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Digest
Mishna Berura
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סימן תמ"א סעיף א'-ב'

Halacha Highlight

Nullifying *chometz* that belongs to a gentile

Mishnah Berurah Siman 441 Seif Koton 8

שמחויב לבערו או למכור חמץ זה בזמן המכירה כשאר חמץ שלו

He is obligated to destroy or sell this *chometz* during the time of the sale of *chometz* like the rest of his *chometz*

Shulchan Aruch (סע' ב') discusses a Jew who loaned money to a gentile and accepts his *chometz* as security for the loan. In the event that the *chometz* was put into the Jew's home and the agreement was that if the gentile does not repay the loan the *chometz* will retroactively become the Jew's from the onset of the loan, the *chometz* will be prohibited after Pesach if the gentile defaults on the loan since retroactively it belonged to the Jew during Pesach. Mishnah Berurah (סק"ח) writes that although Shulchan Aruch addressed the question of the status of the *chometz* after Pesach in the event that the gentile defaults on the loan, the same concern arises before Pesach. If one has possession of a gentile's *chometz* as security for a loan that could become the Jew's property retroactively if the gentile defaults on the loan, the Jew must destroy or sell that *chometz* in advance of Pesach. Sha'ar HaTzion (ס"ק י"ד) cites Elya Rabba who asserts that if the Jew nullified the *chometz* before Pesach but did not destroy it, the *chometz* would be permitted after Pesach. Although nullification without destroying or selling the *chometz* does not permit *chometz* that belonged to a Jew, in this case where the *chometz* belonged to a gentile one could be lenient. Chok Yaakov, however, rejects this position.

The issue of a Jew nullifying the *chometz* of a gentile is subject to debate amongst later authorities. Sha'ages Aryeh (סי' ע"ז וע"ח) writes that one cannot nullify *chometz* that is not his own. This opinion is cited by Pri Megadim (סי' תמ"א א"א סק"ד) approvingly. Mikor Chaim (סי' תמ"ח סק"ט) writes that although it is generally true that one cannot nullify what one does not own in this case it is effective. The reason is that the gentile knows that the Jew must destroy *chometz* that is in his possession before the onset of Pesach and therefore as that time approaches the gentile abandons hope of recovering his *chometz*. At that time the Jew acquires the ownerless *chometz* and may then nullify that *chometz* that he just acquired.

Stories to Share

Faulty Reasoning

ש"ע סי' תמ"א, ב': "ישראל שהלוה לאינו יהודי על חמצו .."

A certain merchant was presented on Rosh Chodesh Nissan with a great deal for a chometz product by a non-Jewish seller. Although he knew that he could not purchase it outright since there was too much volume to be able to sell before Pesach, he also could not wait, since surely the non-Jewish seller would find another buyer in the interim. The prospect of buying the chometz and then selling it to a non-Jew also did not interest him. So he came up with a plan. He would pay for the chometz, but only make a kinyan on it after Pesach. This method had the added benefit that the halachah allows for making such a delayed kinyan from a non-Jew when cash is used.

After Pesach, when he boasted about his brilliant plan, someone pointed out that he may have transgressed the prohibition of owning chometz over Pesach. "But in Pesachim 5 we find that regarding chometz, valued goods within a person's sphere of influence or possession are considered his responsibility according to all authorities. Even if one is merely responsible to replace the other person's chometz, he transgresses. So presumably this was a violation of the prohibition of chometz on Pesach…"

But when this question reached the Amudei Ohr he ruled that it was not a problem. "The Rosh writes that even if one lends money to a non-Jew on a collateral of chometz and the non-Jew did not say מעכשיו, the Jew does not violate the prohibition of chometz on Pesach. Yet we may wonder why this is different. It seems clear that since the kinyan only takes place after Pesach, there is no problem at all, just like regarding a loan to a non-Jew who gave the Jew a collateral of chometz and didn't say מעכשיו when the Jew has no real responsibility for the chometz."

ספר עמודי אור, סי' ט"ז

Overview

Siman 441 Seif 1:

If a gentile loans money to a Jew relying on his *chometz* as security and took physical possession of the *chometz* and the agreement was that if the Jew does not repay the loan by a certain date the *chometz* becomes the gentile's retroactively from the time of the loan and that date arrives and the Jew does not repay the loan the *chometz* is permitted. This ruling applies even if the designated date arrives after Pesach and the rationale is that when the designated date arrives and the loan is not paid the *chometz* becomes the gentile's retroactively and the *chometz* belonged to the gentile on Pesach.

- According to many Acharonim if a *kinyan* was made and the agreement was that the *chometz* would retroactively become the property of the gentile the *chometz* is permitted even though it remained in the physical possession of the Jew as long as he did not bear responsibility for it. (M.B. 2)
- Poskim are uncertain whether one should rely upon this ruling *l'chatchila*, therefore they advise that the *chometz* should be redeemed before Pesach and certainly one should avoid relying upon this ruling when one's intent is to redeem the *chometz* after Pesach. (M.B. 3)
- If the due date for the loan arrived before Pesach and the loan was not repaid there is a disagreement whether benefit could be derived from that *chometz* and one may rely upon the lenient opinion in a pressing circumstance. (M.B. 4)
- Magen Avrohom is uncertain whether in a case where the agreement was not retroactive if the Jew could allow the gentile to keep the *chometz* as payment for the loan or perhaps that is considered deriving benefit from the *chometz*. Other authorities maintain a lenient position on this matter. (M.B. 6)

Siman 441 Seif 2:

If a Jew loans money to a gentile relying on his *chometz* as security and took physical possession of the *chometz* and the agreement was that if the gentile does not repay the loan by a certain date the *chometz* becomes the Jew's. If the due date arrived, which is after Pesach and the gentile does not repay the loan, even if the Jew did not bear responsibility for the *chometz* it is prohibited since he acquired it retroactively. However, if the agreement did not include the clause that made it the Jew's retroactively and he had no responsibility to watch the *chometz* the *chometz* is permitted.

- Although Shulchan Aruch discusses the halacha from the perspective of deriving benefit from the *chometz* after Pesach the same halacha would be true for the prohibition of בל יראה בל ימצא before Pesach. As such one must destroy of sell the *chometz* before Pesach. (M.B. 8)
- According to some authorities if the due date was before Pesach and the gentile did not repay the loan the *chometz* becomes the Jew's and he must destroy or sell it. One should be careful about this matter since many authorities subscribe to this position but *b'dieved* one could be lenient about the matter. (M.B. 9)
- If the loan is between two Jews the lender acquires the *chometz* even if it is not set up to work retroactively since a Jew acquires the security for the loan. (M.B. 11)