The Chicago Center
Digest
Mishna Berura
THE DAILY RESOURCE FOR MISHNA BERURA YOMI
Mon, Apr 4, 2022 ■ ג' ניסן, תשפ"ב
סימן תמ"ח סעיף ג'

Overview

Siman 448 Seif 3 (c):

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. However, the gift has to be absolute without any conditions or the sale must be absolute with a small amount of money changing hands.

- If the gentile does not want to return the chometz one may not force him to do so even in secular court. If the gentile put only a small amount down and does not want to pay the rest it is obvious that it is permitted to file a claim against him in secular court or to return the chometz as payment. (M.B. 13)
- Later authorities write it is prohibited for a Jew to purchase another Jew's chometz from a gentile and if he does purchase it he must return it to the original owner. In the event that he over paid the original owner is not obligated to pay any more than its value. (M.B. 13)
- One's agent or wife may sell the chometz to the gentile but a gentile may not serve as one's agent to sell chometz. (M.B. 14)
- The proprietary act of a gift is lifting the object or pulling it if it cannot be lifted. (M.B. 15)
- The concern is that the gentile will not fulfill the condition cancelling the gift and retroactively the Jew violated בל יראה. (M.B. 16)
- There is a disagreement whether the proprietary act for a gentile is money or pulling/lifting the object. According to some even the other kinyanim could be performed by a gentile. L'chatchila one should employ money and pulling or at least pulling the object but b'dieved if the only proprietary act was money or some other kinyan the chometz is permitted after Pesach. (M.B. 17)

Stories to Share

Services Rendered

ש"ע ס' תמ"ח, ג': "או שימכרנו מכירה גמורה..."

Today's amud continues discussing the halachos of mechiras chometz.

Many gedolim refused to derive benefit from any gifts, with rare exception. One of these exceptions was sometimes accepting a gratuity for arranging the sale of chometz. Rav Meir Simcha of Dvinsk, the famous Ohr Sameach, seems to have had different customs at different times in his life.

Some recounted that the rav never accepted money for mechiras chometz. Despite the hundreds of people who lined up outside his house to request that he sell their chometz, he never took a penny. But Rav Shmuel Leib Svei testified that he was present at one mechiras chometz and Rav Meir Simcha accepted the gifts offered freely by those who wished him to officiate.

He recounted, "One wealthy man gave the rav an expensive item which he immediately took. I acted without thinking and, instead of remaining silent, I asked him about this. 'I know the rav never accepts gifts, so why is accepting a gift for having sold another's chometz any different?"

"Rav Meir Simcha immediately replied that this was no gift. 'I once saw an old document of sale of chometz from the Nodah B'yehudah. It says there that the rav officiating is entitled to receive all the payments for selling the chometz. We see that what people give the rav to sell chometz does not constitute a gift. It is payment for services rendered. This is no different than accepting money for rent from a renter.'"

ספר רבינו מאיר שמחה

Halacha Highlight

Possible chometz mixtures

Shulchan Aruch Siman 448 Seif 3 (c)

או שימכרנו לו מכירה גמורה

Or he should sell it with a valid sale

Shulchan Aruch emphasizes that although one may sell or give away one's chometz to a gentile before Pesach knowing that he will hold onto it and return it after Pesach, nevertheless, one must be certain that the sale or gift is halachically recognized. The practice of selling not only one's chometz but even his chometz utensils before Pesach raises an important question. Seemingly, if one sold his chometz utensils to a gentile for Pesach, when he purchases them back from the gentile they should have to be immersed in the mikvah the same as any other kli seudah that is purchased from a gentile that requires immersion.

One approach adopted by Poskim to address this issue is that they write in the contract of sale that they are only selling to the gentile the chometz that may adhere to the walls of the utensil but they are not selling the utensils themselves. There is no need to sell the chometz taste that is absorbed in the walls. Shulchan Aruch (סי' תנ"א סע' א' ומג"א שם סק"א) rules that one does not violate בל יראה ובל ימצא for chometz taste absorbed in the walls of a utensil, and it is permitted to retain possession of such utensils in a place in one's home where there is no concern that one will use the utensil on Pesach. Other Poskim were concerned about maintaining ownership of even the absorbed taste in the utensils and specified that in the contract as well.

In the event that one did not take the necessary precaution to assure that the utensil was not sold to the gentile, there is a dispute whether one is obligated to immerse the utensils when they are bought back after Pesach. According to some Poskim the utensils should be immersed while others only require immersion for the utensils that Biblically require immersion. The common custom, however, is that the utensils are not immersed since the sale was not intended to be permanent and were never called the gentile's utensil (פסקי תשובות אות ח').