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BAKE SALE:

Can a Transfer of Ownership Effect Biur Chametz?

Adapted from a shiur by Rav Yosef Greenwald

SELLING FOR TASHBISU

Mechiras chametz, the sale of *chametz* to a gentile before Pesach to avoid violating *bal yeira'eh uval yimatzei*, appears in the Mishna and Tosefta. But for most of Jewish history, it was employed only in exigent circumstances. Decrees in Europe four centuries ago that banned Jews from most professions led to a state where the Bach, writing in 1630s Poland, observed (O.C. 448:3) that most Jewish commerce was in liquor. As a pre-Pesach fire sale of a producer's entire inventory would mean financial ruin, the Bach permitted a distiller to sell his supply to a gentile before Pesach, without physical transfer, and then buy it back after Yom Tov—provided he also sold the warehouse and gave the buyer the key.

By two centuries ago, the current practice, in which selling *chametz* to a gentile through one's Rav is a standard part of Pesach preparations, was taking shape.

Despite this, we all still burn *chametz* on Erev Pesach. Why can't we employ *mechiras chametz* to fulfill the mitzva of *biur chametz*?

There is a dispute between Rabbi Yehuda and the *Chachamim* in the Mishna (Pesachim 21a) whether the mitzva of *tashbisu s'or mibataichem* requires burning, or if crumbling *chametz* and dispersing it in the wind or tossing it into the sea suffices. The basic Halacha follows the view of the *Chachamim* that any means of destruction is valid, although the *minhag* is that fire is preferred. (For this reason, when Erev Pesach falls on Shabbos, we flush *chametz* down the toilet.) Wouldn't a sale to a gentile also fulfill the mitzva?

The *Minchas Chinuch* (9) famously ponders whether one who owns no *chametz* must

acquire some in order to destroy it on Erev Pesach. Does *tashbisu* require an act of elimination, or simply that one not possess *chametz*? He concludes that the Torah mandates an act of *hashbasa*.

But does *hashbasa* require physical elimination, or would a legal act that removes the *chametz* from its owner's possession be effective?

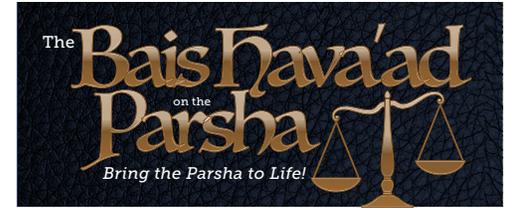
The *Rishonim* say that one could fulfill the mitzva of *tashbisu* with *bitul*. And they say—with the notable exception of the Ran—that *bitul* means making one's *chametz* ownerless.

So if *bitul*, wherein the *chametz* is untouched but its ownership is changed, constitutes *tashbisu*, why wouldn't selling it to a gentile qualify as well?

It would appear that the answer is this: *Tashbisu* requires that one treat his *chametz* as worthless, something he no longer values. (See, for example, the *bitul* formula, in which we declare that our *chametz* "should be *batei* and be ownerless like the dust of the earth.") Both physically destroying *chametz* and relinquishing ownership of it via pronouncement demonstrate that the *chametz* no longer holds value for its owner. But selling would indicate the opposite. Offering an item for sale shows that the seller values it and expects that others will do so as well. He sells his *chametz* to exchange it for another valuable commodity, money. One who sells his *chametz* certainly won't violate *bal yeira'eh uval yimatzei*, because he no longer owns it. But neither will he fulfill *tashbisu* if it requires an eliminative act.

The *Rashash* (Pesachim 21b) suggests that one could fulfill *tashbisu* on Erev Pesach by eating *chametz* and letting his gastric juices consume it. But we don't find that option mentioned by the *Rishonim* and *Acharonim*, and this could be the reason: Eating

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Medication on Pesach

What should one do if their medicine is not listed on the Kosher L'Pesach list?

If someone has a potentially life-threatening condition e.g. hypertension, diabetes, infection, asthma, stroke risk, cancer, psychiatric condition, etc. the *Poskim* maintain that one must take all their regular medication, whether it's a pill, liquid or chewable.

