Heichal Hora'ah

DEVAR HAMISHPAT BULLETIN

Clarifications in the Laws of Choshen Mishpat and Ribbis | #26 Nissan 5784



- Torah Thoughts for Pesach Based on the Maharal -

Throughout the year we regularly mention yetzias Mitzrayim, and many mitzvos we perform are zecher liyetzias Mitzrayim – to remember how Hashem took us out of Mitzrayim. But Pesach is singled out with its unique mitzvah of sipur yetzias Mitzrayim, to relate about yetzias Mitzrayim and not to suffice with merely remembering yetzias Mitzrayim. It could be, that the reason we are commanded to relate about yetzias Mitzrayim on Pesach, is to help us remember yetzias Mitzrayim throughout the year. By relating and knowing what happened at yetzias Mitzrayim, we can easily remember it the rest of the year.

This explains why the Haggadah text includes the Mishnah (Brachos 12b), אמר רבי אלעזר בן עזריה, הרי אני כבן שבעים שנה ולא זכיתי שתאמר יציאת מצרים בלילות עד שדרשה בן זומא, שנאמר למען תזכור את יום צאתך מארץ מצרים כל ימי חייך, ימי חייך – הימים, כל ימי חייך – הלילות - "Rebbi Elazar ben Azaryah said, I am approximately seventy years old, and although I have long held this opinion, I was never able to prove that there is an obligation to mention yetzias Mitzrayim at night, until Ben Zoma derived it from the passuk 'that you may remember the day you went out of the land of Egypt all the days of your life,' 'the days of your life,' refers to daytime, and the addition of 'all' comes to add nights as well." Why does the Haggadah bring this

Mishnah? It deals with the mitzvah of remembering yetzias Mitzrayim throughout the year and not with the mitzvah of relating about yetzias Mitzrayim which is pertinent to the night of Pesach! But as we explained, we relate about yetzias Mitzrayim on the night of Pesach so that we will be able to remember yetzias Mitzrayim throughout the year.

We must understand why the Yom Tov of Pesach was established, and why it is such an important aspect in Yidishkeit, that it is the basic of our emunah (see Ramban end of Bo, the whole basic of emunah depends on yetzias Mitzrayim). If it is to mark the day Bnei Yisrael became a nation and ascended from the lowest levels of tumah to the highest level of kabalas haTorah, that is what Shavuos is all about! And if it is to thank Hashem for saving us from slavery to freedom, in what way is Pesach any better than Chanukah or Purim which are also designated for the same reason of thanking Hashem for saving us.

The Maharal (Gevurot Hashem 4) explains, yetzias Mitzrayim was not a mere exodus from slavery to freedom, but that the Israelites then became a nation and new reality. As slaves in Egypt, their whole essence was slavery. A servant's hand has the same law as his master's hand, since his whole body is enslaved to his master without having an essence of his own. And although the Bnei Yisrael were descendants of the holy

>>> Continued on page 2

Editorial

With thanks and praise to Hashem, we present you with *chidushim* from our *beis medrash*, clarifying pertinent *halachos*.

Since we are approaching Pesach, we have dedicated this pamphlet to the halachos of selling chametz and related issues. As the Gemara writes in Sanhedrin כל הקורא פסוק בזמנו מביא טובה לעולם, שנאמר (101) ידבר בעתו מה טוב – "Whoever recites a passuk in its time brings goodness to the world, as it says how good is a word on time." Similarly, the Gemara in Eruvin (54) cites the passuk, פינה פיו טוב מה טוב 'happiness to a man by the answer of his mouth, and how good is a word on time,' and explains: אימתי שמחה לאיש? בזמן שמענה – "When does a person rejoice? When he answers with his mouth." And Rashi explains – ודבר בעתו מה טוב "a good word on time," as שיודע לדרוש הלכות חג בחג - "one who expounds on the halachos of the yom tov on the yom tov.'

