

THE Devar Hamishpat

BULLETIN

Clarifications in the Laws of Choshen Mishpat and Ribbis | #34 Nissan 5785

Published by:
Kollel Dayanus
Mishpat
Avraham,
London

EXPANDED
ISSUE
FOR
PESACH

AL HAPEREK

EREV PESACH THAT FALLS ON SHABBOS

This year, since erev Pesach is on Shabbos, the bedikas chametz is performed on Thursday night, the night before Nissan 13.

If a person forgot to perform the *bedikas chametz* on Thursday night, he should do *bedikas chametz* on Friday. But if he remembered on Shabbos that he hasn't yet searched for the *chametz*, the *poskim* discuss if it is permissible for a non-Jew to hold the candle during the *bedikas chametz* that he does on Friday night.

Teshuvos Avnei Tzedek (Orach Chaim 50) permits telling a non-Jew to hold the candle, but Maharshag (II 72) disagrees and forbids doing the *bedikas chametz* on Shabbos, on two grounds: עובדין דחול (inappropriate for Shabbos) and שמא יטה (lest one comes to tilt the candle so that it burns better).

[If one forgot to check for *chametz* and he remembered on *Yom Tov*, there is a *machlokes* between the *poskim* (Orach Chaim 435) if one may perform the *bedikas chametz* on *Yom Tov* or wait till *chol hamoed*, if he was *mevatel* the *chametz* before *Yom Tov*.]

Bitul chametz is said after searching for the chametz (Mishnah Berurah 444:1) and we

leave over food for the two Shabbos meals, but not for seudah shelishis, since the time of this meal is in Shabbos afternoon when one cannot eat matzah (since one may not eat matzah on *erev Pesach*) nor *chametz*. Although, by the letter of the law, one may eat מצה (egg matzah) on *erev Pesach* since one isn't *yotze* the mitzvah of matzah with it, the Rema has already ruled that our *minhag* is not to eat מצה עשירה. Instead, the obligation of eating a third meal is fulfilled by eating fruit, or fish and meat.

Some have the *minhag* to split the morning *seudah* into two, and to eat bread at both these meals, and in addition they eat *Pesachdik* food in the afternoon following the view that *seudah shelishis* cannot be eaten in the morning. Each person should follow his *minhag*.

The Mechaber writes that it is preferable to burn the chametz on erev Shabbos before chatzos (midday). The Mishnah Berurah writes that "before *chatzos*" is not specific, because he means that it should be burnt before six (halachic) hours of the day, as is the law in a regular year [the Piskei Teshuvos cites the Chayei Adam and Tzelach that in a regular year one should burn the *chametz* by

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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 ודבר 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*, שמחה לאיש במענה, "happiness to a man by the answer of his mouth, and how good is a word on time," and explains: בזמן? אימתי שמחה לאיש? בזמן – "When does a person rejoice? When he answers with his mouth." And Rashi explains – "a good word on time," as – שידוע 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 – "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 – "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

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the end of the fifth hour, and that is the *minhag*]. In a regular year, the *chametz* must be burnt on *erev Pesach* by the sixth hour, and although this year the *chametz* is burnt a day earlier, if we would burn the *chametz* this year after *chatzos*, it could lead to confusion in subsequent years.

One doesn't recite the *kol chamira* when burning the *chametz*, but on Shabbos. One must be careful to recite the *kol chamira* on Shabbos before the time of שריפת חמץ, as is the law every year. Even if he did recite the *kol chamira* on *erev Shabbos*, he must recite it again on Shabbos, since he reacquired the disowned *chametz* that he left over for the Shabbos meals, and some of that *chametz* might remain after finishing the meal (Mishnah Berurah 22).

If any *chametz* remains after the Shabbos meal, the *Mechaber* writes that one should be *mevatel* it and cover it with a vessel until *motzaei Shabbos*, and then destroy it. The Mishnah Berurah writes that if a gentile is available, one should give him the remaining *chametz*, but may not tell the gentile to take it out of the house since it is prohibited to carry on Shabbos.

In the fifth hour one may move the *chametz* and crumble it into the toilet, but in the sixth hour, when the *chametz* is already אסור בהנאה, it is *muktzeh* and may not be moved. But one may tell a non-Jew to throw it into a river or into the toilet.

But the **Chazon Ish** (Orach Chaim 118:3) is of the opinion that the *chametz* may only be thrown into the toilet if it is before the *zman* of שריפת חמץ, but after that one may not throw it down the toilet.

