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BAKE SALE:

Can a Transfer of Ownership Effect Biur Hametz?

Adapted from a shiur by Rav Yosef Greenwald

SELLING AS “TASHBITU”: GETTING RID OF YOUR HAMETZ

Mechirat Hametz, the sale of *Hametz* to a gentile before *Pessah* – used to avoid violating the prohibition of owning *Hametz* on *Pessah* – appears in the *Mishna* and *Tosefta*. But for most of Jewish history, it was employed only in exigent circumstances. Decrees in Europe four centuries ago that banned Jews from most professions led to a state where the *Bac”h*, writing in 1630’s Poland, observed (O.H. 448:3) that most Jewish commerce was in liquor. As a pre-*Pessah* fire sale of a producer’s entire inventory would mean financial ruin, the *Bac”h* permitted a distiller to sell his supply to a gentile before *Pessah*, without physical transfer, and then buy it back after *Yom Tov*—provided he also sold the warehouse and gave the buyer the key.

Two centuries ago, the current practice, in which selling *Hametz* to a gentile through one’s *Rav* is a standard part of *Pessah* preparations, was taking shape in Europe.

Despite this, we all still burn *Hametz* on *Erev Pessah*. Why can’t we consider the *Mechirat Hametz* as a fulfillment of the *mitzva* of *Biur Hametz*?

There is a dispute between *Ribbi Yehuda* and the *Hachamim* in the *Mishna* (*Pessahim* 21a) whether the *mitzva* of *Tashbitu Se’or Mi’Batechem* requires burning, or if crumbling the *Hametz* and dispersing it in the wind or tossing it into the sea suffices. *Maran* follows the view of the *Hachamim* that any means of destruction is valid, although the *minhag* to burn the *Hametz* when possible. Wouldn’t a sale to a gentile also fulfill the *mitzva*?

The *Minhat Hinuch* (9) ponders whether one

who owns no *Hametz* must acquire some in order to destroy it on *Erev Pessah*. Does *Tashbitu* require an act of elimination, or simply that one not possess *Hametz* on *Pessah*? He concludes that the Torah mandates an act of *Hashbata*.

But does *Hashbata* require physical elimination, or would a legal act that removes the *Hametz* from its owner’s possession be effective?

The *Rishonim* say that one could fulfill the *mitzva* of *Tashbitu* via *Bittul* – the proclamation that one considers all his *Hametz* worthless like dirt. This is with the *Rishonim*’s overwhelming understanding—with the notable exception of the *Ran*—that *Bittul* makes one’s *Hametz* ownerless.

So if *Bittul*, wherein the *Hametz* is untouched but its ownership is changed, constitutes a fulfillment of *Tashbitu*, why wouldn’t selling it to a gentile qualify as well?

It would appear that the answer is this: *Tashbitu* requires that one treat his *Hametz* as worthless, something he no longer values [as it is stated in the *Bittul* formula, in which we declare that our *Hametz* “should be nullified and ownerless like the dust of the earth”]. Both physically destroying *Hametz* and relinquishing ownership of it via pronouncement demonstrate that the *Hametz* no longer holds value for its owner. But selling would indicate the opposite. Offering an item for sale shows that the seller values it and expects that others will do so as well. He sells his *Hametz* to exchange it for another valuable commodity, money. One who sells his *Hametz* certainly won’t violate the prohibition of owning *Hametz* – *Bal Yera’e* – because he no longer owns it. But neither will he fulfill the *mitzva* of *Tashbitu* since it requires an eliminative act.

The *Rashash* (*Pessahim* 21b) suggests that one could fulfill *Tashbitu* on *Erev Pessah* by eating *Hametz*. But we don’t find that option mentioned by most *Rishonim* and *Aharonim* (see

(continued on back)



Shiur Summary by Dayan Shlomo Cohen

The Hametz Index: Owning Shares of Companies Dealing in Hametz

We are not allowed to own any *Hametz* over *Pessah*. The custom in most communities today is to sell the *Hametz* in our possession to a non-Jew over *Pessah*. What happens if you own shares in companies that deal with *Hametz*?

Let us explain how corporations work. According to law, a corporation is considered to be a separate entity, apart from the shareholders. That’s why it is also has limited liability, meaning that it is not liable for more than the value of its assets, while its shareholders are exempt. Is such a type of ownership a problem of owning *Hametz*?

There are two types of corporations: a private corporation, in which the shareholders have a say and power to influence the company’s decisions. Such a company would be viewed by *Halacha* as a partnership and – although there would be a limited liability according to *Halacha* – there would still be a problem of owning its *Hametz*.

However, with regards to a public company with millions of shares, even though they may have some “voting” rights, they cannot exert any influence as to the running of the company. Rav Moshe Feinstein points to this fact and permits one to own shares in such companies although they own *Hametz* (he understands that owning a share is merely buying a portion of the profits of the company). If one owns a significant percentage of the shares this may

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(continued from front pg.)

Baal HaMaor, ad loc.) and this could be the reason: Eating something does not demonstrate that one doesn't value it, it does the inverse.

A similar argument is made by the *Hattam Sofer*. The *Tosefta* (*Pessahim* 2:12) discusses the case of a man who finds himself on a ship before *Pessah* in possession of *Hametz*. Were he to destroy his *Hametz* provisions, he would starve before reaching land. The *Tosefta* says he should sell or gift it to a gentile passenger, but it adds the caveat (per the text of the *Geonim*) that one must not engage in pretense; the sale must be *real*. The *Tevu'ot Shor* (*Bechor Shor, Pessahim* 21a) offers a novel understanding

of the contemporary *Mechirat Hametz*: Although it is a *Ha'arama*, a trick, which is generally forbidden, but because *Bittul* eliminates the possibility of a Biblical violation (*Pessahim* 4b, 10a), therefore the prohibition of *Hametz* is only *Mid'Rabbanan*, and a *Ha'arama*-based sale is sufficient on the *D'Rabbanan* level as a reinforcement of one's *Bittul*. The *Hattam Sofer* rejects this understanding, arguing, as above, that the sentiment that underlies sale is the opposite of that behind *Bittul*: *Bittul* means I *don't* value the *Hametz*, selling means I *do*. The sale of one's *Hametz*, far from fortifying his *Bittul*, would undermine it.

May you and your family enjoy a *Hag Kasher V'Sameah!*

(continued from front pg.)



be a problem.

This logic would also permit one to own stocks in companies that are: dealing in non-Kosher items; open on Shabbat or lending with interest. The *Minhat Yitzhak* argues on Rav Moshe and forbids owning even minimal amounts of stock. Thus, the Sale of *Hametz* contract in many places includes selling one's stocks (which would raise an issue with regards to dividends given on *Pessah*). According to the *Minhat Yitzhak* it would seem that one shouldn't own any stocks, due to the other transgressions involved.

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DO DIABETIC SUPPLEMENTS HAVE TO BE KASHER L'PESSAH?

This and other similar questions were the subject of "PESSAH & PHARMACEUTICALS" a recent seminar hosted by the Bet HaVaad Medical Halacha Center in conjunction with the OU. Rabbi Gavriel Price, Rabbinic Coordinator for Ingredient Research, and Rabbi Moshe Elefant, Chief Operating Officer, at OU Kosher, presented the issues related identifying potential *Hametz*-based ingredients in pharmaceuticals, dietary supplements, and vitamins.



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