The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Sun, Apr 3, 2022 ■ ב' ניסן, תשפ"ב
סימן תמ"ח סעיף ג'

Overview

Siman 448 Seif 3 (b):

If the chometz was sold or given to a gentile who lives outside of his home before Pesach, even though the Jew knows him and understands that not only will the gentile not touch the chometz but he will hold it until after Pesach and then return it, it is permitted.

- It is prohibited to sell one's chometz to a Jew who is a mumar since he is still a Jew. (M.B. 11)
- Later authorities explain that the main point is not whether the gentile is in the Jew's home; the main point is that the chometz should be removed from the Jew's home. (M.B. 12)
- Chok Yaakov maintains that the reason the chometz must be removed from the Jew's property is so that he can make a proper kinyan but if a proper kinyan was performed the chometz may remain in the property of the Jew as long as he constructs a partition of ten tefachim in front of the chometz. Other authorities require the chometz to be physically removed and a partition is not sufficient in this case. This requirement is l'chatchila but b'dieved the chometz would not be prohibited even if one did not designate a particular place for the chometz. (M.B. 12)
- Later authorities write that if one has a large quantity of chometz which is impossible to remove on should sell the room where the chometz is located and it is as if the chometz was removed from the Jew's property. (M.B. 12)
- In such a case the key to the premises must be given to the gentile or he must at least be given free access to the chometz. It is prohibited to lock the gentile out of the premises. (M.B. 12)

Halacha Highlight

Selling chometz after it was declared ownerless

Shulchan Aruch Siman 448 Seif 3 (b)
קדם הפסח
Before Pesach

Shulchan Aruch teaches that a person may sell or give his chometz to a gentile before Pesach. Even though he knows that not only will the gentile not touch the chometz but he will return it after Pesach, nevertheless, the chometz is not subject to Chazal's decree prohibiting chometz from benefit that was in a Jew's possession during Pesach. The common practice of selling chometz raises an interesting question discussed by the Poskim. The accepted practice is that the Bais Din that sells the chometz of the community members arrange for the sale to take place at the end of the fifth hour of the day on erev Pesach. At that time most people have already burned their chometz and have recited the accompanying declaration of nullification. How then is it possible to sell chometz to a gentile that one has already nullified and declared ownerless? Chasam Sofer (או"ח סי' ס"ב וסי' קי"ג וקי"ט), in fact, writes that the sale of chometz should be performed earlier in the day so that is precedes the declaration of nullification. That way he includes in his declaration of nullification any chometz that he may have overlooked and did not include in his sale.

However, many Poskim justify the common practice and offer the following explanations. Some maintain that the chometz one intends to be included in the sale of chometz to the gentile is excluded from declaration of nullification. Others reject this approach and assert that the declaration of nullification includes all of one's chometz. The intent of the sale is to address the concern that perhaps the declaration of nullification was not performed with full intent so Chazal wanted to assure that the chometz would not remain in one's possession therefore they instituted the practice of selling the chometz to assure that no one would violate the prohibition of owning chometz on Pesach (פסקי תשובות אות ז').

Stories to Share

The Burden of the Sale

ש"ע סי' תמ"ח, ג': "אע"פ שהישראל מכרו לאינו יהודי ויודע בו שלא יגע בו כלל"

When Rav Meir Arik would preside over the sale of chometz each year, many people would come from the surrounding places with money asking the rav to sell their chometz. Although he usually took no money for his work for the community, he had a few exceptions: for a din Torah, for Purim, and for selling chometz. He would give some of this money to his household. The rest he would give to his nephew to distribute among the poor.

It took him a long time to sell the chometz. He would observe various stringencies, including those of the Shulchan Aruch HaRav. He would make sure to explain everything to the non-Jew. Besides endless patience, this required a translator, since the rav did not know the local language. He would also make a special document of sale for himself to be used on this special occasion.

When he finished the sale he would say, "A stone has been rolled off of me."

Motzei Yom Tov he would not even go to the shul for maariv. Instead, he would immediately go to the non-Jew's house to redeem the chometz. Only after that did he feel free of the burden.

שיח זקנים, ע' שמ"ז