

HALOCHOSCOPE

Congregation Shaaray Tefillah, Pittsburgh, PA

The question:

Someone is receiving a delivery from a non-Jew which includes items that are Chometz. What should he do if they arrive on Pesach? May he pay for them? If he has already paid for them ahead of time, must he include them in his sale of Chometz to a gentile before Pesach, or can he assume that he did not really acquire them as his own with payment alone? If he accepted the delivery, may he benefit from these items after Pesach? And, finally, what does one do if a gift of Chometz is given to him or delivered to him on Pesach without his consent?

The issues to be discussed:

- (A) *Bal Yeroeh, Bal Yimotzei* - the prohibition against having Chometz in one's possession on Pesach.
- (B) *Chometz Sheavar Alav Hapesach* - Chometz which was in a Jew's possession during Pesach.
- (C) Making an acquisition of Chometz on Pesach itself.
- (D) *Kinyan Kesef* - Acquisition through payment. Can one make a Kinyan Kesef from a gentile?
- (E) *Kinyan Davar Shelo Ba La'olam* - acquiring something that is not yet in existence.
- (F) Disposal of Chometz which is not one's own.

(A) Bal Yeroeh, Bal Yimotzei

Having Chometz in one's possession during Pesach is a violation of one of these two Scriptural commandments: Chometz should not be seen in your possession, nor shall you conceal it in your possession nor even leave your own Chometz in the possession of a gentile. [Parshas Bo 12,19 See Ramban and Rambam Hil. Chometz 4,1. Magid Mishneh.]

This does not apply to the Chometz of a gentile left by the gentile on the property of a Jew. However, if the gentile left it in the care of Jew, meaning that the Jew is liable for theft or loss, there would be a violation of Bal Yeroeh. [See Pesachim 5b, Rashi, Todafof, Rambam Hil. Chometz Umatza 4,3, etc.]

(B) Chometz Sheavar Alav Hapesach

Scripturally all Chometz is permitted after Pesach regardless of whose possession it was in on Pesach. However, it is Rabbinically forbidden to benefit from any Chometz that was in the possession of a Jew during Pesach, even if he did not intentionally violate Bal Yeroeh and even if it was beyond his control - *Oness*. The reason for this Rabbinic ordinance is to encourage people to destroy their Chometz

and not to keep it until after Pesach when they will be allowed to use it. [See Pesachim 29a, Rambam Hil. Chometz 1,4. Mishneh Berurah 443,9 and Biur Halacha.]

If, therefore, someone acquires Chometz during Pesach and keeps it in his possession for later use, one may not benefit from it after Pesach. So, in our case, if the acquisition is ruled valid in Jewish law, the goods delivered cannot be sold.

(C) Acquiring Chometz on Pesach

If the Chometz being delivered has not been paid for, then the Chometz is transferred into the possession of the Jew on Pesach with the delivery. In this case, the Jew will then be in violation of Bal Yeroeh. In fact, the act of acquisition will be considered a violation of this Scriptural commandment. There are various methods of acquiring something, called *Kinyanim*, which are all demonstrations of ownership. The Kinyan being used in our case is *Kinyan Chatzero* - his property completes the transaction. This means that anything placed in one's yard can become his without an active Kinyan such as picking it up. If he is present and standing on his property at the time of the delivery, then his Chatzer makes the Kinyan for him. [See Bava Metziah 12a.]

There is, however, a question whether it is at all possible to acquire Chometz on Pesach. It is forbidden to derive any benefit from Chometz, therefore one cannot take possession of it because it is impossible to say he owns it. Ownership, in Jewish law, must give the owner exclusive rights to use. If someone cannot use something, his ownership is meaningless. It should be impossible to violate Bal Yeroeh even with one's own Chometz since its uselessness deems it not his own. Nonetheless the Torah considers it in one's possession since he did not destroy it. However, if it was not his when Pesach began, how can he gain possession of it on Pesach? [See Pesachim 6b-7a. Rambam Hil. Chometz Umatzo 1,3.]

One resolution to this is to say that since the Torah considers the previously owned Chometz as belonging to the person with regard to violating Bal Yeroeh, one can also gain possession of it on Pesach with regard to Bal Yeroeh. [See Noda Biyehuda Vol 1 O.C. No 19.] Another explanation is that when buying the Chometz on Pesach from a gentile, it does have a selling value in the hands of the gentile. It also has a value for the Jew since he can wait until after Pesach to make his purchase. It, therefore, is considered of value until the purchase is complete, and it is fully owned by the Jew. Only then does it become forbidden and, thus, valueless. [See Or Sameach Hil. Chometz 1,3 and Marcheshes 1,2 quoting Ran, Avoda Zora.]

Accordingly, if the Chometz in question was purchased from a gentile, the transaction could be valid, and the purchaser in violation of Bal Yeroeh. (If it is purchased from a Jew, the transaction might not be valid, freeing the purchaser of Bal Yeroeh, but the Chometz is anyway forbidden because the seller violated Bal Yeroeh.) However, in order for the transaction to be valid, the Jew must make a valid Kinyan. We have already discussed Kinyan Chatzer, meaning that accepting the delivery in question would be a sufficient Kinyan. There is a dispute whether or not a Kinyan Chatzer can take effect for Chometz on Pesach since clear consent might be necessary, and the purchaser would definitely not give consent where he will be unable to benefit. According to the lenient view, the only way one is able to effect a Kinyan on Chometz on Pesach is with an active Kinyan, or with the passive Kinyan Chatzer, but with positive consent to take possession. [See Noda Biyehuda Vol 1 O.C. No 19 citing Masas Binyomin. See Shul. Aruch O.C. 448,2. Taz and

Magen Avrohom.]

