The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
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סימן תמ"ח סעיף א'-ב'

Overview

Siman 448 Seif 1:

Chometz that belongs to a gentile that he possessed on Pesach is permitted even for consumption.

- The same halacha is true if the chometz is ownerless. (M.B. 2)
- If a Jew and gentile are partners and own chometz for Pesach and following Pesach they dissolve the partnership the chometz that the gentile takes is permitted for benefit. M'kor Chaim maintains that this is limited to where the chometz was in the gentile's home and in such a case it may even be permitted for consumption. The Jew's portion of the chometz is prohibited for benefit. The same halacha is true for two Jewish partners when only one of them sold his chometz. (M.B. 2)

Siman 448 Seif 2:

If a gentile brings a Jew a gift of chometz on the last day of Pesach he should not accept it and he should not behave in a manner that indicates that he wants the chometz. It is best if he declares that he does not want his property to acquire the chometz on his behalf.

- If he accepted it it is prohibited for benefit even after Pesach since it was chometz in the possession of a Jew on Pesach. (M.B. 4)
- If he behaved in a manner that indicates that he wants it his property would acquire it for him on his behalf. When he does not behave in that manner it is assumed that he does not want to violate the prohibition. (M.B. 5)
- In other words, although technically if he says nothing the chometz is permitted, nevertheless, it is best if he articulates that he does not want his property to acquire the chometz. If he does so he may even show the gentile where the chometz may be placed and he must either put up a partition of ten tefachim in front of the chometz or on Shabbos or Yom Tov cover the chometz with a utensil. (M.B. 6)

Halacha Highlight

Ownerless chometz after Pesach

Shulchan Aruch Siman 448 Seif 1

חמץ של אינו יהודי וכו'

The chometz of a gentile etc.

Shulchan Aruch (סע' א') rules that chometz that was owned by a gentile over Pesach is permitted even for consumption after Pesach. Mishnah Berurah (סק"ב) discusses the case of a Jew and gentile who have a partnership and the Jew did not sell his chometz for Pesach. If after Pesach the Jew and gentile decide to dissolve their partnership and divide the assets, the chometz that the gentile takes is permitted for benefit. The reason is that since the prohibition against benefit from chometz that was owned by a Jew is only Rabbinically prohibited, we can utilize the principle of berairah – retroactive clarification - to declare that the chometz that gentile took after the dissolution of the partnership was his during Pesach as well. Mikor Chaim adds that this leniency is limited to where the gentile had the chometz in his property and in such a case it is possible that the chometz is permitted for consumption as well. The portion that the Jew takes following the dissolution of the partnership, however, is prohibited for benefit. This is in contrast to Shaagas Aryeh's position that even the chometz the Jew takes following the division of the assets is permitted (ע' שערי תשובה סק"א ושעה"צ סק"ד).

Mishnah Berurah (סק"ב) mentions that chometz that is ownerless – hefker – is also permitted for consumption after Pesach. The reason is that since no one violated the prohibition of בל יראה Chazal's injunction prohibiting the chometz after Pesach does not apply. For this reason if a convert who did not have relatives to inherit his property were to die before Pesach his chometz would be permitted for consumption after Pesach since it was ownerless during Pesach. Poskim add that chometz that is owned by communal organizations that is distributed to the poor is permitted for benefit after Pesach in the event that they were negligent and did not sell the chometz. The reason is that since it is a communal organization no one violated בל יראה when the chometz was not sold so it is not prohibited after Pesach (פסקי תשובות אות א').

Stories to Share

The Nobleman's Revenge

ש"ע ס' תמ"ז, א': "חמץ של אינו יהודי שעבר עליו הפסח מותר אפילו באכילה..."

A Jew named Yeshayah owed a large sum of money to a local nobleman but was a little late repaying his debt. Since Yeshayah was very useful earning huge profits through various investments, the nobleman did not wish to harm him, but he wanted to punish the Jew to ensure that such a lapse would never recur. Since he was unfamiliar with Jewish customs, he asked a local meshumad how he might cause the Jew to suffer. The meshumad suggested that he prevent him from selling his chometz.

When Yeshayah found out about this it was too late to do anything about it, since the nobleman had forbidden the non-Jews to buy anything from him. He immediately opened his warehouses and declared everything hefker to all and joyously said, "כל חמירא וחמיעה דאיכא ברשותי דחזיתיה ודלא חזיתיה...".

When the nobleman heard about this, he was very disconcerted. He was afraid that if he allowed everyone to take the Jew's property, he would become destitute and the nobleman would lose vast capital.

He immediately dispatched guards to remove the non-Jews from Yeshayah's property and restore whatever they had taken. The nobleman then summoned Yeshayah. "Tell me," he asked. "Are you out of your mind?"

When Yeshayah explained that he was merely following halachah, the nobleman dismissed him. "He has obviously lost his mind."

After Pesach, the nobleman was astounded to hear that Yeshayah refused to take possession of any of the chometz that had been his. "It might be forbidden," reasoned the Jew.

Eventually the exasperated nobleman called in a rav at Yeshayah's behest. After hearing the entire story, the rav determined that since Yeshayah had declared the chometz ownerless, the nobleman had acquired possession of it

The nobleman responded, "Well, I demand then that you take it back!" Which Yeshayah promptly did.

ספר זכרונות, ר"י מאז"ה