in our practice. That is because the Talmud explicitly precludes us from taking his view into consideration. As it tells us:²

אמר רב אשי: שמע מינה דרב הונא: לית דחייש להא דרבי יוחנן בן נורי.

R. Ashi said: From R. Huna you may infer that none pay heed to the ruling of R. Johanan b. Nuri.

This is the approach taken by Rambam³ and others.⁴ The rationale behind their position is, as the Talmud cited above states, that flour created from rice and similar items, when mixed with water, does not undergo leavening, rather, it simply decays.

¹ B. Pesachim 35a.

² B. Pesachim 114b.

³ Hilkhos Chametz Umatzah 5:1,

⁴ R. Moshe b. R. Jacob of Coucy, Seher Mitzvot Gadol, Negative Precepts #79, Shulhan Arukh, Orah Hayim 453: 1,

It is only the classic five species of grain, wheat, barley, rye, oats and spelt, that actually do become leaven and therefore only those can be used for *matzah* (if baked properly), and conversely, only they fall into the category of *chametz*.⁵

We do not hear about any possible prohibition concerning *kitniyot* until the thirteenth century and the Tosafists in Franco-Germany.⁶ It is unclear who the first to mention this custom actually is. Some claim that Rabbi Yitzchak ben Rabbi Yosef of Corbiel (1210 – 1280) in his *Sefer Mitzvot Katan* (Semak) is the first to mention it.⁷ However the relevant passage actually appears in notes to that text written by Rabbi Peretz ben Eliyahu, who died around 1300.⁸

On the other hand, in Rabbi Mordechai ben Hillel's (1240 – his martyrdom in 1298) Talmudic commentary (known as *Mordechai*), he says that his brother-in-law, the author of *Sefer Mitzvot Katan*, was the one who wrote about and validated the *minhag*.⁹

Mordechai lists several reasons for the custom. One, *kitniyot* produce a *maase kedaira* (a cooked dish similar to what the five grains produce), which might lead to confusion between what is permitted and what is prohibited. Two, these things are heaped up like grain and therefore look like grain, which again might lead to confusion. Three, there are communities that make “bread” from the *kitniyot* species, and again, we might find some reason for confusion. Four, these species are not distinct enough from grains to be recognized as not in the same category. This is different than, for example, cabbage which is obviously visibly distinct from the things that we use to make *matzah*.

Mordechai then concludes by saying:

ומנהג הגון הוא ליהרר מכל קטניות ומכל דבר שקורין ליג"ם וגם חרדל נכון לאסור משום דהוה מידי דמדגן
אף על גב דתלמודא שרי...

“[I]t is an appropriate custom to keep away from all *kitniyot* and from anything called legumes, and from mustard, which is also heaped up like grain; even though the Talmud permits their use...”

Returning to Rabbi Peretz's notes to the *Sefer Mitzvot Katan*, he is far less convinced than Mordechai about whether this custom is to be followed. He cites his teacher, Rabbi Yechiel of Paris (d. c. 1265), who relied on *gedolim* (great sages), and ate *kitniyot* on *Pesach*. Nonetheless, Rabbi Peretz (who cites all the reasons presented by Mordechai in the same words as Mordechai does), concludes that this is a *minhag* (a custom), from the early sages which “the world” practices, that has nothing to do with leavening but is a *gezeirah* (decree) that should be followed.

Finally, for this part of our discussion, Tur adds the concern that when cooked, prohibited grain which cannot be adequately separated might have been mixed in with these things that have been included in the prohibition against *kitniyot*. Tur concludes, however, that this is an excessive stringency which we do not practice.¹⁰

ויש אוסרין לאכול אורז וכל מיני קטניות בתבשיל לפי שמיני חטין מתערבין בהן וחומרא יתירא היא זו ולא
נהגו כן.

⁵ M. Pesachim 2:5 and the other sources cited this far in this article.

⁶ For example *Siddur Rashi*, which contains comments by Rashi (d. 1105), his contemporaries and his students, is an Ashkenazi work from before this date, and it permits *kitniyot* (sections 397 and 691).

⁷ Rav S. Y. Zevin, *Ha-Moadim Be-Halakha*, Jerusalem, 1980, v. 2 p. 305.

