

HALOCHOSCOPE



This week's question:

Let us assume that one who leaves his home for the duration of *Pesach* may sell his home to a gentile to avoid doing a *bedikah*, search for *chameitz*. What if he is approached by people wishing to use the home for sleeping quarters while they are visiting town? Does this mean that the 'seller' is no longer selling that part of the home? Is the guest obliged to do a *bedikah*? Would the guests recite a *brocha* if they did a *bedikah*?

The issues:

- A) The *bedikas chameitz* obligation and its timing
- B) One who leaves town before *Pesach*
- C) Sale or rental of property and the *bedikah* obligation

A) *Bedikas Chameitz*

Before *Pesach* one must do the three b's, *bedikah*, *biur* and *bitul*, searching, destroying and nullifying *chameitz* in one's possession. The scriptural *mitzvos* involved are destroying, and refraining from eating, owning or hiding *chameitz*. *Bedikah* is to find and destroy, and to prevent inadvertently eating a morsel found on *Pesach*. After *Bitul* one is not in possession of the *chameitz*, negating the need for *bedikah* and *biur*. However, if a morsel is found there is a temptation to eat it. Therefore one must always do *bedikah*.

The search is for pieces that could constitute a violation of possessing or a risk of eating. Individual crumbs do not meet either criteria. When gathered together they do, but *bitul* takes care of crumbs that are spread out. The *bedikah* is to search in places where a sizable amount or a concentration of crumbs could have been left. To conduct a thorough and efficient search the area must be cleaned and cleared. This *halachic* requirement is based on a Talmudic assumption that if an area is cleaned regularly a search may be relied on, implying the reverse to be the case if it is untidy. Sweeping without a *bedikah* is also not good enough. It might have pushed the *chameitz* into a hole.

The Talmud gives the timing of the *bedikah* at night on the Fourteenth of *Nissan*, *Erev Pesach*. Though it is the beginning of *biur*, that should take place on *Erev Pesach*, there are two reasons to do it the preceding night. To ensure it is done properly, it was instituted to be done when people are generally home from work. To see into cracks and crevices a lamp is used, that gives better light [relative to human eyesight, sensitive to surrounding light,] by night. Some maintain that the optimum time is the beginning of the night, and some suggest right before nightfall. A minority believe that doing it later that night is mere *tashlumin*, making up for missing the main *mitzvah*. The consensus is that the time is all night, but the conscientious do it at the earliest opportunity. This will also ensure it is done, and done properly when one is still awake enough. Therefore, all time-consuming activities, including Torah study, are forbidden before the *bedikah*.

A minority considers a *bedikah* valid when done a night early, and some even permit

doing by day on the Thirteenth. Most poskim require a night *bedikah* unless one forgot, in which case it must be done in the morning. The majority maintain that it should not be done on the Thirteenth. It is removed from the main part of the *mitzvah*, *biur*. If one is indeed destroying it then, or leaving town [see below], he does it early with no *brocha*. If it was done on the Thirteenth night, it need not be repeated on the Fourteenth. If it was done by day, it is invalid and must be redone by night, except in open areas that can be checked sufficiently by sunlight. When *Erev Pesach* falls on *Shabbos* (like this year), one does not burn the *chameitz* on the Fourteenth. Everything is pushed back one day. Since this becomes the real day for *biur*, the *brocha* is recited then. [See Psachim 2a 4a 7b 13a, Nidah 56a-b, Poskim. Tur. Sh Ar OC 431:1-2 433:11 444, commentaries.]

B) Leaving town before Pesach

A person is only obliged in the *bedikah* on his own property. One who owns more than one piece of property is responsible for all of it. If he sells or rents some before the obligation takes effect, he still has the *mitzvah* on his home. If he leaves town before the obligation takes effect, he might wish to exempt himself of the entire obligation. The Talmud discusses one who goes abroad. If he leaves more than thirty days prior to *Pesach*, he is exempt from *bedikah* and *biur*. Most apply this to definite *chameitz* as well. If he plans to return before the end of *Pesach* or if he leaves within thirty days of *Pesach*, he must search. In the former case, this is due to the risk of finding it on *Pesach* when he comes home, or that he will not make it back in time to do *bedikah* and *biur*. In the latter case, one is already conscious of searching, so the Rabbis impose an obligation.

