

HALOCHOSCOPE

This week's question:

Some one is spending *Pesach* in a different time zone than his home town. He sold his *chametz* through a local *rav* in his home town. When *Pesach* is over, the *chametz* is likely to revert to his own possession. In his vacation location it will still be *Pesach*. Does this mean that he will be purchasing his original *chametz* back on *Pesach*? Or worse, does the reversal of the original sale mean that he owned the *chametz* on *Pesach*? May he benefit from this *chametz*? Should he arrange to have the *chametz* purchased back the next day?

The issues:

Last week's issue:

- A) *Mechiras chametz*, selling *chametz* to a gentile
- B) Time zone issues
- C) Buying the *chametz* back after *Pesach*

A) Sale of *chametz* to a gentile [From Halochoscope XII:31, XIV:24]

Possession of *chametz* during *Pesach* involves two Scriptural *mitzvos*: *bal yaira'eh*, it may not be seen, and *bal yimatzei*, it may not be found. One may not conceal *chametz* on his property or leave it in the care of a gentile off his property. This does not apply to *chametz* of a gentile that is left on the property of a Jew. If the Jew is a guardian, liable for theft or loss, there is a violation of *bal yaira'eh*. Possessing *chametz* is also an automatic violation of the positive *mitzvah* to destroy one's *chametz*, or *tashbisu*. *Chametz* in a Jew's possession during *Pesach* is forbidden to benefit from after *Pesach*. This is a Rabbinically imposed penalty. Consequently, one must destroy all *chametz* before *Pesach*, or remove it from his possession by giving it away, selling it or declaring it *hefker*, disowning it. According to the Talmudic view that we follow, during *Pesach*, *chametz* is forbidden to benefit from, Scripturally. This restricts one from selling it. The transaction to remove the *chametz* must take effect before the time that it is forbidden. Practically, this is one seasonal hour before noon on *Erev Pesach*.

Destroying *chametz* is the most definitive way to dispose of it. This fulfills *tashbisu*. Some maintain that *bitul*, nullifying it, and even making it *hefker*, is also a form of *tashbisu*. [Some say *bitul* takes effect through the mechanism of *hefker*.] A merchant with large amounts of *chametz* is unwilling to destroy it or to declare it *hefker*. His *bitul* would be suspect; he could not sincerely consider his inventory 'nullified like the dust of the earth'. Furthermore, if one made *chametz hefker* or *batel*, its benefit is forbidden after *Pesach*. This additional measure is imposed Rabbinically to prevent abuse of the *bitul* concept. People might pretend *bitul* to keep *chametz* in their possession during *Pesach*.

The merchant may sell his *chametz* to a gentile, who may possess it on *Pesach*. The *chametz* remains on the property of the Jew, but it is transferred to the possession of the

gentile. The sources of this practice are two Talmud passages. In the first, a Jew is traveling on a ship with his *chametz*. He is in no position to sell it all regularly. He cannot burn his personal *chametz*, especially if he will need it later in his voyage. He may sell his *chametz* to a gentile accompanying him, or give it as a gift and buy it back after *Pesach*. He may not indicate his intent to buy it back. [This might be self-evident, but should not be stated, as though it were a condition of the sale. Doing so would make the sale look insincere.] In the second case, a Jew is anyway selling *chametz* to a gentile customer. He may ask the customer to buy more *chametz* than he needs, so that the Jew may buy it back from him after *Pesach*. However, he may not make the sale conditional on this.

Nowadays, the *chametz* is sold using various forms of *kinyan*, *halachic* transfer. In addition, the space on which it is located is rented to the gentile. This way, the *chametz* is no longer on the Jew's property. This transaction also helps with the sale of the *chametz*. The gentile can acquire it through *chatzer*, delivering it into his possession. Furthermore, the transaction on the real estate can roll over onto the *chametz* as an additional form of *kinyan*. The transaction has the appearance of a ritual formality. Nonetheless, it is relied on as a true solution, especially for large amounts, such as the inventory of a merchant. This is useful nowadays, when food is stored for long periods. It is also handy where disposal in other ways is difficult. The sale stipulates that the Jew does not remain guardian of the *chametz* of the gentile, for the reasons explained above. The gentile begins payment with a nominal installment, but the essence of the sale is the transfer of ownership.