⁸ *Hagahot of Rabbenu Peretz to Semak Mitzvah* 222.

⁹ *Mordechai Pesachim* 588.

¹⁰ R. Jacob ben Asher (c. 1269 - c. 1343), *Orah Hayim* 453.

In short, we do not know the true origin of the *kitniyot* custom, nor who actually first originated it, only that as indicated, it appears in Franco-German Tosafist circles in the thirteenth century.¹¹

Wherever the custom comes from, the lack of a clear statement of origins in the literature has led to periodic attempts to challenge the entire *kitniyot* prohibition. For example, Rabbeinu Yerucham (13th century), says that those who do not eat rice or *kitniyot* on *Pesach* are following a foolish custom, (מנהג שטות הוא).¹²

One of the most dramatic challenges is a claim by Rabbi Yaakov Emden (1697-1776) that this entire issue is a “stringency that leads to leniency” (שהוא חומרא דאחי לידי קולא), since the result is that we bake many more *matzot* than we would otherwise if we could use *kitniyot*. We are, therefore, because we are less careful due to volume of production, far more likely to make a *chametz* mistake (by for example waiting too long to bake the dough), with its attendant serious prohibition, than we would otherwise.

Rabbi Emden says that he wishes that rabbinic authorities would do away with the issue entirely, and, that his father the Chacham Tzvi (1660-1718) said, that he would have done exactly that, if he had the ability to do so.¹³

At the end of the day, however, Ashkenazim do accept the prohibition as did Maharil (c. 1360-1427), (one of the most important pillars of Ashkenazi practices), who reminds us in this context that violating a rabbinic *gezeirah* is a capital crime and that those who challenge the *kitniyot* prohibition have spoken words that are lies and without value (שוא ושקר דבר).¹⁴

That brings us to the *halachic* complexities of *kitniyot*. We can and should accept the idea that this prohibition is a rabbinic decree that we, Ashkenazim, must follow. But what are its parameters? What items are included? What precisely is prohibited? Is it eating, owning, cooking, receiving benefit, as with *chametz*, or only some of these things? What happens if someone needs *kitniyot* for their diet or for their general health (not for something life threatening, where it would obviously be allowed)? What happens if *kitniyot* falls into otherwise *Pesach* acceptable food? Those become difficult questions to ask of a custom or rabbinic decree of unknown origins that first appears in the literature not as something that is thoroughly analyzed in terms of its parameters, but rather as a historical statement that it has existed for a long time with some suggested justification as to what led to the appearance of this custom in the Ashkenazi world. Nonetheless, we need to answer these questions so that people can function appropriately on *Pesach*. As such we present responses to these concerns here.

¹¹ Peri Chadash (1586-1667), himself a Sephardi, sees a source for *Kitniyot* on B. Pesachim 40b, but this is not cited in earlier sources.

¹² Rabbenu Yerucham, Toldot Adam Ve-Chava 5:3, 41a.

¹³ Mor Uketziah, 453.

¹⁴ Rabbi Jacob ben Moses Moellin, Sefer Maharil, Minhagim, Hilkhhot Ma'achalot Asurot Ba-Pesah, 16.

Rabbi Israel Isserlin (1390-1460), a very important halachic decisor from medieval Franco-Germany, who lived a little bit later than Mordechai and Semak takes up some of these questions.¹⁵ He was asked whether we must rid ourselves of all *kitniyot* as we do with *chametz*, and he quotes one of the *Gedolim* who responds to this question with shock:

אינהו אכליו אנן לא משהינן.

[would you really suggest that] they [Rabbi Yechiel (of Paris)¹⁶ and his colleagues] can eat it (*kitniyot*), and we must do away with it?!

This effectively also indicates that if a Sephardic friend comes over one can feel free to feed this friend *kitniyot*. Further, Rabbi Isserlin says that finding a small amount of *kitniyot* in an otherwise Passover approved dish does not prevent us from eating it.