The halachos of Pesach begin (429:1) with שואלין שואלין "One discusses and expounds the halachos of Pesach from 30 days beforehand." The Beis Yosef explains this halachah. One must teach the public the laws of Pesach 30 days before Pesach, so they have enough time to grind the wheat, bake the matzos, kasher their vessels and remove the chametz, since there is no way to clean and kasher on Pesach itself if it isn't done correctly beforehand.

The Sar Shalom of Belz cited the teaching of *Chazal* (Sotah 13b) כל העושה דבר ולא גמרו ובא אחר וגמרו, "whoever does something and doesn't complete it, and another person comes and completes it, the Torah relates to the one who completed it as if he did it all." But Sar Shalom interpreted the Gemara differently, translating the word גמרו from the root אמרו – to learn: "The Torah relates to one who learns all the *halachos* of the mitzvah, as if he fulfilled the mitzvah perfectly."

It is appropriate to cite the Likutei Maharich (seder bedikas chametz) who cites the Yitev Lev: The minhag >>> Continued on page 2

Heichal Hora'ah Devar Hamisphat

For shaalos and halachic clarifications Monetary Dinim and Hilchos Ribbis of Kollel Dayanus Mishpat Avraham, London

The Heichal Hora'ah's Open hours

Sunday to Thursday From 1:00 to 5:00 PM Friday From 10:00 to 12:00 AM

Tel: 0333 613 6565

For shaalos in monetary dinim and hilchos ribbis

call: 0333 613 6565

:Shaalos can also be sent by email dvarmishpot@gmail.com



Forefathers, since they lacked freedom they lacked essence of a nation.

Later on (chapter 61) the Maharal elaborates, saying that there were several aspects to Bnei Yisrael's slavery: 1) The very humiliation of them lacking freedom; 2) their slaved labor which broke their spirits; 3) the psychological slavery, with the men forced to do women's work, and the women doing men's work; and 4) the very reality that they were under the control of the Egyptians.

This explains the wording of the Mishnah (Pesachim 116b), which is also our Haggadah text: לפיכך אנחנו חייבים להודות להלל לשבח וכו' הוציאנו מעבדות לחרות, מיגון לשמחה, מאבל ליו"ט, מאפלה לאור גדול, משעבוד לגאולה – "therefore we are obliged to thank, praise, glorify ... he took us out from slavery to freedom, from sorrow to joy, from mourning to a Festival, from darkness to a great light, and from enslavement to redemption": "From slavery to freedom" corresponds to their humiliation of them lacking freedom; "from sorrow to joy" is their freedom from slaved labor which broke their spirits; "from mourning to a Festival," relates to the psychological slavery of the men doing women's work, and the women doing men's work; from darkness to a great light, because in Egypt they were under the jurisdiction of others, similar to one who is in darkness, with a barrier blocking him from the sun; and "from enslavement to redemption" refers to the very reality that they were under the control of the Egyptians.

This explains the immense joy of Pesach, and why we mention *yetzias Mitzrayim* in so many of our mitzvos, since the whole essence of the Jewish nation began at *yetzias Mitzrayim*. Beforehand, they didn't have an identity at all, and only after they were redeemed from Egypt were they able to become a nation of their own.

The Maharal brings the question he has heard: How does yetzias Mitzrayim benefit us today, when we are in galus under other gentiles? But this is nonsense: When the Bnei Yisrael left Egypt, they became an identity of their own, and were able to be free men. And this Jewish identity stayed with them even when in galus, since galus is coincidental, while Yisrael's virtue is in their essence, and something coincidental cannot annul an actual essence. That is why Chazul term the Jews — princes (Shabbos 111a), even when in galus, since this is their essence which is not annulled by the coincidental galus.

Therefore, Pesach is our praise to Hashem for the actual reality of the Jewish nation, and the freedom that was granted to the *Bnei Yisrael* so they can cleave to Hashem when they are freed from their arduous labor. And after becoming a nation, Hashem benefiting us with His Torah, which was only possible once they were a nation.