As far as owning the medicine, if it is *nifsal m'achilas adam* (unfit for human consumption) and it is just a mixture, there is no issue of *bal yerae*. If it is a syrup or chewable tablet, one should consult a Rav as to the best way to minimize the problem of owning *Chometz* on Pesach.

All prescription medication in the pill form may be taken as usual even for a *choleh she'ein bo sakana*. [i.e. One who is bedridden, in debilitating pain, young children with any type of illness or discomfort, or other such illnesses that are not life threatening.]

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GENERAL HALACHA

PESACH ISSUES FROM THE MEDICAL HALACHA YOMIS SERIES

UNCONSCIOUS SALE

Should one sell the *chometz* of an unconscious patient? Is such a *mechira* valid?

A spouse or custodian can and should sell the *chometz* of an unconscious or demented patient.

The Poskim debate whether there is a need to sell an unconscious person's *chometz*. Some Poskim hold that the *chometz* of a patient who falls under the category of a *shoteh* does not become forbidden on Pesach. However, the Pri Megadim is in doubt about this, and some even hold that since it is possible to sell the patient's *chometz* - if the *chometz* wasn't sold - it is forbidden. Therefore, it is advisable to sell the patient's *chometz*.

With regards to the ability of selling someone else's *chometz*: although the sale is only meant to benefit the patient, there is a discussion whether the principle of *zachin l'adam shelo b'fanav* - one can do a transaction that is beneficial to his friend without his consent - also applies to selling or giving away the person's possessions. While the Gemara and Shulchan Aruch clearly state that one can and should sell his friend's *chometz* if it would otherwise become forbidden, that is referring to an ordinary sale where the goods are physically transferred to the buyer and a full payment is made upfront, not to our *mechiras chometz*. Furthermore, it is debatable whether some of the *Kinyanim* that are done at a *mechiras chometz* can be done via a *shlichus* for a *shotah*.



Therefore, the Poskim advise that it should be sold by a spouse or authorized custodian who have greater executive power over his estate as an *apotropos*.

DOCTOR'S ORDERS

Must one eat matzah, maror or drink wine if the doctor says that it may cause him to become ill without a threat to his life (*choleh she'ein bo sakana*)?

A: If there is only discomfort, one is obligated. If it will cause a more severe reaction, although it is likely one is still obligated; nevertheless, one should consult with a Rav for guidance.

The Shulchan Aruch rules that even if the wine causes someone harm or that he finds it repulsive, one must push himself to fulfill the mitzvah of *daled kosos*. The Mishna Berura writes that this is only if it will cause him headaches or other discomfort. If, however,

he will become ill and be bedridden, he is exempt.

In the Shaar HaTziyun he explains that the logic behind this is that it is not called *derech cheirus* - a manner of freedom. This logic would not seem to apply to matzah and maror. However, the Chelkas Yoav and others hold that one is exempt from all of these mitzvos if he will become ill. The Binyan Shlomo writes that one may not be *machmir* to partake of these items and cannot make a *bracha*, comparing it to a sick person sitting in the Sukkah. Other Poskim, such as Rav Shmuel Wosner and Rav Chaim P. Sheinberg are of the opinion that *mitztaer* is limited to the mitzvah of sitting in a Sukkah and is not applicable to any other *mitzvos aseh*. Therefore, one is obligated in matzah, maror and wine unless there is a question of *pikuach nefesh* as previously mentioned.

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MATTERS OF INTEREST

AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE:

THANKING THE LENDER

May the borrower thank the lender for the loan? May he greet him warmly upon meeting him in the street?

Does it make any difference if he thanked or greeted him during the life of the loan or afterward?

As discussed in the previous chapter, Chazal forbade the borrower to perform favors for the lender, even where there is no financial value to the favor. Thanking the lender is similarly prohibited, and is considered *ribbis devarim* (ribbis through words).

However, many *poskim* permit a simple "thank you," especially if the borrower explains that he is merely thanking for the effort involved.

