

HALOCHOSCOPE

Someone has the practice of refraining from selling *Chameitz* to a gentile for the duration of *Pesach*, unless it is in a closed package. He gave away open packages of *Chameitz* that he had left over to a Jewish friend. The second person had the practice of selling open packages. It turns out that the second person did not use any of this *Chameitz*. After *Pesach*, the second person returned the open packages of *Chameitz* to the first Jew. Must the first person be concerned that his gift was never taken seriously, thus invalidating its sale, and meaning that it was considered his throughout *Pesach*? If so, is the second person considered a *Shomer*, guardian, for the first, willingly or unwillingly? Could his own sale or that of the second person be counted anyhow for the opened packages?

The issues:

(A) Owning *Chameitz* over *Pesach*; selling *Chameitz* to a gentile before *Pesach*

(B) Becoming a *Shomer*; selling *Chameitz* for another without his knowlege

(A) Owning *Chameitz* on *Pesach*; selling it to a gentile

Possession of *Chameitz* on *Pesach* is forbidden in two *Mitzvos*, *Bal Yera'eh*, it may not be seen, and *Bal Yimatzei*, it may not be found. One may not conceal it in his possession nor leave his *Chameitz* in the possession of a gentile. This does not apply to *Chameitz* of a gentile left on the property of a Jew. However, if the gentile left it in the care of the Jew, making the Jew liable for theft or loss, there would be a violation of *Bal Yera'eh*. Possessing *Chameitz* is also an automatic violation of the positive *Mitzvah* to destroy one's *Chameitz*, *Tashbisu*. If one violated these *Mitzvos* by keeping it in his possession, it is forbidden to benefit from after *Pesach*. This is a Rabbinical penalty for the violation. It applies to all Jews, including others who get it from the violator.

As a result, one must destroy all *Chameitz* belonging to him before *Pesach* or remove it from his possession by giving it away, selling it, or making it *Hefker*, disowning it. Not being able to benefit from something effectively restricts selling it or doing anything with it. Thus, *Chameitz* must be destroyed or removed from one's possession before the time that it becomes forbidden. Practically, this is one seasonal hour before noon on *Erev Pesach*.

Destroying *Chameitz* is the most definite way of disposing of it. By doing so one fulfils a positive *Mitzvah* - *Tashbisu*, "you shall destroy". Some *Poskim* say that *Bitul*, nullifying it and even *Hefker* (which some consider the *Bitul* anyway)

is also considered a form of Tashbisu. A merchant who must dispose of large amounts of Chametz merchandise will not want to destroy it. He would also not make it Hefker. Bitul would also be suspect; he is could not be sincere about considering his inventory "nullified like dust". Furthermore, even if one made Chameitz Hefker or Bateil, it is forbidden to benefit from it after Pesach. This additional preventive measure imposed Rabbinically is to prevent people from pretending to have done Bitul, while keeping their Chameitz over Pesach.

The merchant can sell his Chametz to a gentile who may possess it on Pesach. The origins of this practice are two passages in the Talmud. A Jew is travelling in a ship, presumably accompanying his merchandise. He is in no position to sell it all, or to burn his personal Chametz, especially if he will need to eat it later in the voyage. He may sell his Chametz to a gentile accompanying him, or give it as a gift and buy it back after Pesach. In this case, the Jew should not indicate at the time he gives it or sells it to the gentile that he intends to buy it back. The second case is when the Jew is anyway selling Chametz to a gentile customer. He may ask the gentile to buy more Chametz though he does not need it, so that the Jew may buy it back from him after Pesach. However, he may not make the sale conditional on being able to buy it back.

Since it is never delivered to the gentile, the whole transaction has the appearance of a ritual formality. However, it is relied on for large amounts of Chametz such as the inventory of a merchant. This is more applicable nowadays, since many products last a long time in storage. It is also handy where other forms of Chametz disposal are difficult.

Though the sale is Halachically valid, some private consumers refrain from selling even items that have a long shelf life. It has too much appearance of a legal fiction. Major loss is hard to define, and is subjective. They do not feel that their circumstances warrant sale, nor will they sustain major loss. Some only sell items that are not pure Chameitz, but those that have a concern of, or have some mixture of it, or some form of Rabbinical Chameitz. Others agree to sell unopened packages, because this could be defined as a substantial loss. They do not consider opened packages a substantial loss. The practitioners of these restrictions all agree that the sale is valid when done, especially by Jewish merchants. Indeed, they will benefit from the Chameitz after Pesach by purchasing it from others who sold it. Thus, in our case, though the person would not have sold it himself, he would be permitted to use it, provided the sale could be upheld. If the sale is found not to have worked, some Poskim maintain that since people do Bitul on all unknown Chameitz, an exception to the

afforementioned preventive measure could apply. If one clearly tried all means to dispose of his Chameitz, but was prevented from doing so unknowingly, we are not concerned that he would intentionally pretend to do Bitul. Therefore, in our case, many Poskim would permit this Chameitz to its owner even if it was not legally sold. [See Pesachim 4b-5b 11b-13b 21a-b 27b-30a Tosefta 2:6-7. Poskim. Sh. Ar. O.C. 441:4 443 445 448 esp. 5 7, commentaries.]

