

HALOCHOSCOPE



This week's question: [Rerun of Halochoscope XIV:24]

Is it inappropriate to use a secular date on a *shtar*, document, used for *mechiras chametz*, the sale of one's leaven to a gentile? What if the actual document is handed to the gentile?

The issues:

- A) Possession of *chametz* on *Pesach*; sale of *chametz*
- B) The *Harsha'ah*, authorization of a *Rav* to sell one's *chametz*
- C) *Chukas hagoy*, following the customs of the heathens; other *halachic* issues
- D) Precision in the language of a document

A) Sale of Chametz

Possession of *chametz* during *Pesach* involves two Scriptural *mitzvos*: *bal yaira'eh*, it may not be seen, and *bal yimatzei*, it may not be found. One may not conceal *chametz* on his property or leave it in the care of a gentile off his property. This does not apply to *chametz* of a gentile that is left on the property of a Jew. If the Jew is a guardian, liable for theft or loss, there is a violation of *bal yaira'eh*. Possessing *chametz* is also an automatic violation of the positive *mitzvah* to destroy one's *chametz*, or *tashbisu*. *Chametz* in a Jew's possession during *Pesach* is forbidden to benefit from after *Pesach*. This is a Rabbinically imposed penalty. Consequently, one must destroy all *chametz* before *Pesach*, or remove it from his possession by giving it away, selling it or declaring it *hefker*, disowning it. According to the Talmudic view that we follow, during *Pesach*, *chametz* is forbidden to benefit from, Scripturally. This restricts one from selling it. The transaction to remove the *chametz* must take effect before the time that it is forbidden. Practically, this is one seasonal hour before noon on *Erev Pesach*.

Destroying *chametz* is the most definitive way to dispose of it. This fulfills *tashbisu*. Some maintain that *bitul*, nullifying it, and even making it *hefker*, is also a form of *tashbisu*. [Some say *bitul* takes effect through the mechanism of *hefker*.] A merchant with large amounts of *chametz* will not want to destroy it or to declare it *hefker*. His *bitul* would be suspect; he could not sincerely consider his inventory 'nullified like the dust of the earth'. Furthermore, if one made *chametz hefker* or *batel*, its benefit is forbidden after *Pesach*. This additional measure is imposed Rabbinically to prevent abuse of the *bitul* concept. People might pretend *bitul* to keep *chametz* in their possession during *Pesach*.

The merchant may sell his *chametz* to a gentile, who may possess it on *Pesach*. The *chametz* remains on the property of the Jew, but it is transferred to the possession of the gentile. The sources of this practice are two passages in the Talmud. In the first, a Jew is traveling on a ship, presumable accompanying his merchandise, though this is not self-evident. He is in no position to sell it all regularly. He cannot burn his personal *chametz*,

especially if he will need it later in his voyage. He may sell his *chametz* to a gentile accompanying him, or give it as a gift and buy it back after *Pesach*. He should not indicate that he intends to buy it back. [This might be self-evident, but it should not be stated, as though it were a condition of the sale. Doing so would make the sale look insincere.] In the second case, a Jew is anyway selling *chametz* to a gentile customer. He may ask the customer to buy more *chametz* than he needs, so that the Jew may buy it back from him after *Pesach*. However, he may not make the sale conditional on this.

Nowadays, the *chametz* is sold using various forms of *kinyan*, *halachic* transfer. In addition, the space on which it is located is rented to the gentile. This way, the *chametz* is no longer on the Jew's property. This transaction also helps with the sale of the *chametz*, as the gentile can acquire it through his *chatzer*. It is like delivering it into his possession. Furthermore, the transaction on the real estate can roll over onto the *chametz* as an additional form of *kinyan*. The transaction looks a ritual formality, but a valid solution, especially for large amounts, such as the inventory of a merchant. This is helpful when food is held in storage for long periods or where disposal in other ways is difficult. The sale stipulates that the Jew does not remain guardian of the *chametz* of the gentile, for the reasons explained above. The gentile begins payment with a nominal deposit, but the essence of the sale is the transfer of ownership. [See Psachim 4b-5b 11b-13b 21a-b 27b-30a Tosefta 2:6-7, Poskim. Tur Sh Ar OC 441:4 443 445 448: esp. 5 7, commentaries.]