One may give the remaining *chametz* to a non-Jew as a present (*Mechaber* 444:4), and even though it is forbidden to give a present on Shabbos, here it is permitted since it is for the sake of a *mitzvah* (Mishnah Berurah *ibid*).

If he has a lot of *chametz* remaining, and he is concerned to give it as a present to the non-Jew lest he doesn't return it after Pesach, there is a *machlokes* among the *poskim* if it is permitted to sell the *chametz* to him on Shabbos. See further on.

If he has no other solution how to get rid of the *chametz*, and he cannot take it outside to be *mafkir* it there, some say that he should put it in a bag and pour into it a substance that spoils it (it must be a substance that is not *muktzah*). Once he renders it unfit for canine consumption – it is נפסל מאכילת כלב (something that one would not feed his dog), he doesn't transgress an *issur* if he keeps it in his house.

One may not put the remaining *chametz* in the rubbish bin, even if the bin is not in his domain, since the bin belongs to him (or he shares with others). Instead, it must be thrown into a rubbish bin that is *hefker* for all (Mekadesh Yisrael Ve'Hazemanim).

Teshuvos Betzel Hachochmah elaborates on this issue (III 109), and he writes: "This year, 5734/1974, *erev Pesach* falls on Shabbos, and we cannot take the *chametz* that remains after the meal outside the house to destroy it or be *mafkir* it there. Those who don't have a non-Jew available to give him the *chametz*, have asked if they may put the *chametz* in the rubbish bins in their front yard.

"The Eidah Hachareidis kashrus committee writes in the Madrich Hakashrus, one should be careful to clean the rubbish bins before Shabbos and not throw away one's *chametz* in them," and he explains at length that it depends on the policies of the local authorities. In some countries, the local municipality supplies the rubbish bins and the bins remain the property of the municipality.

[Here in London the local council gave every house rubbish bins, and it has to be clarified what status these bins have. If they are the possession of the local council, it is permitted to put the *chametz* in the bin as long as the bin is not in one's yard, as will be explained.]

Even if the bins belong to the municipality, if the bins are in the Jew's grounds, there is a *machlokes* (Choshen Mishpat 200:3 בדין כליו) if mere permission to let the buyer's vessels be there is sufficient for the buyer's vessels to be *koneh* even though the vessels are in the domain of the seller (Shach *ibid* 7), or if in such a case one must say לקני (Nesivot *ibid* 8).

The Betzel Hachochmah adds, according to many *poskim*, even if he explicitly says לקני it won't help. He explains, vessels are *koneh* with the principle of *kinyan chatzer*, and some *rishonim* are of the view that a non-Jew cannot acquire an object with a *kinyan chatzer*, because *kinyan chatzer* is a form of שליחות, and since אין שליחות לגוי, the *kinyan chatzer* isn't effective. If so, even if he says לקני, the non-Jewish municipality is not *koneh* according to these views and the *chametz* still belongs to the Jew.

Instead, concludes the Betzel Hachochmah, one should be *mafkir* the ground under the bin, and then neither

the bin nor the ground belong to the Jew, and if so the *chametz* in the bin is no longer in his domain.

The *poskim* discuss how to *machshir* a tooth filling.

The filling has to be *kashered* by drinking hot water before Pesach, with the hot water being at the temperature that one usually drinks. **Twenty-four hours before *kashering* the teeth filling, one should be careful not to eat any hot *chametz* or sharp *chametz*, as is the *din* regarding regular הגעלת כלים.** Also, in the 24 hours before Pesach, one shouldn't eat hot or sharp *chametz*. During Pesach it is permissible to eat all hot foods and sharp foods, except for radish (Halichos Shlomo).

The Bayis Ne'eman B'Yisrael pamphlet (on *erev Pesach* that falls on Shabbat) writes, after eating the *chametz* on Shabbos one should brush the teeth in a permissible way (Teshuvos Minchas Yitzchak III 50 writes that one may not use a brush with hard bristles, since it is nearly certain that it bruises the gums and extract blood), after which he should continue the meal with Pesach foods.

Regarding *koshering* teeth on Shabbos, it is permissible to *kasher* the teeth on Shabbos before the זמן איסור חמץ and there is no concern of מתקן מנא (rendering something fit for use). It is not considered a *tikun* since the "repair" is not immediate, and the *issur* only comes into effect later. In addition, the *tikun* is merely a negative one, eliminating *chametz* from the teeth, and it is not a positive *tikun* to the teeth (Halichos Shlomo 8:18).