Rabbi Yisrael Lipshuetz (1782-1860) in his *Tiferet Yisrael*, affirms these decisions, and adds explicitly that there is no prohibition against deriving benefit from *kitniyot*.¹⁷ It is for these reasons and more that the recent concerns about using paper plates that contain corn starch on *Pesach* are not something that should guide us. The starch in the plates is not food, we may derive benefit from *kitniyot* and even if some of the starch should get into the food, that food may be eaten even by Ashkenazim. Some may think that corn starch is food, but no one eats pure corn starch and the other reasons cited here are also sufficient to allow the use of these plates.

In this regard, it is not quite clear how high the percentage of *kitniyot* that is food mixed into a kosher for Passover dish must be before we become halachically concerned. Some suggest that one in sixty is the place where concern begins,¹⁸ while others suggest that as long as *kitniyot* is not the majority, it is acceptable if some *kitniyot* has become mixed with the food.¹⁹

Kitniyot is similar to *chametz* in that most people do not eat it beginning with mid-day *Erev Pesach*.²⁰ On the other hand, there is no prohibition in eating *kitniyot* owned by a Jew on Passover after Passover, since as we have said, there is no prohibition against owning *kitniyot*. Of course, when it comes to *chametz*, we may not own it on *Pesach*²¹ and *chametz* owned by a Jew on Passover is forever prohibited.²²

Oils that come from *kitniyot* are prohibited to be eaten, but can be burned to provide light.²³ Some permit eating these oils as long as the actual solid seeds or kernels have been removed before Passover, because that separation by itself indicates an awareness of the prohibition and that prevents the *kitniyot* from being con-

¹⁵ Terumat Ha-Deshen 113.

¹⁶ Cited above as permitting the eating of *kitniyot*.

¹⁷ *Tiferet Yisrael*, *Hilkhita Gevarta*, *Masekhet Pesachim* 2:5. This is codified by *Ramo*, *Orah Hayim*, 453:1, though *Tiferet Yisrael* is more detailed and explicit. There are earlier authorities who disagree (see *Maharil*, loc. cit.) but we do not accept their opinion.

¹⁸ Rabbi Abraham Isaac Kook (1865- 1935), *Orah Mishpat*, *Orah Haim*, 112, Rabbi Ben-Zion Meir Chai Uziel, (1880- 1953), *Responsa Mishpetei Uziel*, *Orah Haim*, 1:17.

¹⁹ Rabbi Shneur Zalman ben Rabbi Baruch (1745-1813), *Shulhan Arukh HaRav*, *Orah Hayim* 453, Rabbi Isaac Elchanan Spektor (1817-1896), *Responsa Beer Yitzchak*, *Orah Hayim* 11, Rabbi Ovadia Yossef (b.1920), *Responsa Yehave Daat*, 5:32.

²⁰ Rabbi Shmuel HaLevi Wosner (contemporary), *Responsa Shevet Halevi*, 3:31.

²¹ Rambam, *Hilkhhot Chametz Umatzah*, 1:2.

²² *Shulhan Arukh*, *Orah Hayim*. 458:3.

²³ Terumat Hadeshen. Loc.cit, and see *Ramo*, *Orah Hayim*, 453:1 that if some of this oil drips into food that raises no concern on *Pesach*.

fused with *chametz*.²⁴ We generally do not accept this view and do not consume *kitniyot* oils,²⁵ but in difficult situations this has occasionally been permitted.²⁶ It is also on this basis that some authorities permit alcohol that is derived from *kitniyot* sources to be drunk on *Pesach*.²⁷

Some may remember a point in time when many in the Ashkenazi community cooked with peanut oil on *Pesach*. Rabbi Moshe Feinstein validates this custom and even accepts the idea that one can eat peanuts themselves.²⁸ He discusses several aspects of this issue and concludes that only those items known to those who actually originated the prohibition against *kitniyot* are to be included in that prohibition. Since peanuts come from this side of the Atlantic and were unknown to the rabbis of the 12th–13th century in Franco-Germany, and therefore were not prohibited by them; Rabbi Feinstein allows them for use. Nonetheless, Reb Moshe does recognize that *kitniyot* is also dependent on local *minhag* (custom) that may expand beyond the original boundaries, and therefore in some places the custom has developed to include peanuts in the prohibition.

As time has gone on, the major kashrut organizations no longer certify peanut oil for *Pesach*. And so, in a defacto sense, the *minhag* has become not to eat peanuts or peanut derivatives on *Pesach*.

