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HALACHA CENTER

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THE BUSINESS HALACHA REVIEW

This issue is dedicated in memory of Reb Gershon ben Reb Yaakov Sostchin z"l.

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THE BUSINESS HALACHA

REVIEW



Contract Draft
and Review



Heter Iska



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Food Service
Arrangements



Partnership and
Employment
Agreements



Bais Din and
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About the Bais HaVaad

With over 50 *dayanim*, *poskim*, and *kollel* members—a group of some of the most accomplished *talmidei chachamim* in the United States today—the Bais HaVaad has become the epicenter for the study, analysis and application of halacha in our contemporary society.

In addition to the national Kehilla Division, the Bais HaVaad provides a full suite of business halacha services, including contracts, partnership agreements, *heter iskas*, wills, and all Shabbos arrangements, ensuring that a halachic life is fully accessible and practical for all.



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Dear Friends:

I hope this finds you well at this difficult time.

We at the Ba'is HaVaad are pleased to present to you this next issue of the Business Halacha Review. In this publication, we aim to provide an overview of essential issues in day-to-day *dinei mamonos*—business halacha—one topic at a time.

In this issue, we tackle *mechiras chametz* issues that pertain to businesses. But first, a very brief history of *mechiras chametz*.

The permanent sale of chametz to a non-Jew before Pesach in order to avoid violating *bal yeira'eh uval yimatzei* is mentioned in the Mishnah.¹ The Tosefta² goes further and discusses selling and physically transferring chametz and then repurchasing it after Pesach, and this method is codified by the Rambam³ and Shulchan Aruch.⁴ 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 17th century CE, 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 Bach⁵ 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 19th century CE, 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,⁶ paving the way to its wide adoption. More recently, the Mishnah Berurah⁷ even ruled that one can obviate the need for *bedikah* in a hard-to-check spot by selling that area and any chametz it contains.⁸ Still, some observe a *chumra* not to sell chametz gamur, i.e., foods that are *asur min HaTorah*.

Please feel free to contact us to obtain a recording of a symposium we held on *mechiras chametz* for businesses.

May the Torah in these pages help you to have a *chag kasher*. May that, in turn, make it *samayach* as well. And may we soon see *refu'os vishu'os* for all *Klal Yisrael*.

Rabbi Nossou Kaiser

Editor in Chief

1 פסחים כ"א ע"א

2 פסחים פ"ב ה"ו

3 הל' חו"מ פ"ד ה"ו

4 או"ח סי' תמ"ח סעיף ג'

5 שם סעיף ב'

6 שו"ת או"ח ק"ג יו"ד ש"ו

7 סי' תל"ג ס"ק כ"ג

8 ומ"מ דנו הפוסקים אם צריך למכרו לפני שחל חיוב בדיקה באור לי"ד.

The background of the page is a collage of food-related images. On the left, there are several loaves of bread, including a round one with a dark crust and another with a lighter, more textured crust. Below these are several stalks of wheat with their heads intact. On the right side, there is a close-up of a dark chocolate cake or loaf topped with sesame seeds, and below that, a slice of a light-colored, possibly white or vanilla, cake or loaf. The overall color palette is warm and natural, with browns, yellows, and whites, set against a dark teal gradient at the bottom.

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

1 או"ח ח"א קמ"ו

2 או"ח ק"ח ד'

3 ע"י באג"מ דמיירי ששלח ישראל לישראל במתנה באופן שודאי חייב המקבל להחזיר 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"י באג"מ (או"ח א' קמ"ו) אלא דיש להסתפק אם היה כותב כן בניד"ד דשאני התם דמיירי שבעלות ישראל מעולם לא פקע וה"אחריות" דמדובר שם מיירי 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 הישראלי 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.

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

Possessing the Dispossessed

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 (Bava Kama 69b) 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 (Igros Moshe Orach Chaim 1:146) 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. To the Chazon Ish (Orach Chaim 118:4), ownership per se is sufficient for *bal yeira'eh*.

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.





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 Hachoshen⁶ 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

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 Hachoshen⁵ 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.

6 סי' ס"ו

The Law of Return

The Ketzos (354:4) writes that the only way something not in one's physical control can be considered *birshuso* is when it is held as a *pikadon*, in trust, on his behalf. Even if a sale was 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 Tosafos, which would place Tosafos at odds with Tosefos Rid and the Ritva in Kiddushin 56b. The Chasam Sofer, however, rules in accordance with Tosefos Rid and the Ritva and understands that to be the view of Tosafos as well.

5 סי' שני"ד



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

Taking Stock of Chametz

Adapted from a shiur by Dayan 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 19th century CE *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 1:91 discusses at length why corporate-owned chametz with Jewish shareholders isn't subject to *chametz she'avar alav haPesach*. Mo'adim Uz'manim (Vol. 3 269), 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.



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Do you sell
chametz through Amazon
that can be returned
by the customer?



Do you operate
a facility that is
required to serve
chametz on Pesach?



Do you have
an office where the
employees might bring
in chametz over Pesach?

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