To effect this sale, a proper form of *kinyan*, act of *halachic* transaction, must take place. The seller and the buyer are required to perform this *kinyan*, with the consent of both parties. It is important that the seller is aware of the *halachic* process. It is usually left to the town's *Bais Din*, or to a *Rav*, who acts on behalf of others who designate him.

Delegating another to effect a change in *halachic* status is known as *shlichus*, agency. For many transactions, an agent is appointed with a simple instruction. A simple *shliach* does not have the ability to do something with someone else's property unless he is given a nominal right to the property itself. In the event that the gentile will indeed choose to take full delivery of the *chametz*, the full price will need to be decided by the seller. The *Rav* or *Bais Din* will also be drawing up a proper contract of sorts.

To authorize an agent for such transactions, one prepares a *harsha'ah*, a limited power of attorney. Basically, the seller contracts the *Rav* to prepare his contract for the sale, and to do whatever it will take to complete it. He gives permission and full power to the *Rav*, and agrees to abide by his decision. The *harshaos* detail the items sold and their location. An approximate value is given, so the gentile can calculate this from the documents that are later handed to him. The *Rav* will prepare a separate sale contract, to include whatever he has been authorized to sell in the accompanying *harsha'ah*.

An additional reason is given for this *harsha'ah*. The gentile will not pay in full, and the Jew will still have the *chametz* in his possession. This might not have enough validity to save the Jew from violating. By transferring the right to sell the *chametz* to a different Jew, the first Jew is relieved of his violation. The second Jew never owned the *chametz*. He is not liable for the amount over and above the value of the initial part-payment.

To validate the *harsh'ah* contract, a *kinyan sudar* is made. The *Rav* gives the seller a

utensil, which is then returned to the *Rav*. This is not the sale, but solidifies the resolve of the parties to go through with the transaction. This known as *gemiras da'as*. All real *kinyanim* amount to *gemiras da'as* to transfer the ownership from the one party to the other. The optimum form of such *gemiras da'as* is the *kinyan sudar*. Therefore, it is utilized for all other situations where a commitment needs to be reinforced. The *kinyan* also binds the *Rav* to go through with the sale, and absolves the seller of his liability for the *chametz* remaining in his possession. [See Psachim 4b-5b 11b-13b 21a-b 27b-30a Tosefta 2:6-7 Baba Kama 70a, Poskim. Tur Sh Ar OC 441:4 443 445 448: esp. 5 7 CM 122-3 etc., commentaries. SA Harav, Mechiras Chametz. R Eider XI:A8:10, notes.]

B) Time zones

The prohibitions of *chametz* begin on *Erev Pesach*. Scripturally, the *isur achila* and *hana'ah*, forbidding eating and benefit, begin at midday. Rabbinically, the *isur achilah* begins two seasonal hours before midday. [A minority view says it is two clock hours.] The *isur hana'ah* begins one hour before midday. The poskim say that *bal yaira'eh* does not take effect until nightfall. However, the only way to avoid it past midday is to physically destroy it. One cannot effect a transaction, nor do *bitul*, with *chametz* over which he has no *halachic* control or that has no *halachic* value, due to *isur hana'ah*. The poskim debate the status of *chametz* in a different time zone than its owner.

If the owner is east of his *chametz*, midday comes to his location before it comes to the location of his *chametz*. The opposite is true when he is further west. In the waning hours of *Pesach*, the situation is reversed. Some say that since it is the item that must have value, the time zone of the *chametz* determines the matter. The majority maintain that the determining factor is the owner's location. He is the one in compliance or in violation of his *mitzvos*. In practice, many poskim suggest that one should satisfy both views. The sale and the *bitul* should be arranged to take effect when both the owner and the *chametz* are in a safe time zone.

