

HALOCHOSCOPE

This week's question:

A special education teacher is responsible to help his students eat lunch. He has mostly non-Jewish children in his class. On *Chol Hamoed Pesach*, may he help a student eat her *chametz* lunch? This student cannot eat it by herself.

The issues:

- A) Possession of *chametz*; *chametz* of a *nochri*, non-Jew
 - B) *Tiltul shema yavo le'achlo*, touching or moving *chametz* on *Pesach*
 - C) *Hana'ah*, benefit from *chametz*; *rotzeh bekiyumo*, vested interest
- A) Possession of *chametz*; *chametz* of a *nochri*, non-Jew

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*. If *chametz* is given to a gentile by a Jew, perhaps as a security for a loan, terms of the security and of default are also taken into account. Selling *chametz* before *Pesach* must be done in a way that the seller has no liability for it. Whether it is on their property or the property on which the *chametz* is present is also transferred must also be taken into account. If a gentile stores *chametz* on the property of a Jew, one must prevent it from being eaten inadvertently. Ideally, a partition should be erected.

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 Rabbinically forbidden to benefit from after *Pesach*. Consequently, one must destroy all *chametz* before *Pesach* or remove it from his possession by giving it away, selling it or disowning it. We follow the Talmudic view that it is Scripturally forbidden to benefit from *chametz* during *Pesach*. 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 disowning it is also a form of *tashbisu*. [Some say *bitul* takes effect through the mechanism of *hefker*.]

None of this is relevant in our case. The teacher is not at home. The *chametz* is never in his property. Even if a *nochri* brings *chametz* into the property of a Jew, there is no restriction on the *nochri* eating it there. It is always a good idea to take precautions to avoid any of it being left behind. One should avoid any *chametz* getting mixed with *Pesach* food or utensils. However, one need not erect a partition for the short period that the

nochri is in the home. The partition is needed when the nochri deposits it in the home for any length of time. [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 7 450:6-7, commentaries.]

B) *Shema yavo le'achlo*

In our case, the issue is not whether the teacher is in violation of *bal yaird'eh*, nor the regular issues with eating. One may not eat at the same table with a *nochri*, because there is concern that the Jew might eat some of the *nochri's chametz*. When the Jew is not eating, he may sit next to the *nochri*. The Talmud debates whether it is advisable to search for *chametz* on *Pesach*. The concern is that if one finds *chametz* he might end up eating it. The lenient view maintains that one preoccupied in searching to destroy it will not come to eat it. The implication is that if one is not intent on destroying it, he may not handle the *chametz*. A practical case is when *chametz* that belongs to a non-Jew falls onto the property of a Jew, he should not pick it up and return it to the non-Jew's property. He should push it with a stick.

Based on this concern, the poskim debate whether a bartender's supervisor in a gentile's bar could be employed on *Pesach*. If he is in the habit of taking some beer throughout the year, and paying for it, he might do the same on *Pesach*. The Talmud raises this issue even if the *chametz* is out of reach, and whether there is a concern that one might bring a ladder. Assuming that we are not so concerned with *chametz* out of reach, if it is easily within reach there is a concern. Even out of reach, there is concern that it might fall down within reach. Therefore, one must bring a ladder to remove and destroy it.

It becomes more problematic if the Jewish employee has to handle the *chametz* directly. If he does not have to handle the *chametz*, but is told that it is not his department, his status is no different than that of a Jew looking at the *chametz* of a gentile. If the Jew is watching it for him, or keeping it safe on his property, he must build a partition so he does not see it. If the gentile is present with the *chametz*, the Jew need not build a partition. In our case, if there is another employee responsible for the *chametz*, the Jewish teacher may look at it, but should not handle it. The poskim suggest that the supervisor in the bar should have another observant Jew accompany him to remind him not to drink. This is practically not feasible in our case.

This issue is more stringent for a Jewish owned store. The owner may not sell forbidden food items, even if they are not *assur behana'ah*. One reason is that he might come to eat them, or that the onlookers will suspect him of eating them. Both concerns should apply to the teacher in our case. Perhaps there are regulations about eating the food of the students. All of this raises the issue of *tiltul*. We are used to thinking of *muktzeh* on *Shabbos*, but the basic idea includes the concern that one might come to use the item in his hands; in the case of *Shabbos*, a *melacha*; in the case of *chametz*, he might come to eat it. *Muktzeh* means that anything that has no permissible use is forbidden to pick up and move around. One may pick up *chametz* to destroy it on *Pesach*. If one finds it on *Yomtov*, he may not burn it then. He must wait until *Chol Hamoed*. On *Yomtov*, he may not move it to a safe place, because it is *muktzeh*. In this case, it happens to be worse, because there is a *melacha* involved, burning for no permissible food preparation

purposes. On *Chol Hamoed*, this does not apply. However, one may not handle the *chametz* for other purposes, which invariably include the need to use it in some way. In our case, this is obviously true. [See Shevi'is 7:3-4 Psachim 6a 10b-11a, Poskim. Tur Sh Ar OC 438:2 440:3 443:2 446:1 3 YD 117:1, commentaries. Refs to last section. Shaar Efraim 7. Nitei Gavriel *Pesach* I:56:7-8.]

C) *Hana'ah, benefit from chametz; rotzeh bekiyumo, vested interest*

Benefiting from *chametz* is forbidden in many forms. Direct benefit includes use as a salve, such as an oatmeal patch. It also includes using *chametz* as fuel to cook with, if it is burned on *Pesach*. In a mixture, *chametz* can be made into starch or glue. Inedible items include inedible pure *chametz*, inedible *chametz* in a mixture, or edible *chametz* in an inedible mixture. Indirect benefit includes benefiting from feeding the *chametz* to animals. This includes animals belonging to the Jew, or even other animals. One benefits from seeing the animal fed. The *chametz* need not belong to the Jew. One may not benefit from a non-Jew's *chametz*. This seems to be the biggest issue in our case.