Praising the lender or giving him a *mi she-beirach* or a *beracha* during the life of the



loan, however, is definitely *ribbis devarim*. It is very important to be aware of this.

The prohibition of greeting the lender has its source in a *Yerushalmi* which clearly states that this applies to one who had not been accustomed to greeting the lender before. Hence, one who is friendly with the lender and is accustomed to greeting him may continue to do so during the loan period.

Poskim permit the borrower to *return* the greeting if he was greeted by the lender *first*, even if he had not been accustomed to doing so before.

Common courtesies, such as holding a door open for the lender or telling him the time, are always permitted.

After one has repaid the loan, he may greet the lender even if he had *not* been accustomed to doing so before.

This is a special leniency in the area of *ribbis devarim*, namely, that it carries with it no prohibition of *ribbis me'ucheres*. The logic for this leniency is that otherwise no one would ever be allowed to greet someone who had lent them money, even after having paid up.

YOU DAILY LIVING

LAWS RELATED TO PESACH

Weekly Questions



On Pesach, can one use paper plates, paper towels and napkins that are not certified kosher for Pesach?

Paper plates, paper towels and napkins generally contain starch. Some forms of raw starch are *kitniyos*, such as corn starch, while other forms of starch, such as wheat starch, are actual *chametz*. In the U.S, it can safely be assumed that starch used in manufacturing is *kitniyos*, most probably corn-based. Though

one should not intentionally add *kitniyos* to food, with respect to paper goods this is not a concern because the starch that is part and parcel of the paper itself is *nifsal mei'achila* (inedible). (If paper goods contain wheat starch, the fact that it is *nifsal mei'achila* may not suffice to permit their use, see *Magen Avrohom* 442:4). Based on the above, in the US, one may use paper plates, paper towels and napkins even if not certified for Pesach.

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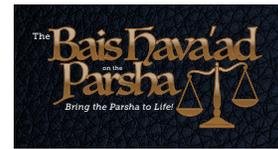
something does not demonstrate that one doesn't value it, it does the inverse.

A similar argument is made by the Chasam Sofer. The Tosefta (Pesachim 2:12) discusses the case of a man who finds himself on a ship before Pesach in possession of *chametz*. Were he to destroy his *chametz* provisions, he would starve before reaching land. The Tosefta says he should sell or gift it to a gentile passenger, but it adds the caveat (per the text of the *Geonim*) that one must not engage in pretense; the sale must be real. The Tevu'os Shor (Bechor Shor, Pesachim 21a) offers a novel understanding of contemporary *mechiras chametz*: It is indeed *ha'arama*, a pretense,

but because *bitul* eliminates the possibility of Biblical violation (Pesachim 4b, 10a), the prohibition of *chametz* is only *mideRabbanan*, and a *ha'arama*-based sale is sufficient on the *deRabbanan* level as a reinforcement of one's *bitul*. The Chasam Sofer rejects this understanding, arguing, as above, that the sentiment that underlies sale is the opposite of that behind *bitul*: *Bitul* means I *don't* value the *chametz*, selling means I *do*. The sale of one's *chametz*, far from fortifying his *bitul*, would undermine it.

May all of *Klal Yisrael* enjoy a *chag kasher v'samayach*.

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For liquid and chewable medication, one should obtain an alternative that's

approved for Pesach. If there is merely an issue of *kitniyos*, liquids and chewables are also permitted.

It is important not to discontinue taking any prescription medications including liquid or chewable, without consulting your doctor and Rav.

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DO DIABETIC SUPPLEMENTS HAVE TO BE KOSHER L'PESACH?

This and other similar questions were the subject of PESACH & PHARMACEUTICALS, a recent seminar hosted by the Bais HaVaad Medical Halacha Center in conjunction with the OU. Rabbi Gavriel Price, Rabbinic Coordinator for Ingredient Research, and Rabbi Moshe Elefant, Chief Operating Officer, at OU Kosher, presented the issues related identifying potential *chametz*-based ingredients in pharmaceuticals, dietary supplements, and vitamins.



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