

HALOCHOSCOPE

This week's question:

Someone filled out a *shtar*, document, used for authorizing *mechiras chametz*, the sale of one's leaven to a gentile, using the words *Chodesh Harishon* for the month. This is a Scriptural way to describe the month of *Nissan*. However, this is not the normal way we date a document. In addition, the years are counted beginning *Rosh Hashanah*. Therefore, it is confusing to the unacquainted reader, who could think the reference is to the month of *Tishrei*. Is this *shtar* acceptable the way it is written, or should it be changed?

The issues:

- A) Possession of *chametz* on *Pesach*; sale of *chametz*
- B) The *Harsha'ah*, authorization of a *Rav* to sell one's *chametz*
- C) *Chukas hagoy*, following the customs of the heathens; other *halachic* issues
- D) Precision in the language of a document

A) *Sale of Chametz* [Most of sections A B and D is extracted from Halochoscope XIV:24]

Possession of *chametz* during *Pesach* involves two Scriptural *mitzvos*: *bal yaira'eh*, it may not be seen, and *bal yimatzei*, it may not be found. One may not conceal *chametz* on his property or leave it in the care of a gentile off his property. This does not apply to *chametz* of a gentile that is left on the property of a Jew. If the Jew is a guardian, liable for theft or loss, there is a violation of *bal yaira'eh*. Possessing *chametz* is also an automatic violation of the positive *mitzvah* to destroy one's *chametz*, or *tashbisu*. *Chametz* in a Jew's possession during *Pesach* is Rabbinically forbidden to benefit from after *Pesach*. Consequently, one must destroy all *chametz* before *Pesach* or remove it from his possession by giving it away, selling it or disowning it. We follow the Talmudic view that it is Scripturally forbidden to benefit from *chametz* during *Pesach*. This restricts one from selling it. The transaction to remove the *chametz* must take effect before the time that it is forbidden. Practically, this is one seasonal hour before noon on *Erev Pesach*.

Destroying *chametz* is the most definitive way to dispose of it. This fulfills *tashbisu*. Some maintain that *bitul*, nullifying it, and even disowning it is also a form of *tashbisu*. [Some say *bitul* takes effect through the mechanism of *hefker*.] A merchant with large amounts of *chametz* will not want to destroy it or to declare it *hefker*. His *bitul* would be suspect; he could not sincerely consider his inventory 'nullified like the dust of the earth'. Furthermore, if one made *chametz hefker* or *batel*, its benefit is forbidden after *Pesach*. This additional measure is imposed Rabbinically to prevent abuse of the *bitul* concept. People might pretend *bitul* to keep *chametz* in their possession during *Pesach*.

A merchant may sell his *chametz* to a gentile, who may possess it on *Pesach*. The *chametz* remains on the property of the Jew, but it is transferred to the possession of the gentile. The sources of this practice are two passages in the Talmud. In the first, a Jew is traveling on a ship, presumable accompanying his merchandise, though this is not self-

evident. He is in no position to sell it all regularly. He cannot burn his personal *chametz*, especially if he will need it later in his voyage. He may sell his *chametz* to a gentile accompanying him, or give it as a gift and buy it back after *Pesach*. He should not indicate that he intends to buy it back. [This might be self-evident, but it should not be stated, as though it were a condition of the sale. Doing so would make the sale look insincere.] In the second case, a Jew is anyway selling *chametz* to a gentile customer. He may ask the customer to buy more *chametz* than he needs, so that the Jew may buy it back from him after *Pesach*. However, he may not make the sale conditional on this.

Nowadays, the *chametz* is sold using various forms of *kinyan*, *halachic* transfer. In addition, the space on which it is located is rented to the gentile. This way, the *chametz* is no longer on the Jew's property. This transaction also helps with the sale of the *chametz*, as the gentile can acquire it through his *chatzer*. It is like delivering it into his possession. Furthermore, the transaction on the real estate can roll over onto the *chametz* as an additional form of *kinyan*. The transaction has the appearance of a ritual formality. Nonetheless, it is relied on as a true solution, especially for large amounts, such as the inventory of a merchant. This is useful nowadays, when food is held in storage for long periods. It is also handy where disposal in other ways is difficult. The sale stipulates that the Jew does not remain guardian of the *chametz* of the gentile, for the reasons explained above. The gentile begins payment with a nominal deposit, but the essence of the sale is the transfer of ownership. [See *Psachim* 4b-5b 11b-13b 21a-b 27b-30a *Tosefta* 2:6-7, *Poskim*. *Tur Sh Ar OC* 441:4 443 445 448: esp. 5 7, commentaries.]