The fact that the purchaser ordered these goods and does want to take delivery at some time does not amount to consent to make a Kinyan with his Chatzer specifically since he obviously does not want to acquire it now. However, if he is careful to have it placed in a particular part of his property, this shows his consent to accept the delivery and deems the Kinyan Chatzer valid. It is, therefore, necessary, in this case, to be very clear at the time of the delivery that he does not intend to take delivery until after Pesach, and he should not pay or sign a receipt. If, for example, he says clearly, "I take no responsibility ... until....", he may even tell the deliverer where to place the Chometz. If the Chometz is still left on his property against his wishes, he is free of the problem of Bal Yeroeh and may make a valid Kinyan after Pesach, and then make use of the Chometz. Until Pesach is over, he should cover the Chometz or erect a partition to conceal it, and it is considered the Chometz of a gentile since he made clear that he is not liable for it. [See Shul. Aruch O.C. 448,2 Mishneh Berurah 5-6, Shaar Hatziyun 7.]

(D) Kinyan from a Gentile

In Scriptural terms, one of the valid Kinyanim is *Kesef* - currency. Many authorities consider paper money as currency. However, for reasons beyond our discussion, the Rabbis invalidated Kinyan Kesef when both parties are Jewish. When a gentile is making the acquisition, Kesef is still a valid Kinyan; in fact, it might be the only valid Kinyan. If a Jew is acquiring something from a gentile, many authorities say that the Kinyan is completed with the payment of cash currency. [See Bechoros 13a-b. Poskim, and a summary in Biur Hagra Choshen Mishpat 194,11]

In our case, the purchaser had paid for the items in advance. If he had paid cash, then we could technically assume that they were his before delivery, and he was already in violation of Bal Yeroeh. If, however, he did not pay cash, but by a check or credit card, and certainly if he made a telephone order using a credit card number, there was no Kinyan Kesef. Nonetheless, any Kinyan that is recognized by the Government as legally binding is also considered valid in Jewish law. Accordingly, regardless of how he had paid, he has made a Kinyan. Delaying the effect of the Kinyan to the time of delivery, either by making the original Kinyan at the purchase contingent on delivery or by stating that one does not wish to acquire it at the purchase, only at the time of delivery, might mean that a second Kinyan at delivery is necessary. [See Bava Basra 74a. See Kidushin 59-60 Kesubos 82a, 86b, etc.] However, since the purchase is being made from a gentile, it is possible that the Kinyan Kesef of the Jew is not complete until he makes another Kinyan of his own and therefore he does not yet own the Chometz. This cannot be relied on without a careful, thorough investigation into the nature of the transaction. [See Bava Basra 54b. Shul. Aruch Choshen Mishpat 194,2-3. Sma, Shach, Biur Hagra, Nesivos, Mishneh Berurah 448,19 (end), Shaar Hatziyun 56.]

(E) Davar Shelo Ba Laolam

If a valid Kinyan took place at the time of purchase, and this was before Pesach, the Jew may sell the items with the rest of his Chometz to a gentile before Pesach as is customary. However, in Jewish law, one may not make a transaction on something that is not in existence yet, but is being sold so that when it does come into existence it will belong to the buyer. Likewise, one cannot sell something which is not yet in one's possession even though he is sure that it will come into his

possession later. This is because it is not possible to give full consent to a transaction unless one is clear about the article in question, and without consent the transaction is not valid. If, therefore, there was no valid Kinyan at the time of purchase the Jew does not own the Chometz until he accepts delivery, and cannot include it in the Chometz he sells to the gentile before he makes his own valid Kinyan.[See Bava Metzia 16a-b. Shulchan Aruch Choshen Mishpat 210. Mishneh Berurah as above.]

(F) Disposal of Chometz Which One Does Not Own

In the event that the Jew is unwilling to accept the delivery we have already detailed in section C what he must do. If Chometz is delivered in the mail as a free sample, one must be careful not to show that he is willing to accept delivery and follow the instructions in section C. If Chometz belonging a gentile neighbor was mistakenly delivered to a Jew, the Jew should push it out of his property with a stick. He should not handle it directly because he might eat it unwittingly. [See Shul. Aruch. O.C. 446,3, 440,2 and commentaries.]

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ANNOUNCEMENTS

SCHEDULE:

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| SHABBOS MINCHA | 7:40 PM |
| SHACHARIS SUNDAY | 8:00 AM |
| SHACHARIS MONDAY - FRIDAY | 7:00 AM |
| MINCHA SUNDAY - THURSDAY | 7:55 PM |
| CANDLE-LIGHTING SAZRIA-METZORA | 7:49 PM |
| MINCHA EREV SHABBOS SAZRIA-METZORA | 7:00 PM |

SHIURIM:

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| GEMORO MAKOS | SUNDAY 7:15 AM |
| HALACHA B'IYUN | MONDAY 9:00 PM |
| HILCHOS SHABBOS | SHABBOS 8:15 AM |

This issue of HALOCHOSCOPE has been sponsored by Mr. Zishe Gutman in memory of his father, R. Tzvi Yehuda ben Efraim, z"l, whose Yorzite was on the 23rd of Nissan.

Any and all comments and suggestions are welcome and can be addressed to :
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