One may not earn money or profit from *issurei hana'ah*. The classic case discussed by the Talmud is working for a non-Jew who produces or sells forbidden wine. This comes in two forms. *Yayin nesech* is wine that was used in service of *avoda zara*, idolatry. The worshiper takes a small amount of wine, dedicates it to his god, and pours it back. Benefit from this is forbidden Scripturally. *Stam yainam* is wine of any gentile. It is also forbidden, Rabbinically, but its status is less stringent. In both cases, the Talmud forbids benefit from the wages earned from working with it. It would obviously be forbidden to do the work. While employed, the Jew would be *rotzeh bekiyumo*, interested in the wine being protected from damage or loss. This is also a form of benefit. Based on this, many other forms of indirect benefit are forbidden as well. Thus, there are two issues, often overlapping: *rotzeh bekiyumo* and *mistakair be'isurei hana'ah*.

This leads to discussion about a Jew working for a gentile who may possess *chametz* himself, to work with the non-Jew's *chametz*. The Jew would be gaining financially from the *chametz*. While employed, he is *rotzeh bekiyumo*. The question is whether he may do the work, and if he did so, whether he may accept his payment, and if he already accepted it, whether he may keep the earnings. The poskim debate whether the prohibition of *mistakair* applies to other *isurei hana'ah*, such as *chametz on Pesach*, or only to those associated with idolatry. We generally follow the stringent view.

Various situations are debated by the poskim. In one, is a Jewish owned oven is hired out to bakers. Non-Jews used it on *Pesach*. Usually, they pay in bread. A non-Jewish manager accepted bread on *Pesach* and brought it to the Jew after *Pesach*. This is forbidden. It is considered transferred to the possession of the Jew on *Pesach*. If the manager brought money, it is also forbidden to accept it. This would be considered *mistakair be'isur hana'ah*. However, if he already took the money from the manager, he may keep it. The restriction is against doing the activity to profit from the *issur*. Unlike money traded for *chametz*, this money does not become forbidden. The Talmud imposes a special restriction on earnings from *yayin nesech*, but does not from other *isurei hana'ah*.

A Jew may not rent his pot to a non-Jew to cook *chametz*. The Jew gains from the

chametz in money and in ensuring that the pot does not dry out and crack. If, however, he rents a pot or oven to a gentile to cook in it, and specifies that he should only cook *matzo*, but the gentile cooked *chametz*, the Jew may accept the money. He did not actively try to profit from *chametz*. Furthermore, the gentile would have had to pay for renting the pot even if he did not use it at all. The Jew is not gaining from the *chametz* specifically. Similarly, one may give money to his employee to purchase food, even though he knows the gentile will buy *chametz*. He may not tell him to take the food and put it on his employer's account. Some derive from this a leniency when money is being paid for other work together with the work on the *chametz*. This would be called *behavla'ah*, by combining it with the other earnings, one can say that he is earning it for a less specific job.

A Jewish manager may not purchase *chametz* for a non-Jewish owner. He is clearly *rotzeh bekiyumo*. In addition, *halachically*, a Jew cannot act as an agent for a non-Jew. Therefore, the *chametz* is transferred to the Jew first. He is in violation of *bal yair'a'eh*. This is one of the problems with the pre-*Pesach* sale that makes the owner into the agent.

We mentioned a case where the poskim discuss a Jewish manager supervising non-Jewish bartenders. Beer is purchased by a gentile, from a gentile owner, through a gentile server. The Jew's job is to take the money and to ensure that bartenders do not pilfer beer. Although this raises other issues, from the perspective of *rotzeh bekiyumo*, some poskim maintain that it is permissible. The Jew does nothing actively. Our case involves active participation. The case helps resolve a separate issue: since the teacher must perform this task as part of his work, he is being paid for this, *mistakair*. Just as the supervisor may be paid, the teacher may accept payment. It is considered absorbed in his general wages as a teacher. This is modeled on certain *halachos* of gaining from work on *Shabbos* as part of a larger unit of time. [See Psachim e.g., 6b-7a 21a-b 28-29 Avoda Zara 62a-b 63b-65a, Poskim. Tur Sh Ar OC 443:1-3 446 450:1-6 YD 133 326, commentaries. Sdei Chemed Chametz 1:14 15 18 21. Maadanei Shmuel 117:47-52. Shearim Hametzuyanim Bahalacha 117:note 17. Nitei Gavriel Pesach I:57:1-2 8, notes.]

In conclusion, if at all possible, the teacher should not feed the *chametz* to the student. If this is unavoidable, he should try to feed non-*chametz* at the same time. It might be advisable for the teacher to wear a face-mask while helping the child eat.

On the parsha ... He who sleeps (lies down) in the [stricken] house shall cleanse his clothing; he who eats in the house shall cleanse his clothing ... [14:47-48] Why are both sleeping and eating mentioned? Even if one sleeps without eating, his clothing is defiled. How long must he sleep there? As long as it takes to eat a prass, half-loaf. [Toras Kohanim]. The Torah could state: "anyone who stays in the house long enough to eat a *prass!*" Why repeat the statement and why use the example of one who sleeps there? One who is sleeping is definitely not eating. He is doing nothing at all. His clothing is still defiled by contact with the *tumah* of *negaim*. One should distance himself even from doing nothing in the presence of something forbidden.

Sponsored in memory of R Shmuel ben Asher Rosenthal z"l and his wife Yitele bas Hagaon R Yitzchok

Eitzik a"h, whose *yahrzeits* are on the 17th of Nissan. ם

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