B) *Harsha'ah*

To effect this sale, a proper form of *kinyan*, act of *halachic* transaction, must take place. The seller and the buyer are required to perform this *kinyan*, with the consent of both parties. It is important that the seller is aware of the *halachic* process. It is usually left to the town's *Bais Din*, or to a *Rav*, who acts on behalf of others who designate him.

Delegating another to effect a change in *halachic* status is known as *shlichus*, agency. For many transactions, an agent is appointed with a simple instruction. A simple *shlich* does not have the ability to do something with someone else's property unless he is given a nominal right to the property itself. In the event that the gentile will indeed choose to take full delivery of the *chametz*, the full price will need to be decided by the seller. The *Rav* or *Bais Din* will also be drawing up a proper contract of sorts.

To authorize an agent for such transactions, one prepares a *harsha'ah*, a limited power of attorney. Basically, the seller contracts the *Rav* to prepare his contract for the sale, and to do whatever it will take to complete it. He gives permission and full power to the *Rav*, and agrees to abide by his decision. The *harshaos* detail the items sold and their location. An approximate value is given, so the gentile can calculate this from the documents that are later handed to him. The *Rav* will prepare a separate sale contract, to include whatever he has been authorized to sell in the accompanying *harsha'ah*.

An additional reason is given for this *harsha'ah*. The gentile will not pay in full, and the Jew will still have the *chametz* in his possession. This might not have enough validity to save the Jew from violating. By transferring the right to sell the *chametz* to a different Jew, the first Jew is relieved of his violation. The second Jew never owned the *chametz*. He is not liable for the amount over and above the value of the initial part-payment.

To validate the *harsh'ah* contract, a *kinyan sudar* is made. The *Rav* gives the seller a utensil, which is then returned to the *Rav*. This is not the sale, but solidifies the resolve of the parties to go through with the transaction. This known as *gemiras da'as*. All real *kinyanim* amount to *gemiras da'as* to transfer the ownership from the one party to the other. The optimum form of such *gemiras da'as* is the *kinyan sudar*. Therefore, it is utilized for all other situations where a commitment needs to be reinforced. The *kinyan* also binds the *Rav* to go through with the sale, and absolves the seller of his liability for the *chametz* remaining in his possession. [See Baba Kama 70a, Poskim. Tur, Sh Ar OC 448, CM 122-3 etc., commentaries. SA Harav, Mechiras Chametz. R Eider XI:A8:10, notes.]

C) Naming or numbering months

We count years from creation, beginning at *Rosh Hashanah*. Months are counted from *Nissan*, the first month and so on. Some poskim maintain that there is a Scriptural *mitzvah*, never to use a monthly count that begins at any month other than *Nissan*. The purpose of this is to remember the month of the Exodus. [Similarly, names of the days of the week invoke the names of *mesharsim*, celestial bodies that are considered ministers to Hashem that administer time. They became deities. There is a Scriptural *mitzvah* to remember *Shabbos* throughout the week, counting the days towards it. This is to remember Creation. Jewish documents use the day number.] Many other poskim maintain that the requirement to count months from *Nissan* is solely for the sake of fixing the holidays. Thus, when the Torah uses a number for a month, we know which month it means. It has no bearing on writing dates and is not connected to remembering the Exodus.

This brings up our issue. The opinion that considers it a Scriptural *mitzvah* to count the months in order from *Yetzias Mitzrayim* is difficult to reconcile. We no longer use a numbering system, but use names for the months that we learned during the Babylonian exile. References throughout the Talmud and in the later Scriptural texts use these names. There are also other names such as *Ziv* for *Iyar* and *Aisanim* for *Tishrei*. Furthermore, the Torah itself uses *Aviv* for *Nissan*. A minority view maintains that the original *mitzvah* was to remember the Egyptian Exodus. Now that we experienced a Babylonian Exodus, we have a new *mitzvah* to remember it, that supersedes the original *mitzvah*. Most poskim reject this idea. Accordingly, the overwhelming usage of the names seems to indicate that there is no *mitzvah* to number months from *Yetzias Mitzrayim*.