Some apply this only to one who will not have a different home for the duration of *Pesach*, but will be in transit. One who stays local could be obliged, even if a gentile moves in. He may not exempt himself totally from *bedikah*. Some apply this exemption only if the original home is owned by a gentile landlord and will be occupied by a gentile tenant. The Jew must see to the *chameitz* before leaving, since no-one else will. If a Jew moves in, or a Jew owns the house, the laws in section C apply. Others apply it even if a Jew moves in. Others maintain that even if a Jew owns it, the gentile moves in bringing his own *chameitz*. Searching and destroying the present *chameitz* early is pointless. In practice, the poskim present all opinions. The ideal is to satisfy them all.

Accordingly, in our case, placing the property under jurisdiction of a gentile will not exempt the homeowner from searching before he leaves. If a Jew sells *chameitz* to a gentile before the prohibitions take effect, but after the time of *bedikah*, the poskim debate the obligation to search its location. Everyone knows that *chameitz* will be left there anyhow, partitioned off and sold with its location to a gentile. Yet, the obligation of *bedikah* came and should not disappear. In practice, though we follow the lenient view, one should try to effect the transfer before the *bedikah* takes effect. A traveler who leaves early has an earlier time for his *bedikah* obligation. Should he advance the effective date of the transfer to avoid *bedikah* on his earlier date (the night before he leaves)?

According to the lenient view, he need not worry about any rooms sold with their *chameitz*. The other view would require him to sell the entire house before the last night before he leaves. Living there as the 'guest' of the gentile gives the sale the appearance of a loophole. He would also not be satisfying the view that before leaving town one must be sure not to avoid the *mitzvah* of *bedikah*. He could exclude a small area from the sale

to fulfill his *bedikah*. He could arrange to 'own' an area in the destination location. He must still check his clothing, luggage and car, but portable items do not count to satisfy the requirements of the basic *mitzvos* of *bedikah* and *biur*. There is no *brocha* on them, since they do not qualify as a house or 'border' that the Torah mentions in connection with this *mitzvah*. [See Psachim 6a, Poskim. Tur, Sh Ar OC 436:1-3, commentaries.]

C) Sale or rental of property and bedikah

Bedikah and *biur* are connected to owning both the *chameitz* and the property where it is located. *Biur* and *bitul* apply to the owner of the *chameitz*, and *bedikah* also prevents inadvertently eating other's *chameitz* found on one's property. Renting property is considered ownership for these purposes. One who has unwanted known *chameitz* of a gentile on his property may partition it off. He need not, usually, destroy it. If *chameitz* does not belong to the property owner, but is under his jurisdiction, he could also be in violation.

The Talmud discusses a tenant renting property that has (or might have) *chameitz* belonging to the landlord on it. Who does *bedikah*? The landlord has no interest in the *chameitz*, but it must be removed. The discussion is about renting it after the effectuation of the obligation, the night of the Fourteenth. If it is rented beforehand, the landlord has no obligation, and the tenant is left with it. The two possible controlling factors are that the landlord owns the *chameitz*, and that the property is in the hands of the tenant. One way to view the question is whether the dominant factor is the risk of eating something found on one's property, or the possession of the *chameitz*. Alternatively, the overriding concern is how to enforce the searching. A stranger cannot be compelled to search for *chameitz*. In this case, given that *bitul* will be taking place anyhow, can one party be held more responsible for the search than the other?

In addition to the property rights, gained on the Fourteenth, the commentaries raise various subjects for discussion. Is the discussion about known *chameitz* left there or possible unknown *chameitz*? Initially, the Talmud compares the *bedikah* obligation to *mezuzah*, which is the obligation of the occupier at the time. This implies that the landlord might or might not have had an obligation that he lost when he moved out. Either by default, or by the fact that he is currently affected directly, the tenant might now have an obligation or inherit it from the landlord. *Bitul*, and violating having *chameitz* of another Jew in one's jurisdiction, are also raised. The Talmud concludes that the determining factor is: who held the key at the beginning of the Fourteenth night? The commentators raise some more issues. Is this a new factor, or connected to the other factors? Does the transfer of the key alone affect the status? Is there no consideration for the rental agreement or the formal act of *kinyan*, *halachically* binding transfer of property rights? To understand how our questioner is absolved of his responsibility, we will examine the views.

