

# HALOCHOSCOPE<sup>TOI</sup>

**When spending a night in a motel during *Pesach*, is one obliged to check the room for *Chametz*?**

**The issues:**

**(A) *Bedikas Chametz*; *Bal Yeira'eh*, keeping Chametz in one's possession**

**(B) Ownership that a motel guest has on the Chametz in his room**

**(A) *Bedikas Chametz*; *Bal Yeira'eh***

Some consider *Bedikas Chametz* a Scriptural Mitzvah, indicated by the Talmud's use of Pesukim to derive some details of the Mitzvah. Others maintain that it is Rabbinical, based on an explicit Talmudic statement to this effect (reconciled by the other view). Some consider it a part of the Scriptural Mitzvah to destroy Chametz, or even a form of destruction. While the stated Mitzvah is to physically destroy it, its purpose is the absence of Chametz in one's possession. This requires Bedika. Some consider it a way to avoid violating the negative Mitzvos, *Bal Yera'eh Uval Yimatzei*, Chametz shall not be seen in one's possession, nor be hidden where it could be found or unearthed. Therefore, one must find all Chametz and remove it from his possession before Pesach. Others say that Scripturally this is not necessary, because one can effectively remove Chametz through *Bitul*, by disowning it, which is required after destroying all known Chametz. Bedika is a precaution against violating the more serious Mitzvah forbidding eating Chametz on Pesach. Though one disowned it, if he finds some Chametz in his home on Pesach he might be tempted to eat it.

Every single area in one's possession where Chametz was brought recently must be searched. If no known Chametz was brought into an area for thirty days or more, he may assume that there is no unknown Chametz there. Chametz found will be destroyed. Therefore, the Brocha on the Mitzvah to destroy Chametz is made before the Bedika. Bedika is made the night before it is destroyed, i.e. the night of *Erev Pesach*. If this could not be done, one must make up for it the next day, even after the time has come to destroy the Chametz, and according to most Poskim, even on or after Pesach.

As mentioned, one may not have Chametz in his possession on Pesach. This

is forbidden Scripturally as a part of two Mitzvos, *Bal Yera'eh*, it shall not be seen, and *Bal Yimatzei*, it shall not be discovered, i.e., it may not be concealed in one's possession, nor may it be given to the possession of a gentile for safekeeping.

The Torah excludes from this Mitzvah Chametz of a gentile on a Jew's property. There is still concern that the Jew will forget and be tempted to eat it. Therefore, it must be placed behind a partition. [If the Chametz originally belonged to a Jew and was sold to a gentile, if left in its usual place it might be used out of habit. The practice is to either lock it up and place the key in a new place, to move it to another location, or to place an obvious reminder on the place where the Chametz is. Though it is also common practice to rent or sell the location of the Chametz to the gentile, this does not take care of the problem of unintentional sampling.]

In our case, if the Jewish guest finds Chametz in his room, he assumes it belongs to the previous guest. If this guest was a gentile, there is no prohibition against this Chametz. If he abandoned it, the issue is whether it is now property of the motel, the present guest, or if the present guest can even take such possession.

If the original owner of this Chametz was a fellow Jew, he might have disposed himself of it before Pesach. Nonetheless, the concern about unintentional sampling is there. Thus, our issue is, in part, whether or not there is an obligation of Bedikas Chametz, and/or to destroy it, to prevent the possible consumption or benefit from it. The motel cleans its rooms thoroughly, but it is not that concerned when it comes to Chametz. Therefore, one may safely assume that if there is Chametz somewhere (such as in a drawer) the cleaning staff did not remove it. Is there, therefore, an obligation to search for this, with a Brocha?

If one did no Bedika before Pesach, when he does it on Pesach he recites a Brocha. If he did one before Pesach, any Brocha he recited then is still valid. However, that Brocha only applies to the obligation that existed at that time, and not on newly acquired property. Nonetheless, since he did not knowingly take possession of this new Chametz, his Bedika is merely to prevent inadvertent consumption of someone else's Chametz. This is not part of the Mitzvah of destroying Chametz, and the Brocha (which is on the Mitzvah to destroy) might not apply. If he finds Chametz, assumes that it is abandoned but does not want to take possession, but wishes to destroy it, he does not recite it either. The Mitzvah is destroying personal Chametz in one's possession. [See Psachim 2a 6a-7b 10b Rashi Tos. Ran, Poskim. Rambam Chametz Umatza 2:1-4 18-19 3:6-7 etc. Tur Shulchan Aruch Orach Chaim 431 432:(1) 433:1-3 11 435:(Magen Avraham 2, commentaries) 436:1 446:1, Kitzur 111:17, commentaries.]

