

HALOCHOSCOPE ^{TOI}

Someone plans to spend the entire Pesach away from his home. If he sells his house to a gentile for the duration of Pesach, will he still need a thorough *Bedika*, search before he leaves town? Does this depend on when the sale takes place in relation to the obligation to search? Assuming he must search, must he clean the house thoroughly first? Does he recite a *Brocha* on such a *Bedikah*?

The issues:

- (A) Cleaning the house before the *Bedikah*
 - (B) The timing of the obligation to search
 - (C) Sale or rental of property, and the obligation of search and removal of leaven
 - (D) One who leaves town before Pesach, and his obligation to search
 - (E) The *Brocha* on *Bedikas Chameitz*
- (A) *Cleaning the house before Bedikas Chameitz*

The search for Chameitz is meant to accomplish one or both of the following. The presence of Chameitz on one's property is forbidden. One searches to ensure that none is present. Having found some, it must then be destroyed, known as *Biur Chameitz*, before the beginning of Pesach. One must also do *Bitul*, nullify remaining Chameitz that escaped attention during the search. After *Biur*, one must nullify Chameitz that might not have escaped attention, but escaped the *Biur*. Really, having done *Bitul*, there is no longer any risk of violating the prohibition of having Chameitz in one's possession. This should, therefore, negate the need for a *Bedikah* totally. However, there is a risk that one might find a tempting morsel of Chameitz on Pesach. One might inadvertently eat this Chameitz, though it is considered null and void and does not halachically belong to the eater. Nonetheless, this is a violation of the prohibition against eating Chameitz. Therefore, one must always conduct a search.

Thus, the search is for pieces that could constitute either a violation of possession or of a risk of eating. Crumbs are so insignificant that individually they are automatically considered null. They are also not big enough to pose a temptation of eating. If they are gathered together in an amount that they would constitute a violation, the *Bitul* nullifies them anyhow. Nonetheless, under normal circumstances one should look in places where such an amount could be concen-

trated. One is therefore looking for sizeable pieces and concentrations of crumbs, in places where these could have been left.

To conduct a thorough and effective search, the area to be searched must be cleared before the search. It must be generally clean, so the search can be conducted efficiently. This is not a piece of good advice and a convenience. The Poskim require this as a Halachic precondition to searching. It is based on a Talmudic passage, discussing a different issue, which mentions that one may rely on the absence of a certain objectionable item. Since the women check when they sweep, one may rely on this search. The implication is that if they would not do both the sweeping and the checking, one could not rely on this search. By the same token, one could not rely on the sweeping alone, as stated there by the Talmud, because the item might have simply been swept into a hole. Accordingly, before Bedikas Chameitz one must sweep the areas that are to be checked for Chameitz.

If one did sweep and search at the same time, even at night, it can not be considered a Bedikas Chameitz. It was not done for Bedika, but as a preparation for it. There is an independent obligation to go through with the search. If, however, one had in mind Bedikah, but did it on an earlier night his search could be considered a Bedikah. Though he may search on Erev Pesach, as a personal stringency, he should not recite the Brocha. [See Nidah 56a-b, Mordechai Psachim 536. Tur Shulchan Aruch Orach Chaim 433:11, commentaries.]

(B) The timing of Bedikas Chameitz

The Talmud determines the timing of the search to be the night of the fourteenth day of Nissan. It goes on to explain the need to search by night, specifically. The object of the search is to find and destroy all Chameitz present. If this is the case, one should really do it close to the time that the Chameitz must be destroyed. This time is by day on *Erev Pesach*. The Talmud concludes that there are two good reasons to push the Bedikah back to the night before. First, because it is so important, there is a need to ensure that it will be done properly. Therefore, a time is chosen that people are anyhow home. Second, the search must be thorough and all cracks and crevices that could have Chameitz placed there must be checked. This requires a candle light. By day, the light of a candle is not as effective, due to the surrounding light. The eyes seem to focus better when guided by candle light at night. Therefore, the closest night to the time of destruction is the night before.

According to some, the optimum time for Bedikah is at the beginning of the night. Some even suggest starting before it gets fully dark. There is a minority view that checking at any later hour is simply *Tashlumin*, a make-up for having missed

the true time at the beginning of the night. However, the majority maintain that the time is all night. One must, nonetheless, do it as early in the night as possible. Apart from the general maxim that *Zrizim Makdimin*, the conscientious hurry to do Mitzvos, there is a risk that one might get involved in other activities and forget Bedikah until it is too late or he is too tired. Thus, time-consuming activity is forbidden, including a meal and Torah study, as soon as the time for Bedikah arrives.