We can now understand the words of the Haggadah: עבדים היינו לפרעה במצרים וכו' ואילו לא הוציא הקב"ה את אבותינו ממצרים. היינו לפרעה במצרים וכו' ואילו לא הוציא הקב"ה היינו לפרעה במצרים "We were slaves to Pharaoh in Egypt ... and if Hashem didn't take our ancestors out of Egypt, we, our sons and grandchildren would still be enslaved to Pharaoh in Egypt." If we would have been freed merely from the torturous labor, but would still be enslaved to them without being freed from slavery, we wouldn't have become a nation of our own.

And that is why we praise Hashem on this night of Pesach.

Yes, how different is this night from all other nights! Throughout Yisrael's history they didn't merit a miracle like *yetzias Mitzrayim*, with such changes in nature. Only when Moshiach comes will we see total changes to nature, even greater than those seen at *yetzias Mitzrayim*.

If so, the uniqueness of this night is not only the freedom from the ימדרו את חייה, the torturous labor and conditions, but the more important freedom from עבדים היינו ,the enslavement. The Haggadah therefore writes, אילו לא הוציא הקב"ה אותו ממצרים היינו לפרעה במצרים "if Hashem didn't take our ancestors out of Egypt, we, our sons and grandchildren would still be enslaved to Pharaoh in Egypt," we may no longer be suffering the torture, but we would still be enslaved, thus lacking the essence of a Jewish nation and all that is included therein. And such a miracle, to change nature and to make Yisrael into a new identity, only Hashem can do, and not even an angel.

is to check one's pockets on *erev Pesach* at the daytime, and this is a *remez* to the money in one's pocket, since one cannot do *teshurah* for the sin of theft unless the stolen item or money is returned. We check the pockets, which hints to the *chametz*, the sin of theft, but this only helps for theft that is known so that the theft can be returned, and by day we are *meratel* known *chametz*. But at night we are only *meratel* unknown *chametz*, since the *chametz* we know about we still keep in the home, therefore we don't then check the pockets for theft, since we have to eliminate and return the theft to his rightful owner.

We say in the Haggadah, על אחת כמה וכמה טובה ומכופלת למקום עלינו – "How much more so should we be grateful to Hashem for the doubled and redoubled goodness that He has bestowed upon us," and similarly the Gemara says in Pesachim (116b) אמר ליה רב נחמן לדרו עבדיה, עבדא דמפיק (מוד ליה ב נחמן לדרו עבדיה, עבדא דמפיק (מאר ליה א"ל בעי לאודויי (אוד ליה מריה לחירות ויהיב ליה כספא ודהבא, מאי בעי למימר ליה, א"ל בעי לאודויי (Rav Nachman said to his servant, Daru: A slave who is freed by his master, and his master gives him gold and silver, what should the slave say to him? Daru said to him: He must thank and praise his master!" Let us therefore bring several thoughts on the *middah* of gratitude, which is the center-point of Pesach.

The Chavas Da'as writes in the introduction to his Haggadah Maaseh Nissim: "In particular, we are commanded to relate about yetzias Mitzrayim. Yetzias Mitzrayim is the root of all the goodness that Hashem did for Bnei Yisrael, and therefore Hashem imposed on us to relate and thank Hashem for every detail, so that we are rewarded for it. Because even without being told to relate Hashem's wonders with us, we would be obliged to do so as a sign of gratitude. Nevertheless, Hashem ordered us to relate about yetzias Mitzrayim so that we gain a mitzvah from doing so."