At the end of *Pesach*, if *chametz* somehow comes into the possession of the owner when he is still observing *Yomtov*, he would be in violation of *bal yaira'eh*. This does not depend on the value of the item, but on the status of the owner. Some suggest that there would be no dispute on this. However, just as disposal transactions depend on value, so do acquisition transactions. At the onset of *Pesach*, the Torah puts withheld *chametz* into one's possession without his input, so that he is in violation of *bal yaira'eh*. In our case, he acquires *chametz* on *Pesach*, in the waning hours. The *halachic* viability of acquiring *chametz* on *Pesach* is debated. Nonetheless, the poskim raise the concern about one acquiring his *chametz* in another time zone. [See Psachim 4b-5a, poskim. Rambam ChmuM 1:3 8 3:8. Tur Sh Ar OC 443:1 etc., commentaries. (Beer Moshe VII p. 242.) Oneg Yomtov 36. Mikraei kodesh Pesach I:55 66. Minchas Yizchok VII:25, refs cited.]

C) Buying back the chametz

In the cases cited by the Talmud, the seller of the *chametz* buys it back from the gentile after *Pesach*. In modern times, the *rav* or *bais din* does the same. In fact, the poskim recommend buying it back at the earliest opportunity. If the Jewish sellers would begin using the *chametz* before it has been bought back, it would make the sale look like a joke. There is also a clause written into the document of sale. The gentile does not pay in full

at the time of sale. The balance becomes a debt. The clause stipulates that if the gentile does not make payment in full by the time that *Pesach* ends, that any of his property may be seized in payment. This is a way to repossess the *chametz* as payment for the sale.

The problem in our case is that the *rav* in the earlier time zone will be buying the *chametz* back, ostensibly on behalf of all the sellers who authorized him. The person in the later time zone will then be acquiring *chametz* while it is still *Pesach* in his location. He will be in violation of *bal yaira'eh*, and the *chametz* will be *asur behana'ah*. [Actually, this last issue is debated, when the *chametz* was purchased on the eighth day of *Pesach*. Some say that since the eighth day is Rabbinical, this penalty should not apply.]

A few different factors help the vacationer in this case. The *rav*, acting as an agent, may make an advantageous acquisition on behalf of another. In our case, the acquisition of the *chametz* is actually a disadvantage, because the seller will now be in violation of *bal yaira'eh*. Such *chametz* will be useless to him as well, since it is *asur behana'ah*.

The *rav* was also designated with power of attorney. However, he was only empowered to make the sale. Buying it back (and paying) is not included in the *harsha'ah*.

The aforementioned stipulation states that the property of the gentile may be seized as payment for his debt, without the need to purchase the *chametz* back. Until the traveler returns home to repossess the *chametz*, it is still in the possession of the gentile. The fact that the *rav* made the purchase on his behalf does not bind him to his disadvantage.

There is a difference in transaction mentality between a gentile and a Jew. In Judaism, there is a concept of *makneh*, the person selling takes an active role in conveying the item from his possession into that of the *koneh*, acquirer. In gentile law the seller relinquishes his claim, allowing the buyer to claim it from the disowned state. When the *rav* purchases the *chametz* on behalf of his buyers from the gentile, the gentile simply removes the impediment of his claim to it. The sellers must then take possession. This traveler will not do so until the next day. Until then, the item is *hefker*; disowned.

Finally, the seller implicitly stipulated with the *rav* that he wants the *chametz* out of his possession for the duration of *Pesach*. This means that it is implied that the *rav* has no authority to buy it back before *Pesach* is over for the traveler. Some say that the seller should verbalize such a stipulation with the *rav*. Some go further and say that the *chametz* becomes the property of the *rav* until the vacationer can retake it. There is a view that the *rav* should make a separate purchase for travelers later. Some cite a common practice of *rabonim* or *batei din* to stipulate in the repurchase that it only takes effect when *Yomtov* has ended for the owners. [See Tur Sh Ar OC 448:2 (MA 1, Chok Yakov 7, Mekor Chaim etc.), commentaries, Ar Hash 28. Refs to section B. Bais Yitzchok YD:137. Igros Moshe OC:IV:94 95. Nitei Gavriel Pesach 59:5. Hamaor 25:3.]

In conclusion, ideally, the traveler should stipulate with the *rav* that he will not purchase *chametz* on his behalf until *Pesach* is totally over in his location. If he did not stipulate, he may still rely on many factors to assume that his *chametz* is not forbidden.

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