(B) Becoming a Shomer; selling voluntarily for another

In our case, the second person might have demonstrated that he did not intend to accept the gift in the first place. Accordingly, it is possible that he was no more than a guardian for the first person's Chameitz. A guardian for another Jew is also complicit in the violations of possessing his Chameitz on Pesach. To become a guardian, the person must intentionally accept liability. Sometimes, this requires a statement, since otherwise, the "guardian" may claim that he never accepted it. If there was no legal guardianship, the second person might not be liable for the restrictions on owning Chameitz. If he is a *Shomer*, he should be forbidden from tampering with the item in his safe-keep, known as *Shlichus Yad*. However, In the case of Chameitz, in the absence of instructions, the Shomer is actually required to sell or destroy the Chameitz on behalf of the owner, as we shall shortly discuss. Even if he did not accept liability, and could thus not be held liable for the possession during Pesach, he has this responsibility to the owner to save him from sin.

In our case, the original owner certainly never meant to engage the second person as a guardian. He never asked him or showed any interest in making the second person liable. On the other hand, if the second person had no intention of keeping it, it still belongs to the first person. Thus, it could still belong to the first person and the sale might not have included it.

Assuming he was legally considered a guardian, one might assume that when selling his own Chameitz all Chameitz in his possession was automatically included. The Rav arranging the sale uses documents that cover all eventualities. These would thus include not only the personal Chameitz of those authorising him to sell it, but any Chameitz that they were responsible for. Second, he would himself be interested in this. He might have meant to specify it, or might even have done so, albeit thinking he was simply doing his friend a favor.

In addition, one Jew may sell Chameitz on behalf of another Jew who is unable to sell it. This is discussed by many Poskim, especially in the context of a Rav or Bais Din acting on behalf of a community whose members are ignorant of the procedure or the restrictions. *Zachin Le'adam Shelo Befanv*, one may

appoint himself agent for another to benefit him. Thus, even if the benefitting party is unaware of it, he gains from it. Nobody wants to violate possessing Chameitz, so the sale is to his benefit. Usually, a sale needs obvious authorization. In this case, the sale is to avoid owning the Chameitz for the duration of Pesach. It is known that it will be returned after Pesach. The Poskim add the logic that since Bitul is done as well, this sale is acceptable, *Bide'eved*, after the fact.

However, there is a problem in all of this. If the second person truly did not think that the Chameitz was his, or showed he never intended to keep it, he might think that he is not the person to sell it. Part of the deal in selling Chameitz involves giving the rights to the property on which it stands to the gentile. The second Jew would never have left this Chameitz any other place than where his own Chameitz was, and had sold that spot to the gentile. If the room or space belonged to the gentile at the time of sale, the second Jew was not in violation of the restrictions on possessing it. It was not on his own property. He thus had no incentive to sell it. This case, and many similar to it are discussed extensively by the Poskim. Part of the issue is that the first Jew also sold his Chameitz, but not necessarily to the same gentile. Another factor is that one might suggest that the gentile purchased the spot, and then was able to acquire all Chameitz there, including that of the first Jew. This presumes that a gentile has the legal ability to acquire with his "yard", i.e., his property. It also presumes that he wishes to acquire things he was never told about. Though the legality of such sales is suspect, many Poskim are willing to apply dispensations on these cases based on the fact that the owner did Bitul, as mentioned earlier.

Probably the best factor in favor of permitting this Chameitz is that the second person understood what was happening. He saw that he was being given open packages. Either he thought of them as an outright present, or thought that the first person did not want to sell it himself. Presumably, he thought that he could sell it as his own, to save the first Jew from having resorted to selling an open package. Or he thought that while the first Jew was uncomfortable with this sale personally, he would not object to its being done by the second Jew. Either way, by returning it now, he is showing that he took it to sell it. [See Psachim 13a Baba Metzia 28a, Poskim. Tur Sh. Ar. O.C. 443:2, Choshen Mishpat 294:16-17, commentaries. Sdei Chemed Chameitz Umatza 8:11 9:2, Maadanei Shmuel 114:1 22.]

In conclusion, one may rely on the fact that the Chameitz was legally sold to the gentile over Pesach, since the first person also did Bitul.