

### A NOTE FROM THE EDITOR

In this issue, we tackle *mechiras chametz* issues that pertain to businesses. But first, a very brief history of *mechiras chametz*. [READ MORE](#)

Selling *chametz* permanently to a non-Jew before Pesach in order not to violate *bal yeira'eh uval yimatzei* is mentioned in the Mishnah. The *Tosefta* goes further and discusses selling and physically transferring *chametz* and then repurchasing it after Pesach, and this method is codified by the Rambam and Shulchan Aruch. But *mechiras chametz* in its current form—where the *chametz* remains on the seller's premises and is repurchased after Pesach—dates only to the 17<sup>th</sup> century, when decrees in European countries excluded Jews from many occupations. This brought many Jews into the liquor business, where a pre-Pesach fire sale of a producer's entire inventory would mean financial ruin.

The Bach confronted this issue in 1630s Poland, where most Jewish commerce, as he attests, was in liquor. He permitted a distiller to sell his supply to a non-Jew, without physical transfer, and then buy it back after Yom Tov—provided he also sold the warehouse and gave the buyer the key. By the early 19<sup>th</sup> century, this approach had spread from the liquor merchants to encompass the general population, and Rabbanim arranged mass sales on behalf of those in their communities who had appointed them as *shluchim*. This was initially controversial, as some *poskim* viewed the sale as an ineffective *ha'aramah*. But rebuttals of the objections, and strong affirmations of the practice, came from such luminaries as the Chasam Sofer, paving the way to its wide adoption. More recently, the Mishnah Berurah even ruled that one can obviate the need for *bedika* in a hard-to-check spot by selling that area and any *chametz* it contains. Still, some observe a *chumra* not to sell *chametz gamur*, i.e., foods that are *asur min HaTorah*.

May the Torah in these pages help you to have a *chag kosher*. And may that, in turn, make it *samayach* as well.

Rabbi Nosson Kaiser

When *Chametz* Means Business

### **Does the standard *mechiras chametz* procedure suffice for the *chametz* of a business?**

By Rav 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*, such as a trucking company that hauls •  
bread for clients
- A business that profits indirectly from the sale of *chametz* on Pesach, like a •  
property owner who leases space to Dunkin' Donuts
- A business that sells *chametz* that may be returned either on or after •

**SELLING CHAMETZ PRODUCTS 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*. Can he sell it with his regular *mechiras chametz*?

According to many *poskim*, including R' Moshe Feinstein, the owner of *chametz* that is *aino birshuso* does not violate *bal yeira'eh*, though the Chazon Ish 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 non-Jewish purchaser.

However, another possible concern in this case is that the seller has *achrayus* for the *chametz*. Although accepting *achrayus* for *chametz* of a non-Jew that is located on the non-Jew's property does not generally pose a problem, this may not apply to *chametz* that had once been on the Jew's property.

**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'a*. Such cases are described in Halacha as *mistacker b'issur hana'a*, earning money from an *issur hana'a*. 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 *mechira*. 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 non-Jew shortly before Pesach with a 30-day return window, and the purchaser, claiming the item is defective, returns it on or after Pesach. The sale is nullified 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 *mechira*.

Whether this is a case of *aino birshuso* is the subject of a dispute between the Ketzos HaChoshen and the Chasam Sofer.<sup>6,7</sup> According to the aforementioned 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, may 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 NON-JEW**

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 and Nesivos HaMishpat deem to be *birshuso*.

### **THE SOLUTION**

The ideal solution for all these issues is to sell the entire business, rather than just the *chametz*, to a non-Jew. 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*. 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. This is because the payments he receives are interest from the sale of the business, and he is not deriving *hana'a* from *chametz*. To follow this procedure, it may be necessary to execute a legally-binding sales contract, which may not be feasible in the context of a standard *mechiras chametz*.

It should be noted, however, that a secular court might not uphold this contract, and therefore a *kinyan sudar* is additionally performed.

Even if one does not use this sales contract, there are benefits to listing the company in the standard *mechira* document.

*For more information regarding the sale of business chametz or to execute a specialized business chametz agreement, please call Rav Shmuel Honigwachs at the Bais HaVaad office at 732.276.1309 or email [info@thehalachacenter.org](mailto:info@thehalachacenter.org).*

*To sell your personal chametz online go to [www.TheHalachaCenter.org/chametz](http://www.TheHalachaCenter.org/chametz)*

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### **POSSESSING THE DISPOSSESSED**

(sidebar to the paragraph beginning “According to many *poskim*”)

An item that is lost or stolen remains the property of its owner. Were he to retrieve it, he would not require a *kinyan* to regain ownership.

Nevertheless, it is outside of his control—*aino birshuso*. The Gemara says that just as one cannot sell, gift, or be *makdish* something he doesn't own, he is likewise restricted when the item is his but not *birshuso*, because his lack of control compromises his ownership.

Does one violate *bal yeira'eh uval yimatzei* for *chametz* that isn't *birshuso*, like a package that has been handed off irretrievably to the postal service? R' Moshe maintains that the sender lacks the full measure of possession required to violate *bal yeira'eh*, even if the *chametz* remains his until it reaches the buyer. But to the Chazon Ish, ownership per se is sufficient for *bal yeira'eh*.

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### **THE LAW OF RETURN**

(sidebar to the paragraph beginning “Whether this situation”)

The Ketzos writes that the only way something not in one's physical control

can be considered *birshuso* is when it is being held as a *pikadon*, in trust, on his behalf. Even if a sale is rendered null and void (e.g., via *mekach ta'us*), and the buyer is going to return the item, it's still not in the *reshus* of the seller—because the buyer is holding it for himself, not for the seller. The Ketzos understands this to be the view of Tosfos, which would place Tosfos at odds with Tosfos Rid and the Ritva. The Chasam Sofer, however, rules in accordance with Tosfos Rid and the Ritva, and he understands Tosfos to hold their view as well.

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### **TAKING STOCK OF CHAMETZ**

*Adapted from a shiur by HaRav Yosef Greenwald*

May one own shares on Pesach in a public company that owns *chametz*?

At the heart of this issue is the halachic view of corporations and stock ownership, and whether shareholders, who don't bear personal liability, are considered the owners of corporate assets. These questions were first addressed by 19<sup>th</sup> century *poskim*—the Bais Yitzchok, the Rogatchover Gaon, the Mahari Halevi, and the Sho'el Umaishiv—in the context of banking. They considered such questions as whether a depositor earning interest at a corporate-owned bank with Jewish shareholders is considered a *malveh b'ribbis*.

Melamed L'ho'il discusses at length why corporate-owned *chametz* with Jewish shareholders isn't subject to *chametz she'avar alav haPesach*.

Mo'adim Uzmanim, who completely rejects the notion that corporate ownership is distinct from personal ownership, rules that shares of stock in *chametz*-owning corporations must be sold to a non-Jew along with one's physical *chametz*.