

HALOCHOSCOPE

This week's question:

If one left *chameitz* in a garbage can curbside, but it might not be collected until after the *zman biur*, time by which *chameitz* must be destroyed, what can he do about it?

The issues:

- A) *Chameitz* – the types and the prohibitions against owning it
- B) *Tashbisu*, the *mitzvah* to destroy the *chameitz*; *Hefker*, disowning personal property
- C) *Chatzer*, what is considered 'inside one's possession?'

A) *Chameitz and its prohibitions*

Keeping *chameitz* over *Pesach* is a violation of two Scriptural prohibitions. *Bal yaira'eh* forbids having *chameitz* in one's possession where it can be seen. *Bal yimatzei* forbids concealing it on one's property or owning it and having it stored off the premises. Having *chameitz* of a gentile on one's property is not included, unless the Jew is liable for the *chameitz* in his possession. Actually, due to the prohibition forbidding benefit from *chameitz*, it really is not in his jurisdiction. The Torah forbids one to make use of it. Yet, at the same time, the Torah considers the person holding it liable in these two *mitzvos*.

There are various levels of *chameitz*. Pure *chameitz* is made from one of the five cereal grains that leavened as a result of water. This includes bread and other dough items, or other things made directly from the grains, such as beer or vinegar. Mixtures of *chameitz* have a part that is considered *halachically* significant of *chameitz*. If there is an eighth part *chameitz*, it is Scripturally forbidden to eat. If it is less than this proportion, but more than one sixtieth, the poskim debate the severity of its prohibition. Some consider it only Rabbinically forbidden to eat. Nonetheless, if the entire mixture in one location contains an olive sized part of *chameitz*, one violates Scriptural *bal yaira'eh*.

If the *chameitz* part is less than one sixtieth, no Scriptural violation applies. If it was mixed on *Pesach*, it is forbidden Rabbinically, even in minute proportions. If it was made by mixing *chameitz* that was in the possession of a Jew, it must be destroyed. If a mixture of non-*chameitz* was cooked together with *chameitz* that was later removed, the non-*chameitz* is also forbidden to eat. However, since no actual *chameitz* is present in the mixture, some say that this is not included in *bal yaira'eh*. Others rule stringently, since the mixture is forbidden to eat.

If the non-*chameitz* was not cooked with actual *chameitz*, but absorbed *chameitz* flavor from a pot that had *chameitz* cooked in it earlier that day, the mixture is forbidden to eat on *Pesach*. However, in this case, all are in agreement that one does not violate *bal yaira'eh* for keeping it. This would be the case with many commercial products that are not certified kosher for Passover, but contain no *chameitz*. Nonetheless, in this case, too, if the cooking was done on *Pesach* the food must be destroyed. In that case, since one

may not keep it in his possession, one violates *bal yaira'eh* with it. This would only apply to a *chameitz* ingredient belonging to a Jew. If a gentile manufacturer used *chameitz* utensils to make a product on *Pesach*, a Jewish purchaser would not be in violation.

Pure *chameitz*-type foods that do not fully leaven or were never fully edible, are called *nukshe*. While one does not violate Scriptural *bal yaira'eh* for his, it must be destroyed Rabbinically. If it is totally inedible before *Pesach*, it may be kept. For example, flour might be used as an ingredient in the production of hides. If it started out fit to be eaten and then went a little bad, it is still considered regular *chameitz*. If it becomes totally inedible before *Pesach* it loses its *chameitz* status. If regular *chameitz* food becomes inedible it does not lose its *chameitz* status unless it is unfit for consumption by a dog before *Pesach*. If it turned bad on *Pesach*, such as when mixed into a potion as a medicine, it must be destroyed. The poskim debate whether this is a Scriptural obligation. Thus, if it was not in the Jew's possession before being mixed, there would be a debate on whether *bal yaira'eh* is violated. [If it is fit for a dog's consumption, it could still be used in certain food-grade *chameitz* applications. Therefore, it does not lose its *chameitz* status.]