With this we can explain the words of the Haggadah, ואפילו כולנו חכמים – ואפילו כלנו נבונים כלנו נדונים כלנו נדונים כלנו יודעים את התורה, מצוה עלינו לספר ביציאת מצרים "even though we are all wise, we are all wise, we all know the Torah, we are commanded to recount yetzias Mitzrayim." Why would one have thought that the knowledge of the Torah exempts a person from relating about yetzias Mitzrayim? Usually, those studying Torah are the first to perform the mitzvos! The answer is, sometimes a person takes Torah knowledge for granted; he has to learn, because it is a mitzvah, and if he learns, he knows. So why need thank Hashem for it? But the talmid chacham must remember that without yetzias Mitzrayim he wouldn't have his Torah, since we would still be enslaved in Egypt. Therefore, he is also obliged to relate about yetzias Mitzrayim and thank Hashem for the Torah he has, which would not have been possible without yetzias Mitzrayim.

Another point: The *passuk* writes (*Devarim* 26:3) הגדתי היום הצחת אל הכהן וגו' ואמרת אליז: "You shall come to the kohen ... and say to him, 'I declare this day to Hashem,"' on which Rashi comments, כפוי טובה "To teach that you are not ungrateful for all that Hashem has done for you." And what does he say? He relates how Hashem took us out from Egypt. This implies that when one wants to thank Hashem for the tree's fruits, one must also thank Hashem for what He did to us in Egypt. We find a similar idea in the *birkat Hamazon*, where we thank Hashem, ונדה לך ה' אלקינו מארץ מצרים ועל שהוצאתנו ה' for giving us Eretz Yisrael, and we add אלוקינו מארץ מצרים "for taking us out of Egypt," because when we thank Hashem for His kindness we must also thank Him for yetzias Mitzrayim.

Let us conclude with the words of the Radbaz (Teshuvos 977): It isn't possible to explain according to *peshat* why the Torah is so strict with the prohibition of chametz [prohibiting even a small amount, and prohibiting any benefit from it], so I will rely on the midrashim of *Chazal*, that *chametz* is a *remez* to the *yetzer hara* which is termed שאור שבעיסה — 'the leaven in the dough,' which is why it must be totally eliminated. A person must seek to totally eradicate the *yetzer hara*, since even the smallest amount of *yetzer hara* isn't annulled by itself.''

The Gemara says, places one can't reach, יבטלנו מלבו — "one should annul with his heart, to which Rav Aharon of Karlin said: "*Mit a shtick hartz* — heartfully," seeking to change one's ways with all one's heart.

We would like to clarify, that even though the rulings written here are cited from the *halachah* sources and the *poskim*, nevertheless, since even the smallest detail can change the *halachah*, one must ask a Rav regarding every case, and not rely on what is written here.

In the name of the kollel's Rabbanim, we would like to wish all our readers, and all the philanthropists who support the Kollel, and all *Klal Yisrael*, with a happy Pesach, and may we soon be able to eat from the *korban Pesach* and other *korbanos* with the coming of Moshiach, Amen.

The Editors Nissan 5784

On the agenda - Selling the Chametz

It has become customary to sell the *chametz* before Pesach, and here we will discuss the sale of the Rav to the non-Jew. Needless to say, every person should rely on his Rav, and what we are writing here is not practical *halachah*. As the Likutei Maharich writes (hanhagos erev Pesach), "it is unnecessary to elaborate on the *dinim* of selling *chametz* since it is the custom among all Jews to sell via a *talmid chacham*."

This selling has evolved over the generations. At first, the people would sell their *chametz* to the Rav, and the Rav in turn sold it to the gentile. Later on, the custom was changed to make the Rav an emissary – via a *kinyar*² – to sell the *chametz* on the person's behalf, which is how we sell our *chametz* today. The seller must sign the document, since the Mekor Chaim is of the opinion that an emissary – in our case, the Rav – can only sell the *chametz* if the seller has signed on the document.