### **(B) The motel room**

The Talmud maintains that a tenant is obliged to search for Chametz unless he assumes possession after the evening of Bedikas Chametz. [Taking possession for this liability is debated by the Poskim. Some maintain that the tenant must make both a *Kinyan*, valid act of acquisition, and receive the key. Many Poskim maintain that receiving the key or making a valid *Kinyan* transfers liability. Actually occupying the space is not the critical factor.] Thus, we see that Chametz already on the premises is his own responsibility and liability. However, in our case the entire issue should never apply, since possession is taken during Pesach. However, this is only true if the property was previously the liability of another Jew. The Talmud says, unless otherwise informed, one presumes he would have performed the Mitzvah. The Poskim debate whether the tenant may even renege if he finds out that the house was not searched for Chametz. In our case, we assume the motel is owned or run by a gentile. The Mitzvah would indeed apply to the new tenant even if he took possession on Pesach. [See Psachim 4a-b, Poskim. Tur Sh. ar. O.C. 436:3 437:1-3, (Yeshuos Yaakov 1) commentaries. Maadanei Shmuel 111:note 21.]

[The case of Jewish hotelier would also raise some of these issues. Basically, his obligation is to search for Chametz in any rooms under his control at the appropriate time. Chametz brought into the hotel by others during Pesach is not his liability. This is especially true if he specifically disclaims liability of personal possessions left behind. He must ensure not to assume ownership of abandoned Chametz. If he finds such Chametz, he must destroy it. His responsibility to check after a gentile guest leaves would be less. He contemplates no temptation to eat it, since he will not be occupying the room himself.]

A tenant has exclusive rights to his leased property, and may not be moved by the landlord. A hotel or motel guest might only have rights to a room anywhere in the hotel. It may be possible for the manager to move people around from room to room. However, there is an unwritten agreement that this will not occur in the middle of the night. At least during this time the guest has purchased exclusive "ownership" of the room. He is like a tenant for this period, in terms of liability for Bedikas Chametz. Since there is no Jewish alternative obligant running this establishment, the guest has sole responsibility for the Bedika.

Apart from the precautionary Bedika, the guest does not want be liable for *Bal Yeira'eh* on Chametz found in his newly acquired property. Precautions may be taken to avoid acquiring the Chametz. Chametz in the room either belongs to the previous lodger, which means that there is no issue at all of possession to the pre-

sent lodger, or has been abandoned. If it was abandoned it could now belong to the hotel, having acquired it by *Kinyan Chatzer*, having an ownerless item left on their secured property. The new lodger does not want to acquire it from the hotel. It might still be considered ownerless, in which case the new tenant does not want to take possession by owning the Chatzer with his rental.

Assuming that the acquisition of the use of the hotel space is made with money (currency, according to some specifically coinage rather than paper) the transaction is binding according to the Torah whether or not it is made from a gentile. The (portable) Chametz therein would thus be transferred either in its own merit or as a part of the transaction on the real property. Other forms of transaction considered binding by secular law would also transfer this ownership. However, there is no specific clause including the Chametz. In addition, there is a view that maintains that a tenant, and certainly a motel guest, does not buy the ability to make a *Kinyan Chatzer*, only other uses of the property. Furthermore, the Poskim struggle with the concept of taking possession of Chametz on Pesach. It is worthless as it will become forbidden to benefit from as soon as it enters the possession of the Jew. Though this issue is resolved one way or another, it certainly makes it easier to stop such an acquisition. One must give consent to acquire something. He may say that any Chametz already existing in this property shall not become his as a result of his acquisition of rights to the room. If the Chametz belongs to the motel, this method works. If the Chametz is still in limbo the new lodger must say clearly before he makes the acquisition that as soon as he is in possession and able to control these things he does not want his Chatzer to take possession on his behalf. Thus, since taking possession of the Chametz must come in sequence to the possession of the Chatzer, before the Chametz can be transferred by way of the Chatzer it is stopped from entering his possession. [For a more comprehensive discussion see *Halocholescope* I:12, and the references.]

In conclusion, when he makes the legal transfer of the use of the hotel room, the guest should have very clear intention not to acquire any Chametz that might automatically enter his possession. If he feels any reason to suspect that Chametz is in the room, he must do a *Bedika*, but should not recite a *Brocha*.