The Minchas Yitzchak (VIII 37) permits *kashering* the filling on Shabbos for another reason: He says, it doesn't appear to people that the person is rectifying anything, and it looks as if he is only washing his teeth. However, some only permit drinking a hot tea and not hot water, since tea doesn't seem to people as a *tikun*.

Concerning false teeth, one should *kasher* them before midday on *erev Shabbos* like every year, and on Shabbos to refrain from anything hot that is יד סולדת בו. Before the זמן איסור on Shabbos, rinse them and pour hot water over them, so that they are clean from any *chametz* [since he only eats a *kezayis* of *chametz* on Shabbos, and therefore it is sufficient to rinse them properly, since he has already *kashered* them before Shabbos].

AL HAPEREK

SELLING THE CHAMETZ

The intricate laws of selling chametz are for Rabbanim and moreh horaah, as the Likutei Maharich writes, the minhag is to only sell the chametz via a talmid chacham.

The one selling the *chametz* must be fully aware that he is selling the *chametz*, and that it is a firm and binding sale. The Kitzur Shulchan Aruch writes (114:1), "You should 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."

Selling Chametz on Shabbos Erev Pesach

There are many customs regarding the sale of chametz in this year, since it is prohibited to sell the chametz on Shabbos. The Maharam Shik (Orach Chaim 120) says, one must sell the *chametz* on Friday before the fifth hour, as in a regular year [just as the burning is done at this time so as not to lead to confusion in subsequent years].

But if he forgot to sell the *chametz* on Friday before the *zeman*, he can sell it the whole day (Daas Torah).

Others contest selling the *chametz* early, since many shops are still open even after the sixth hour and are selling *chametz*. How can these shops sell *chametz* that isn't theirs, since it has already been sold to the non-Jew? Instead, the sale should be made on Friday afternoon, before Shabbos [see Teshuvos Imrei Yosher I 146].

The Yeyatev Lev writes in Hagadah Yeyatev Panim (דינים של ער"פ שחל להיות בשבת), (אות א'), "Optimally, one should sell the *chametz* the same time as it is sold in regular years."

Similarly writes Teshuvos Kav Chaim (89): "The custom is our city [Maad] as established by my grandfather Rav

Avraham Yehudah [Schwartz, the Kol Aryeh], is to sell the *chametz* as in every year... and I saw that the Noda B'Yehudah rules in his *drashot* for Shabbos Hagadol, printed in Drushei Hatzelach, to sell the same time as in a regular year, so as not to lead to confusion in subsequent years... and I asked the Kedushas Yom Tov about the *minhag* in his town [Sighet], and he replied, "The custom here follows what is written in Yeyatev Panim, to sell the *chametz* on Friday as in other years."

Teshuvos Minchas Elazar (III 26) writes: "Those who are extremely stringent and won't have any financial loss, should sell the *chametz* on Friday morning, and so we wrote in a pamphlet of *halachos* that we recently published and distributed to the surrounding towns and villages."

Similarly writes the Maharshag in his *teshuvos* (II 72), "I said in a *drashah*, that it is permissible to sell the *chametz* till the fourth hour after midday if the Jew benefits from the late sale, but if he has no benefit from delaying the sale, why not follow the Shulchan Aruch's view that it should be done the same as in a regular year."

If He Forgot to Sell on Erev Shabbos

If someone forgot to sell the chametz on erev Shabbos, the poskim dispute whether it is permissible to sell the chametz on Shabbos. The Chok Yaakov (444:8) writes, if he is unable to give the *chametz* to the non-Jew as a present, it is permitted to sell the *chametz* on Shabbos and it is not included in the *issur* of ממכר ומקח, since his intention is not to buy and sell but to be saved from committing a sin. But the Shulchan Aruch Harav (448:16) forbids selling to a non-Jew on Shabbos, even though the sale is for the purpose of a mitzvah.

The acharonim are in a dilemma:

Since we sell our *chametz* on Friday, and in the sale document we write that we sell all our *chametz*, how can we eat on Shabbos the *chametz* in the house? It has already been sold to the non-Jew!

To answer this, the poskim discuss, is the prohibition of buying and selling on Shabbos only if the **entire** sale is done on Shabbos, but if the sale is done on *erev Shabbos* but only comes into effect on Shabbos, is it permitted?