1) The *poskim* write, the selling of the *chametz* must be a proper sale with full intention to sell, and not a deception. As the Kitzur Shulchan Aruch writes (114:1): "Do not treat the matter of selling chametz as a routine formality. Rather, it should be your firm intention to actually sell the chametz to the non-Jew, in a firm

and binding sale."3

2) Some have the custom to pay the Rav for selling the chametz. The Teshuvos Divrei Malkiel (IV 22:17) explains, this is done so that the sale will help even for chametz that doesn't yet exist. Since the Rav receives payment for being an emissary he is considered a worker of the one selling the chametz, and since the rule is יד פועל כיד בעל הבית "the worker's hand is like the hand of the employer" (Bava Metzia 10), he is always zocheh for his employer. This follows the Gemara's ruling of a person who employs a worker to gather found items, everything he finds belongs to the one who employed him, even items that didn't exist when he was first employed. Similarly here, since he appoints the Rav to be his emissary to sell the chametz, and he pays the Rav for his service, the Rav is considered his employee and therefore even if the person buys chametz after the sale, it is all sold by the Rav.

The Divrei Malkiel (V 16) rebukes the villagers who are too lazy to sell their chametz to the Rav and instead sell them to the local shochet in their villages: "It is wrong to do so, because many times one needs to know how to write the details of the places and the chametz, and the village shochet, halevai he would

properly know the *halachos* of *shechitah*! He certainly doesn't know *hilchos Pesach*. I have even seen Rabbanim who err in writing the details of the *chametz*. Also, this is absolute robbery, since it is an accepted custom that the income from selling the *chametz* goes to the Rav, and also that of the villages under the Rav's jurisdiction."

3) Those who have shares in a non-Jewish company that sells or owns chametz: Preferably one should sell the chametz he has in the company. The poskim discuss the halachic status of shares and companies, and the Cheshev Ha'efod (I 62) tends to be lenient, but Teshuvos Minchas Yitzchak rules that one must sell the chametz he owns in the company. Although he didn't register the chametz in the name of the non-Jewish buyer of the chametz, and according to the civil law a share in a company must be registered, here it helps to sell the chametz even without legally registering the chametz under the non-Jew's name.4

The different views regarding the status of a company only relate to a case where the shareholder doesn't have any ownership over the share and has no say in decisions related to the business, in which case he doesn't own the company. But if he has a say in the company's

However, the Beis Yosef explicitly writes that the sale may not be mere deviousness, and several explanations have been given to answer the Noda B'Yehudah's argument. First of all, regarding a gift we say that although דברים שבלב הוי דברים שבלב הוי דברים שבלב הוי דברים שבלב הוי דברים שבלב smore similar to a gift than a sale, since the gentile knows that he will have to return the *chametz* after Pesach. Also, it is possible that although דברים שבלם, that means we cannot annul a sale because of what one thought, because we don't know what the person thought and how much he meant it. However, if a person really didn't have in mind to sell the item, although we cannot take back the item from the buyer, in Heaven they know that it wasn't a proper sale. Since the whole purpose of selling the *chametz* is to bypass the prohibition of *chametz*, and in Heaven they know that the person didn't really intend to sell it, the *chametz* is reckoned in Heaven as if it wasn't sold.

4) There are two approaches to explain why this is permitted: The Chasam Sofer (113) writes to the Baruch Ta'am, explaining that the sale is also valid in civil law, and they also agree that regarding *chametz* it is a sale even without registering the *chametz*. It is only necessary to register the share if the sale is done to hold a share in the company. But if the sale is merely regarding the *issur* of *chametz*, civil laws also recognizes the sale even without actually registering the *chametz* in the buyer's name.