If one does a Bedikah the preceding night, a minority view considers it a valid Bedikah. Some even suggest that one may do it by day on the thirteenth of Nissan. However, most Poskim maintain that it should not be done by day at all, unless one forgot to do it the night of Erev Pesach. In this case, he must do it the morning of Erev Pesach. The majority view is that it should not be done the night of the thirteenth. This is not the night before one plans to destroy his Chameitz. In practice, one who did Bedikah by day on the thirteenth did not fulfil his obligation at all. The exception to this is an open area, such as a porch, which can be checked sufficiently by sunlight. This need not be checked again by night. If one did a Bedikah by night on the thirteenth, he need not do the Bedikah again on the fourteenth. If he wishes to practice stringency and do so anyhow, he should not recite the Brocha.

When Erev Pesach falls on Shabbos, it is not possible to burn the Chameitz on that day, nor search for Chameitz by candle light at night. Accordingly, the process is pushed back to the night before and Erev Shabbos, the thirteenth of Nissan. Since this is the real date of Biur, this becomes the real time for Bedikah, and a Brocha is recited for this Bedikah, even though it is "early". [See Psachim 2a 4a 7b 13a, Poskim. Tur Sh.Ar. O.C. 431:1-2 433:11 444, commentaries.]

(C) The Bedikah obligation on a rented property

Bedikah is connected to the Mitzvah to destroy Chameitz, i.e., to search for it, and when it is found to destroy it. This applies to the owner of the Chameitz, but is connected to owning the property on which it is found. One could not necessarily search for his Chameitz on someone else's property, (nor would one destroy Chameitz belonging to another.) Bitul accomplishes a goal similar to destroying it.

Bedikah is also connected to the chance of finding some on Pesach and inadvertently eating it. Bitul does not take care of this problem. This precautionary aspect would also apply to the owner of property on which Chameitz is found. Even if the Chameitz does not belong to him, one could be tempted to eat it. However, one who has unwanted Chameitz belonging to a gentile on his property may simply partition it off. Under normal circumstances, he is not obliged to destroy it.

The Mitzvah is also connected to the prohibition against having it in one's pos-

session. The owner of property could be in violation even if the Chameitz articles do not belong to him, but are under his jurisdiction. However, in general, the Mitzvah is incumbent on the owner of Chameitz found on his own property.

In light of the above discussion on the initial timing of Bedikas Chameitz, the Talmud raises the question, if one rents property that has Chameitz belonging to the landlord, who must do the Bedikah? The landlord has no interest in keeping the Chameitz. It has no value to him after it becomes forbidden. However, there is an obligation to remove it. Who must do this removal? The discussion is in the context of the obligation not taking effect until the night of the fourteenth. If it is rented earlier, apparently, there is no obligation on the landlord. The tenant now has an obligation to take care of his newly acquired property.

The initial question poses two possible controlling factors, the fact that the landlord owns the Chameitz, and the fact that once rented, the property is in the hands of the tenant. This could be explained as simply deciding whether the determining factor for Bedikah is the risk of eating something found on one's property, regardless of the owner of the Chameitz, or the violation of owning Chameitz. Maybe both factors are important, but when a conflict presents itself, which of them is more important? Alternatively, the two possibilities are factors, with the overriding concern being that the property must be searched. The question is only how to enforce this. A stranger can not be compelled to search any property that belongs to a Jew. Because this property might have Chameitz, which will doubtless be nullified anyhow, should one party be more responsible for the search than the other? Should one factor or the other determine which of the parties has the larger role?

The Talmud poses this question with regard to a property that has already changed hands, and when the transaction took place on the fourteenth of Nissan. If the issue is simply the ownership of the Chameitz as opposed to ownership of the property rights, the same question should be raised in cases where the transaction took place any other time in the year. Another issue is whether the discussion is about known Chameitz, which the landlord left around the house, or about possible Chameitz, and the main issue is the general obligation to search for unknown Chameitz. Another issue is the way the Talmudic passage initially suggests a resolution, comparing the Mitzvah of Biur Chameitz to *Mezuzah*, which is clearly the obligation of the dweller. The landlord would never have been obligated in *Mezuzah* unless he also lived in the property. Does this mean that we are comparing such a case to Chameitz, where the landlord just moved out? Clearly, the main thrust of the question is whether the landlord loses, or ever had, an obligation. By default, or

by the fact that he is now affected directly from here on, the tenant might have the obligation, or take it over from the landlord. What about the Bitul, or the violation on possessing Chameitz of another Jew on one's property? All of these issues in the initial stages of the passage are raised or alluded to by the commentaries.