This analysis also explains the questions often raised about American corn, or maize. People often say correctly that corn is included in the *kitniyot* prohibition, but the species that was called corn in medieval Europe is not the same as the species we call corn in contemporary America. In fact, the American version is best referred to as maize, and maize, because it is native to this continent, was unknown in medieval Europe. As such it should be excluded from the *kitniyot* prohibition. But as indicated, the custom can expand through communal practice to include additional products. That is clearly the case when it comes to maize.

Maize has another strike against it as well. Because we don't refer to this product as maize but as corn, our common usage is therefore to call it by a name that comes with the *kitniyot* prohibition. Often in *halacha* the decision may depend on the common name by which something is called.²⁹ That appears to be the case here as well. As a result, corn and its derivatives are universally treated as prohibited in our communities.

The prototype of something that might be *kitniyot* because of the reasons stated above, that is not treated as *kitniyot*, is potatoes. Despite some who claim that potatoes are to be treated as *kitniyot* and that this was in fact the custom in some locations in Germany, it is our present practice to permit eating potatoes and it would be hard to imagine *Pesach* without them.³⁰

That brings us to the most modern iteration of this question, which concerns quinoa. Despite some claims to the contrary, quinoa, like potatoes, should be perfectly acceptable because it was unknown to the originators of the *kitniyot* prohibition and does not have a name like corn that is associated with this practice. If so, and as long as people use it on *Pesach* so that it does not become adopted as a negative community custom, quinoa should be fine for Passover. Some are concerned that *chametz* grains may have accidentally been

²⁴ See Spektor, loc. cit.

²⁵ R. Avraham b. R. Yechiel Michel Danziger, *Haye Adam* (1748-1820), 2:127:1.

²⁶ See R. Menachem Mendel b. R. Shalom Shachna Shneorsohn (1789- 1866) *Responsa Tzemach Tzedek*, *Orah Hayim* 56, who allows this if used in certain specific ways. Also see Kook *ibid*, 114.

²⁷ Rabbi Spektor, loc. Cit Rabbi .Uziel, loc.cit.

²⁸ *Igrot Moshe*, *Orah Hayim*, 3:63.

²⁹ See R. Yaakov Albeli (d. 1774), *Responsa Kehilas Yaakov*, *Hilkhot Maahalot Asurot* 1:10 and Rabbi Judah ben Rabbi Samuel Rosanes (1657-1727), *Mishneh La-Melekh*, *Hilkhot*, *Shegagot*, 13:5.

³⁰ Rabbi Menashe Klein, *Responsa Mishneh Halakhot*, 6:39.

mixed into the quinoa, but the Tur, as we have said sees this as far-fetched, and if there is concern one can thoroughly wash the quinoa before use.

One final important point before we close: If someone would become ill if they do not eat *kitniyot*, even if that illness is in no way life threatening, since we are dealing with a *minhag* as with all *minhagim*, the prohibition would not apply to them.³¹ The rabbis simply did not decree that customs should be followed when doing so causes physical harm.³² In similar fashion, medicines that contain *kitniyot* would be allowed for any condition that has any degree of serious pain or medical consequences.

In short, from beginning to end, *kitniyot* is a serious matter on *Pesach* and one must know the rules and follow them. But *kitniyot* is not *chametz*, and need not and should not be treated as if it were.

³¹ Rabbi Israel Meir Ha-Kohen, (1839- 1933), *Mishneh Berura*, 453:7, R. Yekutiel Yehuda Halberstam, (1905 -1994), *Responsa Divrei-Yatsiv*, *Orah Hayim*, 195, adds that nowadays with government regulation *kitniyot* is not likely to be mixed with grains of *chametz*, so we do not need to check for this concern in such a situation.

³² Cf. Rabbi Halberstam, *Ibid*, 233, Rabbi Yossef. *Ibid*, 1:41, Rabbi Moshe Sternbuch (contemporary), *Teshuvot Vehanhagot*, 4:126.