Benefiting from *chametz* is forbidden in many forms. Direct benefit includes use as a salve, such as an oatmeal patch. It also includes using *chametz* as fuel to cook with, if it is burned on *Pesach*. In a mixture, *chametz* can be made into starch or glue. Inedible items could include inedible *chametz* itself, inedible *chametz* in a mixture, or edible *chametz* in an inedible mixture. Another interesting case of direct benefit would be to use the *chameitz* to effect *kidushin*, the consecration part of marriage. The man gives an item of minimum value to the woman, and she is betrothed to him. On *Pesach*, one could not give *chameitz* for this. Indirect benefit includes benefiting from feeding the *chametz* to animals. This includes animals belonging to the Jew, or even other animals. One benefits from seeing the animal fed. It also includes benefit from the sale of *chametz*. The money exchanged for items forbidden to benefit from, in violation of the prohibition, is forbidden in turn. If this money is mixed with permissible money, such that it can not be traced, the owner may use that money.

The time that *chameitz* is forbidden, Scripturally, is debated by the Talmud. We follow the view that all the prohibitions begin at *halachic* midday on *Erev Pesach*. Rabbinically, this is extended by one hour for benefit, and by two hours for eating. The consensus is to consider these hours seasonal, that is twelfths of the daylight hours. Thus, on *Erev Pesach*, one divides the day into twelve. After four of these hours one may not consume *chameitz*. It may still be fed to animals. After five hours one may not feed it to animals either. This Rabbinical addition affects Scriptural law as well. *Kidushin* makes a woman Scripturally forbidden to any other man. Yet if one used *chameitz* for *kidushin* after five hours, and then a second man gave the same woman *kidushin* (using something permissible) we do not count the first *kidushin* at all. She is married to the second man.

B) Tashbisu

In addition to the two negative *mitzvos*, a positive *mitzvah* is associated with the *chameitz* in one's possession. *Tashbisu* means to 'destroy' *chameitz*, from one's possession. This means that one must either actually destroy it, or do *bitul*, nullify it. With *bitul* one also renounces claims of ownership, removing it from his possession. Whether this

fulfills the specific *mitzvah* of *tashbisu* is debated. It is also debated whether one may rely on this to rid himself of known *chameitz*. This can only be done before the *chameitz* becomes forbidden. Once it becomes forbidden to benefit from, he is legally (*halachically*) unable to effect *bitul*. The only option then is destroying it. This is usually done by burning. The Talmud debates whether biur *chameitz* must be done through burning, or whether it may be done in other ways. Specifically, may it be crumbled and thrown to the wind or tossed into the sea. In turn, the Talmud debates whether the lenient view permits either crumbling and tossing in the wind, or tossing whole into the sea, or whether it must be crumbled before disposing in the sea. We follow the view that permits destroying it in other ways, including flushing it down into a sewer. One could also cause it to become inedible for a dog, by pouring something like bleach or paint all over it. However, simply putting it into a garbage dump does not help. Since it remains intact, and it can be used in its state, one has not destroyed it. Placing it in a garbage heap on one's own property would also mean that one is still in violation of *bal yaira'eh* as well.

As mentioned, one can also disown *chameitz*. Some maintain that *bitul* effects *hefker*. Others maintain that *bitul* means that the owner nullifies it in his mind. In practice, we include terminology of *hefker* when we do the *bitul*. This satisfies more views on how the *bitul* works. As we mentioned, if one utilizes *hefker* to fulfill *tashbisu*, he can only do it before the *chameitz* becomes forbidden to benefit. After that time, it is no longer his.

The reason that *chameitz* is forbidden at *halachic* midday on *Erev Pesach* is based on the terminology used for the *mitzvah* of *tashbisu*. This must be done by then. Rabbini- cally, this is moved back to the end of the fifth hour. Thus, by the beginning of the sixth hour, *chameitz* should be destroyed, and it is then that the prohibition against benefiting from it begins. Accordingly, one burns his *chameitz* during the fifth hour or sooner. [It should be noted that according to many poskim, *bal yaira'eh* does not apply until night-fall. Thus, it is possible that relying on the collection later in the day could work.]

