

Bake Sale: Can a Transfer of Ownership Effect Biur Chametz?

Adapted

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Selling for *Tashbisu*

Mechiras chametz, the

sale of *chametz* to a gentile before Pesach to

avoid violating *bal yeira'eh uval yimatzai*,

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 Bach, writing in 1630s Poland, observed (O.C. 448:3) that most Jewish commerce was

in liquor. As a pre-Pesach fire sale of a producer's entire inventory would mean financial ruin, the Bach permitted a

distiller to sell his supply to a gentile before Pesach, without physical transfer, and then buy it back after Yom Tov—provided he also sold the warehouse and gave the buyer the key.

By two centuries ago, the current practice, in which

selling *chametz* to a gentile through one's *Rav* is a standard part of Pesach preparations,

was taking shape.

Despite this, we all still burn *chametz* on Erev Pesach. Why can't we employ *mechiras chametz* to fulfill the mitzva of *biur chametz*?

There is a dispute between Rabbi Yehuda and the *Chachamim* in the Mishna (Pesachim 21a) whether

the mitzva of *tashbisu s'or mibataichem*

requires burning, or if crumbling *chametz* and

dispersing it in the wind or tossing it into the sea suffices. The basic

Halacha follows the view of the *Chachamim*

that any means of destruction is valid, although the *minhag* is that fire is preferred. (For this reason,

when Erev Pesach falls on Shabbos, we flush *chametz*

down the toilet.) Wouldn't a sale to a gentile also fulfill the mitzva?

The Minchas Chinuch (9) famously ponders whether one who

owns no *chametz* must acquire some in order

to destroy it on Erev Pesach. Does *tashbisu*

require an act of elimination, or simply that one not possess *chametz*? He concludes that the Torah mandates an act

of *hashbasa*.

But does *hashbasa* require

physical elimination, or would a legal act that removes the *chametz* from its owner's possession be effective?

The *Rishonim* say

that one could fulfill the mitzva of *tashbisu*

with *bitul*. And they say—with the

notable exception of the Ran—that *bitul* means making one's *chametz*

ownerless.

So if *bitul*, wherein the *chametz* is untouched but its ownership is changed, constitutes *tashbisu*,

why wouldn't selling it to a gentile qualify as well?

It would appear that the answer is this: *Tashbisu* requires that one treat his *chametz* as worthless, something he no longer values.

(See, for example, the *bitul* formula, in which we

declare that our *chametz* "should

be *batel* and be ownerless like the

dust of the earth.") Both physically destroying *chametz* and relinquishing ownership of it via pronouncement

demonstrate that the *chametz* 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 *chametz* to

exchange it for another valuable commodity, money. One who sells his

chametz certainly won't violate *bal yeira'eh uval yimatzei*, because he no longer

owns it. But neither will he fulfill *tashbisu* if

it requires an eliminative act.

The Rashash (Pesachim 21b) suggests that one could

fulfill *tashbisu* on Erev Pesach by

eating *chametz* and letting his gastric

juices consume it. But we don't find that option mentioned by the *Rishonim* and *Acharonim*,

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 Chasam Sofer. The Tosefta

(Pesachim 2:12) discusses the case of a

man who finds himself on a ship before Pesach in possession of *chametz*.

Were he to destroy his *chametz* 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'os Shor (Bechor Shor, Pesachim 21a) offers a novel

understanding of contemporary *mechiras chametz*: It

is indeed *ha'arama*, a pretense, but because

bitul eliminates the possibility

of Biblical violation (Pesachim 4b, 10a), the prohibition of *chametz* is only *mid'Rabbanan*,

and a *ha'arama*-based sale is

sufficient on the *deRabbanan*

level as a reinforcement of one's *bitul*. The Chasam Sofer rejects

this understanding, arguing, as above, that the sentiment that underlies sale

is the opposite of that behind *bitul*: *Bitul* means I *don't* value the *chametz*, selling means I *do*. The sale of one's *chametz*, far from fortifying his *bitul*, would undermine it.

May all of *Klal Yisrael* enjoy
a *chag kasher v'samayach*.