Stranger in the Land

An Overview of the Halachos of a Ben Eretz Yisroel in Chutz L'Aretz and a Ben Chutz L'Aretz in Eretz Yisroel for Pesach

Rabbi Yosef Singer

Young Israel Ezras Israel Potomac

In this article, we will address some of the practical issues associated with a *ben Eretz Yisroel*, a resident of Israel, who spends *Pesach* in *chutz l'Aretz* (outside of Israel). In addition, we will explore the inverse scenario of a *ben chutz l'Aretz*, someone who lives outside of Israel, who chooses to spend *Pesach* in *Eretz Yisroel*. As we shall see this is a significantly more complicated problem owing to the fact that there are profound differences of opinion among the poskim as to whether or not a *ben chutz l'Aretz* should observe the second day of *Yom Tov*. Please know that the intent here is to simply acquaint the reader with some of the major concerns surrounding this issue. As such, we are reminded of the guidance provided in the introduction to this bulletin, to please consult your local Rabbi for *psak* and guidance.

Case 1:

A ben Eretz Yisroel who visits chutz l'aretz on a two-day Yom Tov

The Shulchan Aruch writes that a *ben Eretz Yisroel* who visits *chutz l'aretz* is prohibited from performing *melacha* on *Yom Tov sheini* even if he intends to return to *Eretz Yisroel* after *Yom Tov*.¹ The Magen Avraham writes: "Although it is generally true that someone [who is presently outside of *Eretz Yisroel* who intends to return to *Eretz Yisroel*] may conduct himself according to the laws and customs of *Eretz Yisroel* if he does so in private, performing *malachos* on the second day of *Yom Tov* is different. First, it is a universally held *minhag* not to do *malachos* even in private and second, it is, in fact, impossible to do a *malacha* privately.² The Mishne Berura follows these *gedorim* closely. He writes that it is *assur* for a *ben Eretz Yisroel* to do *malachos* on *Yom Tov sheini* even in private.³ However, he does not have to make an *eruv tavshilin* if *Yom Tov sheini* falls on *erev Shabbos* or on *Shabbos* itself because that is considered to be a "private matter"⁴

There is an interesting *teshuva* from the Igros Moshe that investigates the permissibility of a *ben Eretz Yisroel* turning electric lights on or off on *Yom Tov sheini*. Reb Moshe *zt"l* posits that since turning on a light on *Yom Tov* does not involve the performance of (*Torah* prohibited) *melacha* – only *nolad* which is Rabbinically prohibited – it may be permitted. Even if we assume that the problems associated with turning on lights on *Yom Tov* are Rabbinic in nature, illuminating a house must, nevertheless, be considered to be a public act since an illuminated house can be seen from afar by the general public. Since public displays of "foreign" *minhagim* are prohibited because they engender *machlokes*, it doesn't matter whether the activity in question is *d'oryasa*, *d'rabbanon*, or simply a *minhag*. It is *assur*. As such, basing a *heter* on the fact that turning on electric lights is only Rabbinically prohibited would seem to argue against the Magen Avraham and the Mishne Berura cited earlier and thus represents a significant *chidush* on the part of Igros Moshe. Reb Moshe *zt"l*, finds a second, less controversial, basis for a *heter*. He argues that people nowadays have *Shabbos* clocks that are commonly used to turn lights on and off. Therefore, it is not necessarily true that the act of illumina-

¹ Shulchan Aruch Orech Chaim Siman 496 Sif 3

² Magen Avraham Orech Chaim Siman 496, Sif Koton 4 cites the opinions of the Baal HaMeor in the 4th Perek of Pesachim and Tosfos there.

³ Mishne Berura Orech Chaim Siman 496 Sif Koton 9

⁴ Ibid Siman 496 Sif Koton 13

tion represents a public or even private display of a “foreign act or *minhag*”⁵. Based on this ambiguity, it may be reasonable to permit an Israeli who is visiting the United States to turn on a electric lights in the case of a *shaas hadchak*.