The other approach is that of the Divrei Chaim, who writes (*Orach Chaim* II 37): We need not take into account the civil law, and since the sale is recognized in Torah law, it is permitted. [Sdei Chemed (*Chametz Umatzah*, 9, end of 25) cites the Cheshek Shlomo who writes that according to civil law, a document written in Hebrew isn't legal, but the Sdei Chemed replies that this is nothing new, since the civil law in the times of the Mekor Chaim also didn't recognize the sale of *chametz* due to the fact that the non-Jew returns the *chametz* after Pesach. Nevertheless, the *poskim* ruled that the sale is permitted, since according to Torah law it is a legal sale, and we don't need to be concerned about the civil law. However, he adds that since it is customary, as established by the Shulchan Aruch Harav, to reinforce the sale by appointing an *arev kablan* (meaning that if the chametz gets ruined, the financial liability does not fall upon the gentile buyer but on the Jewish guarantor), it is certainly a good sale, because then we certainly don't need to take into account the civil law.

However, the Baal Hatanya writes in his *siddur* that one should add in the sale document that "this document may be translated into Russian and will pay the necessary taxes" etc., implying that the document must be valid according to civil law.

¹⁾ It appears from Teshuvos Chasam Sofer (*Orach Chaim* 111) that in his times every person sold the *chametz* to the gentile, and not via the Rav. However, due to the problems and intricate *halachos*, the custom was changed to sell via the Rav.

The Teshuvos Ani ben Pachma (*Orach Chaim* 22) relates, his father-in-law and grandfather met with the Chidushei Harim in Warsaw, and they agreed that every person should make the Ray a *shliach* to sell the *chametz* to the gentile.

²⁾ Although the *Shulchan Aruch* rules (*Choshen Mishpat* 182:1) that in order to make a person an emissary to sell something there is no need to make a *kinyan*, the Rambam (*Mechirah* 5:11-13) already brings the custom to make a *kinyan* even where not necessary. He writes: "Such a *kinyan*, which is customarily performed with regard to these matters, is of no consequence except to demonstrate that the parties involved were not acting facetiously or in jest when making the statements, but had in fact made a resolution in their hearts before making the statements."

³⁾ Some *poskim* are of the opinion that even if a person doesn't sell the *chametz* wholeheartedly, the sale is valid, since the rule regarding monetary issues is, דברים שבלב אינם דברים "what one thinks in one's heart is irrelevant." The Noda B'Yehudah (I *Orach Chaim* 18) argues: If a Jew sells merchandise to a gentile and makes the necessary *kinyan*, but doesn't give over the key so that he will be able to claim that he didn't really intend to sell the merchandise, will *Beis Din* accept this trick? Of course not! So what difference does it make what the person thinks?! As long as the gentile acquired the Jew's *chametz*, the Jew didn't transgress the *issur* of keeping *chametz* in his home.

decisions, all *poskim* agree that he must sell his *chametz* before Pesach to a gentile.

4) It is forbidden to buy *chametz* before Pesach in order to sell it to the non-Jew throughout Pesach, so that one will have *chametz* immediately after Pesach (see *Mechiras Chametz Kehilchaso*). The Shevet Halevi (IV 49), after discussing the halachic issues in the matter, concludes: "However, it appears to be indecent behaviour to initially sell *chametz* so that he will have *chametz* immediately after Pesach. However, if there is no other way, and it includes financial loss, one can rely on those who permit it."

5) The poskim discuss whether the bitul one makes on erev Pesach includes the chametz he sells to the non-Jew, and the practical difference would be: If the chametz sold is included in his bitul, the chametz he sells doesn't belong to him, but it is assur miderabanan to keep the chametz lest he comes to eat it. A sale is therefore essential, but only miderabanan. However, if the bitul doesn't include the chametz one sold, the sale is necessary min haTorah, otherwise he will be transgressing the Torah prohibition of having chametz in his possession on Pesach.

According to the Ketzos Hashulchan

(194), Mekor Chaim (448) and Shulchan Aruch Harav (448:8),⁵ everything sold to the non-Jew is included in the *bitul* of the chametz.⁶ Accordingly, *min haTorah* he fulfills the mitzvah of not possessing *chametz* by making *bitul*, and the sale is only necessary *miderabanan*. But many other *poskim* (Pri Megadim *Orach Chaim* 448 Eshel Avraham 10, and others) hold that the *chametz* he sells cannot be annulled, since this is a contradiction in his actions – if he annuls it, it isn't his, so how can he sell it; and if he is selling it, how can he annul it?!