To reconcile this, a few suggestions are offered. There is a debate on when the World was created, *Nissan* or *Tishrei*. If it was created in *Tishrei*, the year would begin in *Tishrei*. The original numbering system would have begun with *Tishrei*. At the Exodus, Jews were commanded to switch to a numbering system starting from *Nissan*. This is the *mitzvah*. However, according to those who count the years from *Nissan*, this was always the system, and there is no special *mitzvah*. This solution works if we follow the view that Creation began at *Nissan*. If we follow the other view, we do need to use the numbering system. Therefore, a second suggestion is made. If one plans to use a numbering system, he must use *Yetzias Mitzrayim* as the starting point. However, there is no requirement to use such a system. On being redeemed from *Bavel*, a Rabbinical *mitzvah* was instituted to use a naming system to remind us of the Babylonian Exodus. Using other names violates this Rabbinical *mitzvah*. One may still use the numbering system as well. Furthermore, if the Rabbis instituted their Rabbinical *mitzvah* this way, they clearly held

that it does not negate the Scriptural *mitzvah*. On the contrary, when given a choice, the preferred way is to use the naming system.

In summary, some poskim consider using a different numbering system a Scriptural violation, but there is no requirement to use any numbers. Using different names for the months is a Rabbinical violation. There is no absolute requirement to use the Babylonian names as opposed to using numbers, but it is preferred. [See Bo 12:2, Mechilta, Ramban, Chasam Sofer etc. Rosh Hashanah 7a, Poskim. Rema EH 126:6, Pischei Teshuva 12. Ikarim 3:16. Hakosaiv, Ein Yaakov, Megillah 2a. Sefer Hamitzvos RSG 56, RYF Perla.]

D) Precision in the language of a document

One of the *kinyanim* used is *shtar*, documentation. This works for the real estate, and by way of secular law, on the *chametz* as well. In general, such a document requires a date. This will be used, in the case of sale, if the property is seized to cover a debt. In the case of rental, it determines the liabilities of the parties on the said dates.

A document may be written in any language. Its language must be precise, with no ambiguity or a writing style that leaves room to suspect that it was altered after the signing. The witnesses must understand the document. The consensus is that it may be read to the parties by two witnesses. If it is made in the presence of the *Rav*, who is also a signatory, the preparer of the document may read it. If the parties themselves sign it, they are not required to read it. If they want to sign it without knowing what is in it, they are free to accept that liability. In our case, if it is written in English, there is a case to require a secular date, in order to provide precision.

The *harshaos* are also given to the gentile, since he needs the information about the individual sellers' *chametz*. They also document the *Rav's* power of attorney, according to the secular local law as well. Therefore, the document has to fulfill the requirements of a valid document in *halacha*. The gentile is aware of the *halachic* nature of the transaction. He understands that it takes effect on Passover Eve and can reconcile it with the secular date, should the need arise. In English, due to various *halachic* considerations, it might be better to use the secular date, without getting into any complications. It fulfills the requirement to use precise language. It satisfies most *halachic* opinions as well. It is best to use it only once, as is customary when signing. As for the Hebrew month, if using the numbering system is ambiguous or confusing, it must be avoided. If a document prepared in *Bais Din*, such as a divorce or our case of *mechiras chametz*, used the numbering system, it is kosher. Hopefully, everyone involved knows its meaning. Since a *Rav* is involved, he can explain it. [See Gitin 19b Baba Basra 171 (Rashbam t'r), Poskim. Tur Sh Ar CM 42:2 43:1-5 45:2 191 EH 126:1 6 21, commentaries. Mishpat Hakesuba 11.]

In conclusion, the month may be numbered, rather than named. However, the Babylonian name *Nissan* is preferred.

On the haftarah ... *In the first [month] on the first of the month .. [Yechezkel 45:18]*. The dedication of the third *Bais Hamikdash* is after the Babylonian Exodus. The *Navi* uses the Scriptural numbering system for it. Yet The Rabbis later switched to a Babylonian naming system. Clearly, they felt that it was important to use these names to remember the Babylonian Exodus.

Sponsored by Erel Plotkin in honor of her husband, Arye Leib David's, birthday on the 26th of Adar.

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