It follows that on the second day of *Yom Tov*, a *ben eretz yisroel* puts on *tefillin* and *dovens* a weekday *shemoneh esrei* (privately)⁶. However, he must dress in *Yom Tov* clothes because that is a public matter. On the last day of *Pesach* (or on the second day of *Shavuot*), he may go to *Shul* and recite *Yizkor* with the *Yom Tov minyan* provided that he creates the appearance of *dovening* with the congregation⁷. Moreover, he may be counted toward the *minyan* for *musaf* but should not *doven* for the *amud*⁸. If he is a *Kohen*, he may *duchen* whether or not there are other *Kohanim* present. It is best for him not receive an *aliyah* on *yom tov sheini* particularly if it is a weekday on which the *Torah* is not usually read⁹. It appears to be the consensus of the *gedolei haPoskim* that is *assur* for *bnei eretz yisroel* to organize their own weekday *minyan* on the second day of *Yom Tov* in *chutz l'aretz*. It is interesting to note, by way of contrast that the accepted *minhag*, going back to the time of the Beis Yosef, is to allow *bnei chutz l'aretz* to form their own *Yom Tov minyan* in *Eretz Yisroel* on the second day of *Yom Tov*¹⁰.

There is an interesting *teshuva* from Reb Moshe zt”l regarding an Israeli couple who came to the United States to attend their son’s wedding and remained in the US for the duration of *Pesach*. In this case, the proper halachic procedures are as follows: Candles are lit for the second day of *Yom Tom* without a blessing. The parents sit with their child for the *Seder*, recite the *Haggadah*, but do not recite the *brocha* ‘*asher geolenu*’. They drink all four *kosos* but do not recite a blessing on them except for the third *kos*, relying instead on their son’s *brochos*. They eat *matza* without the *brocha* of ‘*al achilas matza*’, a little bit of *maror* without the *brocha* and recite *Hallel* without the *brocha*. The father puts on *tefillin* privately and recites the weekday *shmoneh esrei*. At night, he recites *ata chonantanu* during *shmoneh esrei* but does not recite *havdallah* over wine – a circumstance that does not preclude or prevent him from eating thereafter.¹¹

Case 2:

A ben chutz l'aretz who visits Eretz Yisroel for a two day Yom Tov

With respect to the case of a *ben chutz l'aretz* who comes to *Eretz Yisroel* for *Yom Tov* with the intent of returning to *chutz l'aretz* after said *Yom Tov*, there is a major dispute among the *gedolei achronim* regarding the proper way of dealing with the second day of *Yom Tov*. There are those who say – most notably the Chacham Tzvi¹² – that such individuals should conduct themselves like *bnei Eretz Yisroel* in all matters and observe only one day of *Yom Tov*¹³. The underlying assumption behind this approach is that conduct on *Yom Tov Shenii* is ultimately governed by the customs of where the *Yom Tov* is being observed and not by customs of the individuals observing it. As such, the principle of *chumrei hamakom shyozei misham* - the notion that an

⁵ Igros Moshe Orech Chaim Vol 4, Siman 104

⁶ Ibid

⁷ Igros Moshe Orech Chaim Vol 3 Siman 92

⁸ Ibid Vol 4 Siman 106

⁹ Piskei Teshuvos Siman 496 Sif 18

¹⁰ Sefer Yom Tov Sheini K'Hilchaso Chap 3 Halacha 26, Note 76. This is based on the Beis Yosef’s *teshuva* in his *sefer*, the Avkas Rachel Siman 26. Contemporary poskim who support this *minhag* include Rav Pesach Tzvi Frank zt”l, Rav Shlomo Zalman Auerbach zt”l, and Rav Yosef Elyashiv zt”l. Please see Chapter 2, Note 13 where there is a major discussion of this topic. Rav Shmuel Fuerst shlit”a indicates that Reb Moshe zt”l was uncomfortable with this wide spread practice. Also see Igros Moshe Orech Chaim Vol 5 Siman 37, note 6

¹¹ Igros Moshe Orech Chaim Vol 3 Siman 72

¹² Sheilos v'Tshuvos Chacham Tzvi Siman 167

¹³ Shaarei Teshuva Orech Chaim Siman 496, the end of Sif Koton 5. There it is noted that Rav Yaakov m’Emden zt”l in expressed concerns regarding the psak of the Chacham Tzvi, his father. See the Shailas Yaabetz Siman 168 for the original source.

individual is bound by the stringencies of his permanent residence - is not operable in this case.¹⁴

