

WHEN CHAMETZ MEANS BUSINESS

DOES THE STANDARD MECHIRAS CHAMETZ PROCEDURE SUFFICE FOR THE CHAMETZ OF A BUSINESS?

By Dayan

Shmuel Honigwachs, Shabbos and Kashrus Division, Bais HaVaad

In this article we will address the following scenarios:

- A business that sells chametz products via an online marketplace like Amazon
- A business that must serve chametz on Pesach, such as a health-care facility
- A business that depends on chametz, e.g. a trucking company that hauls bread
- A business that sells chametz that may be returned either on or after Pesach
- A business that sells chametz on consignment
- A business that profits indirectly from the sale of chametz on Pesach, e.g. a property owner who leases space to Dunkin' Donuts

SELLING CHAMETZ

ITEMS ON AMAZON

Amazon's popular FBA

(fulfilled by Amazon) program enables sellers to pre-position their goods in Amazon's warehouses to be picked, packed, and shipped when the seller receives

an order. When an item is sold, it may still be the seller's property, but because he cannot recall it, it is *aino birshuso*. May he sell it with his regular *mechiras chametz*?

According to many *poskim*, including R' Moshe Feinstein,^[1] the owner of chametz that is *aino birshuso* does not violate *bal yeira'eh*, obviating the problem. The Chazon Ish,^[2] though, disagrees.

An additional basis for

leniency is that because the seller cannot recall the chametz after the order is placed, it may already be the property of the gentile purchaser.^[3]

However, another possible

concern in this case is that the seller has *achrayus* for the chametz.

Although accepting *achrayus* for chametz of a gentile that is located on the gentile's property does not generally pose a problem, this may not apply to

chametz that had once been on the Jew's property.^[4]

A BUSINESS THAT

SERVES, SELLS, OR DEPENDS ON CHAMETZ ON PESACH

A business that utilizes chametz in any aspect of its operations (e.g., a trucking company, a landowner that leases space to Dunkin' Donuts, or, according to some, a health-care facility that serves chametz) is deriving benefit from chametz, which is an *issur hana'ah*. Such cases are described in halacha as *mistacker b'issur hana'ah*, earning money from an *issur hana'ah*. These businesses are earning money from the chametz of others, making *mechiras chametz* both irrelevant and impossible.

A nursing home that purchases *chametz* during Pesach may have an additional problem utilizing the standard *mechiras chametz* in that more chametz will be purchased after the *mechirah*. The issue of *mistacker*, though, may not apply to a nursing home because it can, theoretically at least, operate without serving chametz.

SELLING CHAMETZ THAT CAN BE RETURNED

Suppose a Jew sells *chametz* to a gentile shortly before Pesach with a 30-day return window, and the purchaser returns the item during or after Pesach. The return nullifies the sale retroactively, leaving the Jew in possession of the chametz during Pesach.

In this case, too, the customary sale performed by one's *rav* may have no effect, because the chametz wasn't *birshuso* at the time of the *mechirah*.

Whether this situation is

considered *aino birshuso* is the subject of a dispute between the Ketzos Hachoshen^[5] and the

Chasam Sofer.⁶ Again, according to the view of the Igros Moshe, the prohibition of *bal yeira'eh* wouldn't apply if the chametz isn't *birshuso*.

Reselling the returned chametz,

however, would present a problem of *chametz she'avar alav haPesach*.

Because the matter is contentious, a competent *posek* should be consulted, or one may utilize the solution offered at the end of this article.

SELLING CHAMETZ ON

CONSIGNMENT THROUGH A GENTILE

In this case, halacha considers the chametz to

be *birshuso* and it can be sold with the standard *mechiras chametz* procedure.

This is because consignment is similar to an *iska*, which the Ketzos Hachoshen^[6] and

Nesivos Hamishpat deem to be *birshuso*.

THE SOLUTION

The ideal solution for all

of these issues is to sell the entire business, rather than just the chametz, to a gentile. The proper *kinyanim* must be employed to effectuate the sale, in addition to drafting and executing a legally-binding contract. Since the contract is recognized by *dina d'malchusa*, it is considered *kinyan situmta* (industry custom), which is effective even for items that are *aino birshuso*. (There is a possibility that a secular court may not uphold this contract, and therefore a *kinyan sudar* is additionally performed.) This would also allow the owner to continue to operate the business during Pesach—provided that a valid Shabbos/Yom Tov arrangement is in place—because the

payments he receives are the interest from the sale of the business rather than

a benefit from chametz.

If one does not sell the

business with a sales contract, it is still beneficial to list the business in the standard *mechirah* document.

For more information regarding the sale of business chametz or to execute a specialized business chametz sale agreement, please call Dayan Shmuel Honigwachs at the Bais HaVaad office at 732.276.1309 or email info@thehalachacenter.org.

To sell your personal chametz online, go to www.baishavaad.org/chametz

^[1] או"ח

ח"א קמ"ו

^[2] או"ח קי"ח ד'

^[3] ע' באג"מ דמייירי ששלח ישראל לישראל במתנה באופן שודאי חייב המקבל להחזירו אם לא חזר בו הנותן קודם שמשך המקבל משא"כ בניד"ד דכיון דע"פ דינא דמלכותא אין המוכר יכול לחזור פקע בעלותו

^[4] ע' באג"מ (או"ח א' קמ"ו) אלא דיש להסתפק אם היה כותב כן בניד"ד דשאני התם דמייירי שבעלות ישראל מעולם לא פקע וה"אחריות" דמדובר שם מייירי בדין הואיל דיכול לשאל עליו דזהו המשך מבעלותו הקדום וא"כ י"ל דדוקא התם לא מיקרי מקבל אחריות על חמצו של עכו"ם בבית עכו"ם כיון דהאחריות הוא המשך מבעלותו הקדום של הישראל משא"כ בניד"ד דמכר החמץ לגוי ואח"כ מקבל עליו אחריות בעלמא י"ל דהוי קבלת אחריות שמתחיל ברשותו של גוי ע"כ לא החלטתי לאיסורא ודו"ק

^[5] סי' שנ"ד

^[6] סי' ס"ו