In our case, the *chameitz* in the garbage must be destroyed or removed from the possession of the Jew before this time. The owner is concerned that, based on past experience, the collection on his block often takes place later than this time.

If *chameitz* is found on one's property on *Pesach* it must be destroyed. Even though the property owner might not own the *chameitz*, nor be liable for it, someone might come to eat it. Furthermore, the finder might think of retaking possession of it. Though technically this might not work, he could be held liable for *bal yaira'eh*. If a gentile stores *chameitz* on the property of a Jew, it must be well guarded so that no-one could eat it inadvertently. [See Psachim 5b, 12b 27b-29a 33b 42a-46a, Poskim. Tur, BY Sh Ar OC 442, 445, 446, 448, commentaries.]

C) Chatzer

By strict Talmudic standards, if one disowned his *chameitz* totally, he need not worry about *tashbisu* or *bal yaira'eh*. Throwing something into the garbage normally means that one has disowned it. Even if one does not disown it consciously, the concept exists whereby there is a natural disowning or *bitul*. Crumbs are *batel* this way. Even though they are on one's property, and the door is locked, they are automatically excluded from *bal yaira'eh*. There might be locations where animals that belong to residents forage in

the garbage. This could mean that the item is not considered destroyed. Nonetheless, one who does not care for the item can be considered having disowned it.

However, the poskim debate whether this is actually sufficient. While some poskim rely on this, others maintain that at the very least, the normative *halacha* seems to require a more active *tashbisu*. If one threw *chameitz* in his yard for birds to eat, but they did not eat it, he must destroy it. He certainly had no intention to claim it as his own, but rather disowned it. Clearly, the proper way to fulfill the *mitzvah* is to destroy the *chameitz*, even though he will not be in violation of *bal yaira'eh*.

He could still claim that he has removed it from his property, which also fulfills the *mitzvah*. In different localities, the garbage collection service works differently. In some places, the actual bins belong to the refuse collection company. They are left on the property of the homeowner, with his permission. The collection involves taking them from the property, emptying them, and replacing them. They might not even return the same bin. This could mean that the ownership of the contents is in the name of the company. This depends on whether we say that the owner of the receptacle acquires something, even in the domain of the giver. When one places garbage in the bin, it transfers to the possession of the company. If the company is not Jewish, and if we rule that a non-Jew may also acquire through *kinyan chatzer*, his domain, and this is done earlier than the *zman biur*, this would avoid *bal yaira'eh*. However, the Talmud points out that if a Jew is liable for the *chameitz* of a gentile, the Jew is in violation. Liability in the usual case means that the Jew would be responsible to replace it if it was lost or stolen. What if there is a question of liability for the contents of the bin? If something in the bin would catch fire, whose insurance would be liable for it? If the dumpster would get loose, who would be liable for damages? The answers to these questions could affect *bal yaira'eh*.

In some localities, the bins belong to the homeowners. They are placed on the curbside for collection. Assuming that the curbside is public property, he has removed the *chameitz* from his own exclusive property. However, many poskim maintain that as long as they are in the owner's containers, they have not left his possession. Since the owner has rights to leave his containers there, they retain ownership for him. The only solution would be to remove the garbage from his containers to bags that he disowns. He could disown the containers, but the collectors will not take them, under normal circumstances. Therefore, it is as though his *hefker* on them is disingenuous. [See Psachim 29b-30b Baba Basra 84b-86a, Poskim. Tur Sh Ar OC 447:11 CM 200, commentaries. Igros Moshe OC:III:57. Minchas Yitzchok IV:56. Chelkas Yaakov OC:196. Be'er Moshe I:41.]

In conclusion, there is no clear consensus. If the homeowner owns the garbage cans, the best solution is to remove the bags and place them outside his property. Next best would be to transfer the *chameitz* to a gentile with his sale. One could also pour bleach and the like over the garbage. Some poskim maintain that one may disown the *chameitz* even inside his own property. If the cans belong to the company, many poskim maintain that the homeowner is not liable for the contents. He may leave it on his property.

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