It is important to note that, within the *halachic* framework of the Chochom Tzvi, there are “compromise” opinions. Rav Hershel Schachter *shlit”a* writes: “[There are] many [*bnei chutz l’aretz* who] observe [on the second day of *Yom Tov* in *Eretz Yisroel*] what has come to be known as “a day and a half.” They basically follow the Chochom Tzvi in so far as they *doven tefillat chol* on the second day, put on *tefillin* with a *brocha* [on the second day of *Shavuot*], but by way of compromise, do not do any *melacha* on the second day to be *choshesh* for the other opinions. This is what Rav Soloveichik *zt”l* used to advise *talmidim*.¹⁵ This is also the *minhag* of Chabad.¹⁶ (This approach, of course, takes the “wind out of the sails” of those who have embraced the Chochom Tzvi for the sole purpose of securing an additional day of *tiyulim*.)

However, the opinion of the majority of *Poskim* – including the Mishne Berura - is that a *ben chutz l’aretz* who is visiting *Eretz Yisroel* and who is planning to return home after the holidays must observe two days of *Yom Tov*.¹⁷ Therefore, according to this view, on the second day of *Yom Tov*, *melocha*, is prohibited, *tefillah* is the *Yom Tov shmoneh esrei*, *Yom Tov* candles are lit with a blessing, *Kiddush* is recited with a *shehechianu*, and *tefillin* are not worn. In the event that *Yom Tov sheini* falls on *Erev Shabbos*, an *eruv tavshilin* is made on *Erev Yom Tov* with a *brocha*. On *Pesach*, a *ben chutz l’aretz* is obligated to conduct a complete *seder* on the second night which includes, of course, eating *matza* and *maror*, drinking the four cups of wine, and reciting the *haggadah*, all with the appropriate *brochos*. In addition, one may not eat *chametz* on *acharon shel Pesach*.¹⁸

Within the community of the aforementioned *poskim*, there arises an interesting *machlokes* as to whether the opinion of the Chochom Tzvi may inform and influence *psak halacha* in cases where there are already existing halachic ambivalences. In other words, may we include the opinion of the Chochom Tzvi in a *tziruf kal* to engender a *halachically* lenient course of action in situations of doubt? For example, we could judiciously apply the *kulah* of Chochom Tzvi to completely exempt an American who is vacationing in Israel from having to eat in a *Sukkah* on *Shmini Atzeres*.¹⁹

¹⁴ Sheilos v’Tshuvos Chacham Tzvi Sefer Yom Tov Sheini K’Hilchaso, Chapter 2, Halacha 1, Note 1

¹⁵ http://www.torahweb.org/torah/special/2003/rsch_ytsheini.html, “Regarding the Second Day Yom Tov for Visitors in Eretz Yisroel”

¹⁶ Discussion with Rabbi Mendel Bluming, Rav of the Chabad Shul, Potomac, MD. See Shulchan Aruch HaRav Siman 496 Sif 11. His opinion is also cited by the Mishne Berura Shaar HaTzion Note 13

¹⁷ Mishne Berura Orech Chaim Siman 496, Sif Koton 13,. See Sefer Yom Tov Sheini k’Hilchaso Chapter 2, Note 5 where the Chazon Ish, the Tshebiner Rav *zt”l*, the Igros Moshe, the Minchas Yitzchok, Rav Shlomo Zalman Auerbach *zt”l*, and Rav Yosef Shalom Elyashiv *zt”l* are some of the contemporary *poskim* who supported this view.

¹⁸ Sefer Yom Tov Shen K’Hilchaso Chapter 2, Halacha 1

¹⁹ Ibid, Chapter 2, Note 12. Minchas Shlomo Siman 19, Sefer Moadim v’Zmanim 7:120, Minchas Yitzchok 4:1-4 are lenient while Rav Yosef Shalom Elyashiv *zt”l* and Rav Moshe Feinstein are *machmir*.



Vaad Harabanim of Greater Washington

Rabbi Hillel Klavan, *President*

Rabbi Dovid Rosenbaum, *Interim Director*

www.capitolk.org

Capitolkdc@verizon.net

11161 New Hampshire Ave, Suite 402

Silver Spring, MD 20904

301-593-0336

Fax: 301-593-1115

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