The conclusion of the Talmud is that the determining factor is who had the key in his possession when the night of the fourteenth of Nissan fell. Here the issues raised include: whether this is new factor, or part of the earlier factors raised. And whether the Talmud means that the transfer of the key alone determines it without consideration for the rental agreement or any valid act of *Kinyan*, a Halachically binding act of transfer of property. It is best to list the various opinions on the Halachic conclusions, from which we may draw conclusions in our case.

The first view is that the transfer of the key effects a *Kinyan* for the rental. It would not work to take total possession of a property, but works to finalize a rental agreement. The only question is why this particular choice of *Kinyan* is singled out. It is possible that one needs specifically this type of transfer in this case. Accordingly, in our case, one would have to transfer the key to the property before the night of Bedikas Chameitz to the hands of the gentile or of his agent. This would exempt the Jew from his obligation to search for possible Chameitz in his possession. Definite Chameitz would still pose a problem. Though some Poskim exempt a Jew from the Scriptural violation of possession if it is in the property of a gentile, they agree that there is a Rabbinical obligation to destroy it. To avoid this, one would be required to sell all Chameitz on the property to the gentile as well. Crumbs (gathered in one place) and small pieces are not generally sold. These must be given as a gift to the gentile. Things like garbage in cans or bags, are not generally given as gifts. To accomplish *Biur* one should try to make an arrangement for it. Failing this, one could assume that the gentile knows to clean up the existing mess, and that by adding to the existing garbage he is taking over liability for it.

The second view is that even if a regular *Kinyan* on the rental took place, the keys must also change hands. As long as the landlord has control of the keys, the tenant can not be obliged to search, and by default the responsibility remains with the landlord. According to this view, as well as the keys being handed over before the night of Bedikas Chameitz, the regular *Kinyan* (money, a document, or other forms of *Kinyan*, or all of them to be sure) must also be made to transfer the property to the gentile. However, this view maintains that this all only applies if the rental agreement is intended to take effect beginning on the fourteenth. If the agreement begins on the thirteenth, the main regular *Kinyan* is enough. There is no need

for a key to be transferred. Accordingly, this view would allow one to effect a transaction before Bedikas Chameitz night, effective immediately or any time until then, which would then exempt the landlord of his obligation to search.

The third main view maintains that even with no Kinyan, if a key is transferred with the intent to eventually make a Kinyan, the landlord is exempt. The reason is that if the key is in the possession of either party, the other is not in a position to search anyhow. Once the obligation applies to one party at the beginning of the time of obligation, it does not transfer to the other party later. Within this view there is a question whether a regular Kinyan must also take place earlier, or, as mentioned, the key does the trick. Also, is the regular Kinyan effective at all, even if it is done on the thirteenth? Also, does the order of the Kinyan and the key transfer make a difference? Some suggest that the "time of obligation" stretches through the night. Therefore, the Kinyan and key transfer, and their order, could play a role. Does the effective date of the agreement play a role? Does the agreement on the lease conditions, without the actual transfer Kinyan play a role?

In one view, the entire issue is decided with the time of the transfer of the key. Ultimately there must also be a Kinyan as well. This view adds that the second view makes much more depend on the fact that it is a rental. If the agreement is a sale, there is no need for the transfer of a key. The third view would require a key transfer in a sale as well. For our case, this means that the key must be transferred to the gentile's hands before the night of the fourteenth.

In summary, as regards the property, one would have to make a rental Kinyan and transfer the key before the night of Bedikas Chameitz. The ideal situation would be to make it effective before this time as well. Also, ideally, one should sell or give the gentile all known Chameitz, and make some arrangement about the garbage. [See Psachim 4a, Poskim. Tur Sh. Ar. O.C. 437:1 etc., commentaries.]

(D) The obligation to search before leaving town

All of the above assumes that the person selling or renting his property to the gentile has the status of a landlord, with a home elsewhere in town, which he will search anyhow. His will search on the night of the fourteenth. In our case, the person leaves town, and his sole obligation would be on his home. By selling or renting it, he wishes to exempt himself of the entire obligation. Based on a Talmudic passage, if one leaves to go abroad he might need to search before he leaves. If he leaves more than thirty days prior to Pesach and does not plan to return before or on Pesach (depending on interpretations of different Poskim) he is exempt. Most Poskim maintain that this applies even to definite Chameitz. If he plans to return,

or if he leaves within thirty days of Pesach and does not plan to return, he must check. In the first case, this is due to the risk of finding Chameitz on his return on Pesach, or the risk that he will not manage to search before Pesach on his return. In the second, the time has already begun when one would be conscious of searching. Therefore, the Rabbis applied an obligation to him.