ע"י הרה"ג ר' ברוך אברהם עסטרייכער שליט"א ראה"כ ומרבני היכל הוראה 'דבר המשפט'

5) This seems to contradict what the Baal Hatanya writes in a *teshuvah* (printed at the end of the *sefer*), that whatever one sells isn't included in the *bitul*. There, he explains that just as the rule is *hefker lizeman – hefker* that is for a given amount of time, isn't *hefker*, similarly *bitul* lizeman – bitul for a given amount of time, isn't *bitul* [the *acharonim* explain: *Bitul* doesn't have the power of *hefker*, because *bitul* only helps because he shows that he doesn't want the *chametz* and isn't interested in owning it. So if he annuls it only for the week of Pesach and then intends to acquire it, he shows that he **does** want the *chametz*, and if so his *bitul* is worthless]. The Baal Hatanya therefore warns to make a proper sale, otherwise he will transgress the *issur* of possessing *chametz* on *chametz*. From his words in this *teshuvah* it is apparent that a person doesn't annul the *chametz* he sells, yet in his Shulchan Aruch he rules that the sale is *miderabanan*, since *min haTorah* the *bitul* helps even for the *chametz* he sells!

Some try to answer that in his *teshuvah* the Baal Hatanya retracts his ruling in Shulchan Aruch, but this is very unlikely, especially because the wording in his *teshuvah* doesn't leave room for any other view, and if he is retracting from his early position, this should at least be mentioned in the *teshuvah*.

Instead, the answer is that the Shulchan Aruch and the *teshuvah* are not relating to the same case. The Shulchan Aruch means to say that the actual sale is in itself a *bitul*. Since he wants to sell the *chametz*, he is *megaleh da'as* (reveals his intentions) and shows that he doesn't want it. This *gilui da'as* frees him from transgressing the **Torah** prohibition of having *chametz* on Pesach, since he doesn't want the *chametz*, and instead he is actually selling it. However, this kind of *bitul* doesn't help *miderabanan*, since he didn't specifically say he wants to annul the *chametz*. But in his *teshuvah*, the Baal Hatanya is relating to the *bitul* one makes on *erev Pesach*, and this doesn't help for *chametz* one sells, just as *hefker lizeman* doesn't help.

6) The *rishonim* debate how *bitul* helps: According to the Ran it is a *gilui* da'as (he reveals his intentions) that he doesn't want the *chametz*, and the Ramban holds that by reciting the *bitul* he considers the *chametz* to be dirt. Consequently, according to both these views, it is possible for the *bitul* to annul even *chametz* he sold. But according to Tosafos the *bitul* is a form of *hefker*, and if so the *bitul* cannot effect *chametz* that he sells, because if it is *hefker* he cannot sell it, and if he is selling it he shows it isn't *hefker*.

Can one sell mima nafshach, saying that if the sale is valid, there is no need to make bitul, and if the sale isn't valid, the chametz sold is included in the bitul.

Likutei Maharich (Seder Hanhagas Erev Pesach) writes that in the text of the Kol Chamira, we say "de'viartei – which I have destroyed," and he cites Teshuvos Devar Moshe (II 98) in the name of the Yad Yosef, that de'viartei refers to the chametz he sold in an invalid sale. The Chasam Sofer writes similarly. According to these poskim, the bitul helps even for chametz one intended to sell. See also Minchas Yitzchak (VIII 41) who elaborates on this din. And the Tzemach Tzedek in his pesakim (32:3) explains the view of the Baal Hatanya in his teshuvah, that one can condition the sale, saying that if the sale isn't valid, the bitul helps.

