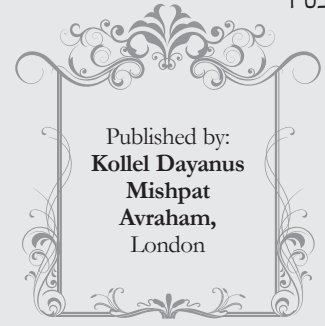


THE Heichal Hora'ah DEVAR HAMISHPAT BULLETIN



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 חיך, ימי חיך – הימים, כל ימי חיך – 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 *pasuk* ‘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 (101), כל הקורא פסוק בזמנו מביא טובה לעולם, שנאמר, “Whoever recites a *pasuk* 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 *pasuk*, פיו שמחה לאיש במענה פיו, “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 בפיו – “When does a person rejoice? When he answers with his mouth.” And Rashi explains דבר בעתו מה טוב – “a good word on time,” as “one who expounds on the *halachos* of the *yom tov* on the *yom tov*.”

The *halachos* of Pesach begin (429:1) with 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 גמרא – 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* (*sefer 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

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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*.¹ **As the Likutei Maharich writes** (*hanbagos 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 *kinyan*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 *כיד בעל הבית* – “the worker's hand is like the hand of the employer” (*Bava Metz'ia* 10), he is always *zocheb* 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 *halachos 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

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 Rav 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.

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 אינם דברים* – what one thinks is relevant, and our sale of *chametz* is more 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 שבלב אינם דברים*, 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.

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
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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 Hanhagot 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.

גם ברכו"ת יעטה מורה

מה טוב ומה נעים, באר וימנא וקטנים, כוס של ברוך ליהוים, ברגשי גל ושרימ
 אצרות, אצור, בתעצמות ועז, בשמחה רבה ואצור כולם לחדות לשבת ולעילוי
 לרגל שובתו להבנים בני לעיל הווראה נעשה גדול, ויקר זו ונחת הפולן אורה ונל
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 אצורא מרשש לוי מה מלנו ברוחא, שרע ומה תקנה ושימה בשפוח
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 וזה נעני וזהו לומר בשידה, במרת הווראה, לאר מודה וזאן גדול כשרא

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23rd February 2024

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