In one view the transfer of the key effect a rental *kinyan*. Possibly, one requires this specific act to work in this case. Accordingly, in our case, too, the key should be transferred to the gentile, his agent, and/or the guests or their agents, before the night of the Fourteenth, or this year, the night of the Thirteenth. This takes care of searching for unknown *chameitz*. Known owned *chameitz* must still be destroyed, Rabbinically at least, even if it on the property of a gentile. One could sell this to the gentile along with the property, but different forms of *kinyan* are required for that. Amounts too small to sell are given as gifts. Garbage can not be given as a gift and must be disposed of.

In another view, even if a regular *kinyan* with money or a document took place, if the landlord controls the keys, the tenant cannot be obliged to search. This responsibility defaults to the landlord. In this view, both a *kinyan* must be done and keys must be transferred. If the rental agreement takes effect before the Fourteenth night, the main *kinyan* is enough to exempt the landlord. Thus, one way to avoid *bedikah* would be to effect a transaction any time before the effectuation of the *bedikah* obligation.

A third view maintains that the key does not effect a *kinyan*. However, holding the key when the obligation begins is the factor determining responsibility. Without it neither party could freely access the property to search. There is still some question about the status of a *kinyan* in addition to the key, according to this view. What about the order of transferring the key and doing the *kinyan*? When is the initial 'time of the obligation', and does the effective date of the agreement, and the time of day that it takes effect, play a role? There are more variations on how to interpret the various views.

In summary, to avoid responsibility for *bedikah*, one must make a rental *kinyan* and transfer the key before the night of obligation. It should be made effective before this time as well. One should also sell or give known *chameitz* to the gentile, and arrange for garbage disposal. [See 4a-b, Poskim. Tur Sh Ar OC 437:1 etc., commentaries.]

In conclusion, in our case, the property owner may sell the property to a gentile to avoid *bedikah*. The sale must take place before the normal time that the *bedikah* obligation takes effect. To follow the strict *halacha*, he should still do a *bedikah* where he is 'moving' to, by 'renting' some space from his host, that requires some *bedikah*. He may recite a *brocha* there. As for the part of his home that the guests will be using, he may exclude the use of those rooms from his sale to the gentile. Normally, he would be required to do a *bedikah*, with or without a *brocha*, depending on when he leaves town. He could rent the rooms that he excluded from the sale to the guests, to take effect before the effectuation of the *bedikah* obligation. This would relieve him of the obligation, and the guests would have the obligation. They could make a *bedikah* with a *brocha*, provided it can be considered space where *chameitz* can be found.

On Parshas Hachodesh ... *You shall guard the Matzos ... [Bo 12:17] Do not read 'matzos' but 'mitzvos' – just as we watch not to allow the matzos become chameitz, so we do not allow the mitzvos to 'leaven'. If a mitzvah comes to your hand, do it right away. [Rashi] Why is the idea of zrizim mzkdimin lemitzvos taught in the mitzvah of matzah? It is possible that the real lesson of zrizim mzkdimin is not to hurry to do a mitzvah early, such as bedikah before dark or a night early. It is to do it when its time comes. One must be ready to drop anything else at that moment. Matzah leavens by itself, in its own time schedule. One cannot hurry or delay it. One must be ready for it whenever it is ready. Thus, doing any mitzvah before its time just because it is more convenient for the performer is not zrizus. Zrizus is the opposite of laziness. This includes alacrity, but also enthusiasm and conscientiousness.*

🕯 **Sponsored in memory of Reb Akiva Moshe ben Menachem Manele z"l, whose**

yahrzeit is on the 28th of Adar. 🕯

© Rabbi Shimon Silver, April 2008.

Subscriptions and Sponsorships available. (412) 421-0508. halachoscope@hotmail.com