B) Harsha'ah

To effect this sale, the seller and the buyer are required to perform a *kinyan*, act of *halachic* transaction, with the consent of both parties. It is important that the seller is aware of the *halachic* process. It is usually left to the town's *Bais Din*, or to a *Rav*, who acts on behalf of others who designate him. Delegating another to effect a change in *halachic* status is known as *shlichus*, agency. An agent is usually appointed with a simple instruction. A simple *shliach* lacks ability to do something with someone else's property unless he is given a nominal right to the property itself. In the event that the gentile will indeed choose to take full delivery of the *chametz*, the full price will need to be decided by the seller. The *Rav* or *Bais Din* will also be drawing up a proper contract of sorts.

To authorize an agent for such transactions, one prepares a *harsha'ah*, a limited power of attorney. The seller contracts the *Rav* to prepare his contract and to do whatever it will take to complete it. He gives permission and full power to the *Rav*, and agrees to abide by his decision. The *harshaos* detail the items sold and their location. An approximate value is given, so the gentile can calculate this from the documents that are later handed to him. The *Rav* will prepare a separate sale contract, to include whatever he has been authorized to sell in the accompanying *harsha'ah*.

An additional reason is given for this *harsha'ah*. The gentile will not pay in full, and the Jew will still have the *chametz* in his possession. This might not have enough validity to save the Jew from violating. By transferring the right to sell the *chametz* to a different Jew, the first Jew is relieved of his violation. The second Jew never owned the *chametz*. He is not liable for the amount over and above the value of the initial part-payment.

To validate the *harsh'ah* contract, a *kinyan sudar* is made. The *Rav* gives the seller a

utensil, which is then returned to the *Rav*. This is not the sale, but solidifies the resolve of the parties to go through with the transaction. This known as *gemiras da'as*. All real *kinyanim* amount to *gemiras da'as* to transfer the ownership from the one party to the other. The optimum form of such *gemiras da'as* is the *kinyan sudar*. Therefore, it is utilized for all other situations where a commitment needs to be reinforced. The *kinyan* also binds the *Rav* to go through with the sale, and absolves the seller of his liability for the *chametz* remaining in his possession. [See Baba Kama 70a, Poskim. Tur, Sh Ar OC 448, CM 122-3 etc., commentaries. SA Harav, Mechiras Chametz. R Eider XI:A8:10, notes.]

C) Chukas hagoy and other issues

We count years from creation, beginning at *Rosh Hashanah*. Months are counted from *Nissan*, the first month and so on. Using a secular date implies that the counting is connected to the deity. This is historically incorrect. In Talmudic tradition the *Notzri* lived more than one hundred years prior to the year 0. Someone else who claimed to be his reincarnation was actually born four years before the secular year 0. Some say that rather, when Rome took power over Israel, Jewish documents began counting from their rule. Later, when the church took over the Roman empire, they conveniently incorporated this as their counting method. At this point, the Rabbis no longer saw it as a courtesy to a ruling power. Jewish documents switched to counting from Creation. Some say that this makes using the Roman calendar worse. It demonstrates shame to identify with Judaism. It touches on *chukas hagoy*, following gentile customs, especially those that have religious connotations. Furthermore, while historians know the truth, the average person identifies the year with the deity. This could violate the Scriptural prohibition against causing the name of an idol to be mentioned. In modern times, most gentiles only make the connection to the deity at certain times of year. Is this a violation?

A secular date does not arouse religious thoughts, but saying: 'according to the C-counting' could arouse thoughts of the deity. The poskim suggest that if one mentions it, he should use the generic 'their counting' or the words 'secular counting'. In many letters written by great Rabbis, the secular year is used, but without connecting it to a religion.

