

PE

HOSCHAH

Someone has *Chameitz* in long term storage, together with all of his other household possessions. He can not access the items in storage unless he is willing to take delivery of the entire container. He does not plan to take delivery before *Pesach*. May he sell the *Chameitz* to a gentile for the duration of *Pesach*, even though he will not be able to provide the access to it? Must he sell the entire container, or may he sell just the *Chameitz* as a separate entity? Is it possible that since he does not have access himself, and the storage company is responsible for it, that he need not sell it? Is it possible for the owner to disown it (make it *Hefker*) before *Pesach* and then to retake possession of it after *Pesach*?

The issues:

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

(B) Allowing access to the buyer

(A) Owning *Chameitz* on *Pesach*; Sale of *Chameitz*

It is forbidden to possess *Chameitz* on *Pesach*. This is included in two *Mitzvos*, *Bal Yera'eh*, it may not be seen, and *Bal Yimatzei*, it may not be found. One may not conceal *Chameitz* 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*. There is also a positive *Mitzvah* to destroy *Chameitz* in one's possession, *Tashbisu*. One who possesses *Chameitz* is in automatic violation of this *Mitzvah* as well.

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. The prohibitions against eating and benefiting begin Erev *Pesach* at midday. Rabbinically, this is moved up to one seasonal hour (twelfth of the daylight) earlier for benefiting and two hours earlier for eating. Thus, one must dispose of his *Chameitz* by noon on Erev *Pesach*, and Rabbinically by one seasonal hour before noon.

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* in this case would also be suspect, since he is probably not sincere about considering his inventory "nullified like dust". He 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 as a gift and buy it back after Pesach. In this case, it is not suggested that the Jew 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. In this case, he may actually ask the gentile to buy more of his Chametz even 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.

Some people are hesitant about using this method for disposing of personal Chametz today. 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 there are many products that last a long time in storage. It is also relied on for the less stringent forms of Chametz where other forms of Chametz disposal are difficult. However, there are cases where it is not recommended at all. For example, it is not recommended to sell ones animals to a gentile while keeping them at home on the property of a Jew, in order to feed them Chametz. This way the Jew will not be benefitting from the Chametz. This sale with all of its ramifications poses problems, including the presence of Chametz on the property of the Jew in its usual way. It is not even recommended to sell the animal to the gentile to be fed on his property, if it is known that he will feed it Chametz. Only in cases where there is really no alternative is this done, and then, on certain conditions.

A Jew's Chameitz is in the possession of a gentile might be included in the prohibition. The Talmud describes a situation where the Jew had liened Chameitz to a gentile as security for a loan. If the gentile took the Chameitz into his possession, the Jew is not accountable for possessing it. The Poskim then discuss a reference to an exemption for any Chameitz of a Jew in the possession of a gentile. If

the gentile accepted liability, some Poskim imply that the Jew is not held accountable. However, others maintain that this source also refers to liened Chameitz in the gentile's home. Thus, a Jew's Chameitz in the safekeeping of a gentile's property is included in the prohibition. We follow the second view.

In our case, to fulfill *Tashbisu* one would have to take delivery of the entire container, remove the Chameitz and destroy it. Doing nothing will mean that the owner will violate the Mitzvos forbidding possession of Chameitz. Declaring it Hefker will be discussed later. The amount of Chameitz is substantial, having been stockpiled because of its special kosher status. Sale seems to be the ideal way to avoid having the Chameitz in the possession of the Jewish owner. [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. 7, commentaries.]

(B) Providing access

When selling Chameitz the transaction must be binding according to Torah law and legally binding according to the secular law. While the actual transaction has the appearance of a legal fiction, if it were so the Jew would be in violation of *Bal Yera'eh*. Therefore, all matters, including the acts of acquisition, documentation, and procedure are done according to strict formulae. A deposit is given, with the understanding that if the gentile chooses to take delivery of all the Chameitz after Pesach, the full value will be assessed. No mention is made of annulling the sale after Pesach, nor of buying it back, until the transaction is completed.

Normally, a gentile's Chameitz may remain on the property of a Jew throughout Pesach, provided the Jew does not accept liability. A special corner is designated for it. To avoid the temptation to eat it, the Jew must erect a partition around it, or keep it locked up, or at least tape a prominent reminder on it. In this case, the Poskim say that the Chameitz must be removed from the Jew's property. Some say that this is to fulfill one of the acts of acquisition, which requires one to take the object acquired out of the property of the seller. However, others say that it is rather to remove the appearance of a merely symbolic act. Since the gentile knows the true nature of the transaction, if the Chameitz is left in the possession of the Jew the sale has the appearance of a mere formality.

If the Chameitz is too much to move around this way, the Poskim say that the Jew should sell the room or space where it is stored to the gentile. However, the gentile must be given a key to the room, or told clearly that at any time he has the right to come to his room to retrieve his Chameitz. If any type of seal is placed on the room before the sale it invalidates the entire transaction. This is because the

object of the sale is to show that the Jew does not want the Chameitz in his possession such that he will be in violation of Bal Yera'eh. He demonstrates the opposite intent by sealing it up. In fact, this makes it look more like a phoney sale. However, if the sale is formalized in the prescribed fashion, the Poskim say that it is still valid. Nonetheless, it is forbidden to place a seal on the room, even after the sale has been transacted.

This raises a serious question in our case. The Chameitz is stored in a way that the gentile is automatically denied access. The storage company will not relax its security unless the Jew asks for the entire delivery. It is possible that the following procedure would resolve the issue. The Jew could sell the entire container, with all pertinent rights, to the gentile, then buy back the non-Chameitz items. However, apart from the obvious difficulty in the transaction, the eating utensils might then require Tevilah, ritual immersion, again.

Since the true issue of not handing over a key is that the sale looks phoney, the Poskim maintain that in some cases there is no need to hand over a key. If one is not home and sells his Chameitz to a gentile without giving him the key, there is no appearance of impropriety. Similarly, if one loses his key, he can not be faulted for not allowing the gentile free access. In our case, the seller wishes to hand over all rights he possesses in the Chameitz. Thus whatever claims he has on the storage he willingly gives to the gentile. If this is made clear at the time of sale, even if it is only included in the documentation, it can not be considered a phoney sale. Therefore, in our case it would appear that the inaccessibility is not an issue, since it is not the fault of the seller.

This method of sale is preferred to the method of declaring it Hefker before Pesach only to reclaim after Pesach. The Yerushalmi actually debates whether this is a clear case of legal fiction, which will not work. The Poskim also debate whether this method may be relied on in emergencies, including when the Chameitz is inaccessible for destruction, such as on a ship. Many Poskim maintain that even after making it Hefker, one is still Rabbinically obliged to destroy it. Therefore it is better to include this Chameitz in one's regular sale. One should add a stipulation to the effect that he wishes to transfer all rights that he has, including the space for which he is paying. [See Tur Sh. Ar. O.C. 448:3, commentaries. Sdei Chemed Chameitz Umatza 5:17, 9:9 27.]