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

Overview

Siman 448 Seif 4:

A Jew may say to a gentile during the fifth hour or earlier, "Rather than purchase chometz worth one-hundred,purchase an amount worth two hundred perhaps I will need chometz and I will purchase it from you after Pesach." However, he may not sell it or give as a gift with a condition and if he does so he violates בל יראה ובל ימצא.

- In other words he is advising the gentile to buy a larger quantity than needed so that after Pesach he will buy it back for a profit for the gentile. (M.B. 22)
- Later authorities write that it is even permitted to inform the gentile that he will buy it back for a profit for the gentile. (M.B. 23)
- Shulchan Aruch refers to where the kinyan would not be completed without the condition but if he specified that the kinyan would take effect immediately as long as the condition is fulfilled, the chometz belonged to gentile all along. However, even this condition should not be made as a stringency of chometz. Another invalid condition is when the transfer is immediate but the condition is that whenever the Jew wants to purchase it back he has the right to do so. In such a case the sale or gift is not valid. (M.B. 24)
- If the Jew states that the sale is final but he retains the right to purchase the chometz if the gentile decides to sell it there are authorities who maintain that this is permitted even l'chatchila because even if the gentile does not fulfill the condition it does not nullify the sale. (M.B. 24)

Halacha Highlight

Selling chometz with the intent to purchase it back

Shulchan Aruch Siman 448 Seif 4

ואקחנו ממך אחר הפסח

And I will buy it back from you after Pesach

Shulchan Aruch based on a Tosefta rules that one may encourage the gentile to purchase his chometz by assuring him that he will buy it back after Pesach. Mishnah Berurah (ס"ק כ"ג) adds that one may even promise the gentile that when he purchases the chometz back he will make sure that the gentile will profit. Terumas HaDeshen (סי' ק"כ) is troubled by the validity of this sale. If all the parties involved know that the Jew will buy back the chometz after Pesach it is not really a sale, it is really a deposit that is being called a sale. As such this arrangement should be prohibited. He answers based on a Gemara in Gittin (20b) that concludes that a person is capable of selling wholeheartedly something that he knows he will buy back if the sale serves his interest. Similarly, since the Jew does not want to violate בל יראה, he sells the chometz to the gentile wholeheartedly even though he is fully aware that he will buy the chometz back after Pesach.

Even if the gentile does not pay the entire purchase price before Pesach the sale is valid as long as it is clear that the sale is absolute and delinquency in paying the remaining balance will not affect the validity of the sale. The sale should not be structured in a way that the sale could be retroactively cancelled due to delinquency in paying the remaining balance. Similarly, Shulchan Aruch rules that the sale should not be subject to any condition, and if it is the Jew transgresses the prohibition of בל יראה. Mishnah Berurah (ס"ק כ"ד) explains that Shulchan Aruch refers to where the transaction is not completed until the condition is fulfilled. In such a circumstance the Jew maintains ownership of the chometz until the condition is fulfilled and if the condition is not fulfilled until after Pesach has begun he has violated בל יראה.

Stories to Share

Returning the money

ש"ע סי' תמ"ח, ד': "אבל מתנה על מנת להחזיר לא מהני..."

Today's amud discusses a מתנה על מנת להחזיר.

A certain man needed to redeem his firstborn son. He heard that Rav Aryeh Levin, zt"l, had retained five "selaim" from the time of the Ottomans, so he took them from him. He figured that he would redeem them from the kohein after the ceremony and return them to Rav Levine.

He invited his entire family and friends to the pidyon haben and presented the kohein with the coins to redeem his son. Immediately after the pidyon, the baal simcha's father-in-law approached the kohein and requested to buy the coins off of him. The kohein figured that the grandfather was acting on behalf of the father and agreed.

After the meal, when the father approached the kohein to acquire the coins, he was surprised to hear that his wife's father had already purchased them.

When he approached his father-in-law for the coins, the man refused to give them up. "If you gave them to the kohein with your whole heart they are mine. If you gave them to him as a מתנה על מנת להחזיר the child is not redeemed, as we find in kiddushin 6..."

The father-in-law was kidding and eventually relinquished the coins.

The Tchebiner Rav, zt"l, was present at the pidyon but did not intervene. When he was on his way home with Rav Yehudah Rabinovitch, zt"l, he said, "The truth is that the son-in-law was correct. The father-in-law was obligated to give back the coins and the redemption was good.

"The proof is from the ט"ז (או"ח, סימן תמ"ח, ס"ק ד') who writes that if one sold his חמץ to a גוי and another Jew redeemed it, he is obligated to sell it back to the original owner. The reason is because that is the custom of merchants as a courtesy.

"I didn't say anything since I could tell that the zeide was just trying to make things lebidik!

בצלו חמדתי, עמוד צ'-צ"א