Some poskim maintain that there is a Scriptural *mitzvah*, never to use a monthly count that begins at any month other than *Nissan*. This is to remember the month of the Exodus. Writing a number for the month corresponding to the secular count, touches on this violation. Using the name of the month could invoke deities. [Incidentally, names of the days of the week invoke deities. In addition, one should remember *Shabbos* throughout the week, counting the days towards it. In secular documents, the day of the week is usually omitted. Jewish documents use the day number.] Some months are named after Roman heroes or are actually numbers, using March as the first month – close to the way we count them as well. Thus, some maintain that it is better to use the name of the month, when the need arises, while others prefer the number. Many maintain that the requirement to count months from *Nissan* is solely for the sake of fixing the holidays. It has no bearing on writing dates and is not connected to remembering the Exodus.

In summary, it is preferable to avoid using a secular date in a Jewish letter or document. However, those who use these dates have the backing of various poskim. [See Bo

12:2, Ramban, Chasam Sofer etc. Ikarim 3:16. Hakosaiv, Ein Yaakov, Megillah 2a. Sefer Hamitzvos RSG 56, RYF Perla. Maharik YD 171. Yabia Omer III:YD:9. Avnei Yashpeh I:193. Tzitz Eliezer VIII:8.]

D) Precision in the language of a document

One of the *kinyanim* used is *shtar*, documentation. This works for the real estate, and by way of secular law, on the *chametz* as well. In general, such a document requires a date. This will be used, in the case of sale, if the property is seized to cover a debt. In the case of rental, it determines the liabilities of the parties on the said dates.

A document may be written in any language. Its language must be precise, with no ambiguity or a writing style that leaves room to suspect that it was altered after the signing. The witnesses must understand the document. The Talmud discusses whether they must be able to read it, or whether an expert may read it for them before they proceed with the transaction. The consensus is that it may be read to the parties by two witnesses. If it is made in the presence of the *Rav*, who is also a signatory, the preparer of the document may read it. If the parties themselves sign it, they are not required to read it. If they want to sign it without knowing what is in it, they are free to accept that liability. In our case, the documents are often in Hebrew, that the gentile buyer does not understand. Nonetheless, it is explained before the transaction. If it is written in English, there is a case to require a secular date, in order to provide precision.

The *harshaos* are also given to the gentile, since he needs the information about the individual sellers' *chametz*. They document the *Rav's* power of attorney according to the secular local law as well. Therefore, the document must fulfill the requirements of a valid document in *halacha*. One would want to use the secular date for the benefit of the gentile, while avoiding the *halachic* pitfalls mentioned earlier.

The gentile is aware of the *halachic* nature of the transaction. He understands that it takes effect on Passover Eve. Though this is not a secular date, it can be reconciled with one should the need arise. Gentiles use the Eve of their holidays as a date. However, mentioning this term could actually invoke thoughts of his deity in connection with his holidays. Furthermore, while explaining the dating system shows Jewish particularism, it also causes the gentile to think of deities. It might be better to use the secular date, without getting into any complications. It will be fully understood as a standard business date, and will obviate the need to explain too much. It fulfills the requirement to use precise language. It satisfies the most *halachic* opinions as well. It is best to use it only once, as is customary when signing. [See Gitin 19b Baba Basra 171 (Rashbam t'r), Poskim. Tur Sh Ar CM 42:2 43:1-5 45:2 191 EH 126:1 21, commentaries. Mishpat Hakesuba 11.]

In conclusion, the secular date should appear one time on the documents.

On the parsha ... On the eighth day ... today Hashem will appear to you. [9:1 4] Rosh Chodesh Nissan [Rashi] [There is a Talmudic opinion that it was the eighth of Nissan.] Dates are used in context. This day of divine presence is dated by the seven preparatory days, rather than Nissan.

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