The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Mon, Mar 30, 2021 ■ י"ב ניסן, תשפ"א
סימן תמ"ג סעיף ב'

Overview

Siman 443 Seif 2:

A Jew who was given *chometz* by another Jew as a deposit should hold onto it until the 5th hour and if the owner does not come he should sell it to a gentile. If he does not sell it he is obligated to destroy it even if he is not liable for the *chometz*.

- If one is concerned that he will not find buyers during the 5th hour he may sell it earlier. (M.B. 11)
- Magen Avrohom writes that when one could sell the *chometz* to a gentile who will sell it back after Pesach one may not make an irrevocable sale to a gentile. (M.B. 11)
- Poskim debate whether the custodian is liable in the event that he did not sell the *chometz* to the gentile. (M.B. 12)
- *Chometz* that one has as security for a loan that one did not sell, it is logical to assume that after Pesach the lender has forfeited his right to collect the loan since he can no longer return the security. However, if the *chometz* is still intact it is possible that he could return it to the borrower and declare הרי שלך לפניך since it is not visibly prohibited (היזק שאינו ניכר). (M.B. 12)
- Although it is possible that the owner sold his *chometz* the custodian should nevertheless destroy it. (M.B. 13)
- Even though the custodian will not violate a prohibition if the *chometz* remains in his possession he must nevertheless destroy the *chometz*. Vilna Gaon maintains that the custodian is Biblically obligated to destroy the *chometz* since it is in his possession. (M.B. 14)

Stories to Share

"Here is That which Belongs to You"

מ"ב סי' תמ"ג, ס"ק י"ג: "הרי שלך לפניך ..."

A certain man was a bit concerned because he owned a couple of bottles of expensive whiskey and didn't wish it to be finished off on Purim. He decided that the best thing would be to leave it with a trusted friend, but the friend was also concerned about it being consumed at his house. But since he had a rather large house, he placed it where he was sure no one would find it, and both friends were satisfied.

After Purim the two forgot about the entire matter. It was only when it was already Pesach that the friend found the bottle of whiskey which had been left at his house shortly over a month before. Of course he was horrified but he also recalled that he had agreed to watch the whiskey and taken responsibility. Although he didn't wish to hold onto chometz for even one instant, he knew that if he himself burned it, he would have to pay for the pricey whiskey. Even though he was unsure, he had a shaky memory that, at certain times, it was permitted for a person to hold onto chometz if he plans to burn it.

He brought it to his friend's house and returned it saying, הרי שלך לפניך.

Naturally, his friend immediately burned it. Also, naturally, he felt afraid that he may have done something wrong and decided to ask about this.

When this question reached the Boruch Tam he ruled that the conduct of both men had been acceptable. "The Chok Yaakov rules that although a robber who stole chometz may return it after Pesach, he may not do so during the chag since it is his duty to burn it immediately. חי"י, ס' תמ"ג, ס"ק ח'. Yet the Ktzos HaChoshen is uncertain about why this shouldn't be permitted. He concludes that perhaps the prohibition is because the thief is obligated to burn it in order to fulfill the mitzvah of תשביתו.

קצות החשן, ס' שס"ג ס"ק א'

The Boruch Tam concluded, "But I hold that even if the robber returns the chometz and the owner burns it, he also fulfills this mitzvah! The same is true in this case."

הגהות ברוך טעם על הקצוה"ח שם

Halacha Highlight

Selling a fellow Jew's *chometz* that is in one's home to a gentile

Shulchan Aruch Siman 443 Seif 2

ואם לא בא בעליו ימכרנו לאינו יהודי

And if the owner does not come it should be sold to a gentile

Shulchan Aruch (סעי' ב') discusses the case of one who is in possession of a fellow Jew's *chometz* as the prohibition against owning *chometz* approaches. The Halacha is that the custodian may sell the *chometz* even if he bears no responsibility for that *chometz* and according to most Poskim will not even violate a prohibition if it remains in his possession. The basis for selling the *chometz*, the Gemara (Pesachim 13a) explains, is *hashavas aveidah* – returning a lost item. Included in the *mitzvah* of *hashavas aveidah* is the obligation to prevent someone from suffering a financial loss.

One of the issues that Poskim raise about this matter is determining the mechanism by which one becomes authorized to sell someone else's property without his permission. There is a principle that allows one to act for the benefit of another called זכין לאדם שלא בפניו- one may acquire property for someone even if they are not present. Although in this case one is looking to benefit his friend by selling his *chometz* rather than allow it to become prohibited as *chometz she'avar alav haPesach*, nevertheless, to accomplish this task one must take the *chometz* out of the owner's possession and the principle of זכין does not allow one to take away someone's ownership. An explanation that is given (ע' ספר בדיקת חמץ וביעורו פי"א הע' נ"ז) is that since one was appointed custodian for his friend's *chometz* included in his responsibility is the authority to save the deposited item from potential loss even if this involves selling that property.

In the event that the custodian did not sell the *chometz* before it became prohibited from benefit, Tur rules that he is obligated to destroy it even if he did not accept liability for that *chometz*. The reason, explains the Perisha (סק"ז), is that although the custodian does not violate the prohibition against owning *chometz* since it is not his and he did not accept liability for the *chometz*, nevertheless, he must destroy it due to the principle of כל ישראל ערבים זה בזה-all Jews are guarantors for one another. Consequently, the custodian is responsible to assure that the depositor does not violate the prohibitions of בל יראה ובל ימצא.