The Teshuvos Rebbe Akiva Eiger (159) prohibits making such a *kinyan* on *erev Shabbos* that comes into effect on Shabbos, but others disagree, saying there is no *issur* if the sale is done on Shabbos and only comes into effect on Shabbos. If so, this would be a solution, to sell the *chametz* on Friday, while the sale is only effective from Shabbos.

However, the custom doesn't follow this view, and the whole sale is done on Friday, and it comes into force from Friday. If so, we return to our initial question, how can we eat on Shabbos bread that was sold to the non-Jew?

Some tell the non-Jew that they are selling to him only what is leftover from the meal on Shabbos morning. But if so, the sale relies on ברירה (retroactively determining an item's halachic status), and since the sale relates to an *issur min haTorah*, we don't rely on ברירה.

Therefore, some ask permission from the non-Jew to be able to eat from his *chametz*.

But the Daas Torah is of the opinion that he can sell all the *chametz* on *erev Shabbos* with the basis of ברירה, that on Shabbos after the meal, the sale comes into effect retroactively. Then, what we ate on Shabbos didn't belong to the non-Jew, and all that remains belongs to the non-Jew retroactively, in which case all agree that ברירה will work.

HALACHA TOPICS

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 (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 *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 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

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.

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 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?!

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 issue of *chametz*, civil laws also recognize 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.

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 issue 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.

גמרא 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."

In the Haggadah we say: מה העדות והחוקים, מה הוא אומר, חכם מה הוא אומר, מה העדות והחוקים – והמשפטים אשר צוה ה' אלוקינו אתכם, ואף אתה אמור לו כהלכות הפסח וכו' – "What does the *Chacham* say? What are the testimonies, statutes and laws that Hashem our G-d commanded you. And you shall also tell him the *halachos* of Pesach." And the next son, the *rasha*, asks: מה העבודה הזאת לכם וכו' – "What does the *rasha* say? What is this work for you? Blunt his teeth and tell him, if he was there in Egypt he wouldn't have been redeemed."

The famous question is, what is the difference between the *chacham* who says לכם, yet we learn with him the *halachos* of Pesach, while the *rasha* says לכם and because of that he becomes a heretic?

The answer is, the *chacham* in his question shows that he wants to know the *halachos*, as he says מה העדות והחוקים – "What are the testimonies, statutes and laws that Hashem our G-d commanded you?" and therefore the Haggadah tells us to teach him the *halachos*. But the *rasha* isn't interested in hearing the *halachos*, he instead asks why it is so hard to serve Hashem. And since he doesn't want to know the *halachos*, we answer him – לכם ולא לו – "for you and not for him," only for you is it hard to keep the mitzvos, since you don't want to know its *halachos* and you aren't interested in keeping the mitzvos properly. But those who learn the *halachos*, for them the mitzvah is not at all hard. On the contrary, they enjoy the mitzvos!

It is appropriate to cite the Likutei Maharich (*sefer bedikas chametz*) who cites the Yitev Lev: The *minhag* 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 *teshuvah* 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 *mevatel* known *chametz*. But at night we are only *mevatel* 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 – "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 ליה מריה – "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 כלנו ובונים כלנו יודעים את התורה, מצוה עלינו לספר ביציאת – "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) ובאת אל – "You shall come to the kohen ... and say to him, 'I declare this day to Hashem,'" on which Rashi comments, ואמרת אליו: להגיד שאינך 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, ועל נודה לך ה' אלוקינו, for giving us Eretz Yisrael, and we add – "for taking us out of Egypt," – שהוצאתנו ה' אלוקינו מארץ מצרים, 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 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, 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

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, בני עוריה, 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 – "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 *yetzi'as 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 *kebalas haTorah*, that is what Shavuot 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 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 יהדות להלל לשבח וכו' הוציאנו מעבדות לחרות, מיגון לשמחה, מאבל ליו"ט, מאפלה לאור גדול, – "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 *Chazal* term the Jews בני מלכים – 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, הרי אנו ובנינו ובני בנינו – משועבדים 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 ימרו את חייהם, the torturous labor and conditions, but the more important freedom from עבדים היינו, the enslavement. The Haggadah therefore writes, אילו לא הוציא הקב"ה אותנו ממצרים, הרי אנחנו, "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.

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ר' יוסף חיים סורומפקער שליט"א

היושבים בעמק הבכא על פטירת אחיהם
המקום ינחם אתכם בתוך שאר אבלי ציון וירושלים

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הרבני הנגיד

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בבני חיי ומזוני רויחי ולהמשיך במעשיו החסדים

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