In one view, this applies specifically to one who will not be moving to another home to do his Bedikah there. He will be on a trip during Pesach. He may not exempt himself entirely from Bedikah. If he moves into a new home, he will fulfill this obligation there. Some say that this applies specifically to one whose home will later be occupied by a gentile, and is owned by a gentile landlord. If a Jew would move in, the laws of rental to a Jewish tenant discussed in section C apply. Others say that this also applies if the former home will be occupied by a Jew. Some say that this only applies to those who will be travelling long distance and will not be quartered in a home. Thus, this view limits the stringency of the Talmud to those who will be in transit or travelling long distances. Others disagree with this view entirely, maintaining that if a gentile will occupy the home, there is no point in searching. The Chameitz will be assumed by the gentile, and he will even bring in more of his own. There is no obligation to search if there is no need to destroy. Both views are presented by the Poskim, and the ideal is to try to satisfy them.

Accordingly, if our questioner leaves early, he should search before he leaves, even if his home will be under the gentile's jurisdiction. However, if a Jew sells all of his Chameitz to a gentile before the time of the prohibition applies, the Poskim debate whether he must search the places where the Chameitz lies. Chameitz will be left there anyhow. It will be sealed off, and the space will be transferred to the possession of the gentile. Why should one search there? Others maintain that the time of the Bedikah begins before the time of the sale. Since the sale takes place after the time of Bedikah, the obligation rests on the Jew to search. The prevailing practice follows the lenient view, but one should try to effect the sale before the night of Bedikah anyhow. In our case, this will affect the entire house, raising the specter of one avoiding the entire Bedikah due to a trip. Let us assume that the sale will indeed take place early, since the traveller wishes to leave early anyhow. Since the traveller, according to one view, is obliged to do his Bedikah early, does this also advance the time he may make his sale effective to avoid Bedikah?

According to the view that whenever it takes effect he is exempt of the obligation to search the rooms with Chameitz in them, there is no need to arrange the earlier sale at all, and certainly if the rooms themselves are sold. To satisfy the

other view one would need to sell the Chameitz and the rooms before the personal obligation takes effect, i.e., before the last night he is home. He would then be living in the gentile's house, which gives the sale the appearance of a loophole. Furthermore, he does not satisfy the view that when leaving town one must fulfill some form of Bedikah. To satisfy this view, one could exclude one room in his home from the early sale and check it. Or he could arrange to do part of the Bedikah in the place where he stays for Pesach. To check his clothing, car and other portable things does not seem to satisfy this requirement. In transit one needs to eat, probably Chameitz. Evidently, checking luggage is insufficient to be considered Bedikah. The Poskim say that no Brocha is recited on such a Bedikah, even when performed on the fourteenth. They are not a "house", which the Torah mentions as the place from where Chameitz must be removed and destroyed. [See Psachim 6a, Poskim Tur Sh. Ar. O.C. 436:1-3, commentaries.]

(E) The Brocha

The Brocha on Bedikas Chameitz applies to both the Bedikah and the Biur. There are at least five opinions on reciting the Brocha on an early Bedikah. Some say that if it is done by night, one recites the Brocha. Similarly, if one leaves town early and does an early Bedikah, some say that he recites it. Others maintain that one only recites it at the right time, on a Bedikah close to Pesach. This applies on the thirteenth when Erev Pesach is Shabbos. In a third view, if the Bedikah is a precaution against returning on Pesach and possibly finding Chameitz, no Brocha is recited. If it is due to the obligation taking effect, i.e., within thirty days of Pesach even if one will not be returning, a Brocha is recited. In another view one must be both returning and checking within thirty days to require a Brocha. In another view one only recites the Brocha when it is connected to Biur. This can only be on the night before the actual obligation of Biur. An earlier Bedikah is not the final check before Biur, since one may still buy more Chameitz. Therefore, in our case, even if one does a Bedikah, he should not recite the Brocha. Besides, the entire obligation to do a Bedikah is questionable, since the property is being sold with its Chameitz. As we have shown, the majority view exempts one from Bedikah in this case. [See Psachim 7a-b, Poskim. Tur (Bais Yosef etc.) Sh. Ar. O.C. end 436, commentaries.]