



WHERE AND WHEN CAN I SHOP AFTER PESACH?

One of the strict laws of Pesach is the halacha of *chametz she'avar alav HaPesach*.

According to this halacha, it is forbidden to eat or derive any benefit whatsoever from chametz that was in the possession of a Jew during Pesach. Sometimes this can lead to tremendous loss, such as in the case when a Jew fails to sell a huge amount of chametz liquor during Pesach that is worth tens of thousands of dollars.

Furthermore, this prohibition is not only applicable to products that are full-fledged chametz such as breads, cookies, pastas, and liquor. Even products that contain admixtures of chametz are prohibited after Pesach unless the chametz ingredient was less than one-sixtieth of the entire mixture (*Mishna Berurah* 447:101).

The halacha follows the opinion of R. Shimon (*Pesachim* 29a) that this law is not a Torah prohibition but rather a rabbinic penalty for the transgression of the violation of “*bal yeraeh u’val yimatze*” — for the possession of chametz during the Pesach holiday. Because of the severity of such a transgression, this penalty was imposed even in cases where the ownership came about inadvertently, or by accident (*Shulchan Aruch, Orach Chaim* 448:3).

Possible Cases of Leniency

Are there any leniencies, especially given that the prohibition is rabbinic in nature? Some authorities are lenient in a situation of “*ones gamur*”

(a complete accident) — when the transgression came about due to circumstances that were completely beyond the control of the owner of the chametz. The *Mishna Berurah* (448:9) brings one such example: If a non-Jewish owner of a mill decided on his own to grind a Jew’s wheat kernels during Pesach, and then turned the flour into bread, the *Beis Meir* ruled that the bread would not become prohibited to the Jewish owner after Pesach, since there was nothing that the Jew could have done to prevent this from happening.

What about a case in which someone nullified his chametz prior to Pesach, so that it no longer belongs to him according to Torah law? The halacha follows the opinion of R. Yochanan in the Talmud Yerushalmi that a

person who nullified his chametz but otherwise did not sell or remove the chametz from his possession may not derive benefit from the chametz after Pesach, since there is a concern that his nullification may have been insincere (see Rosh, *Pesachim* 2:4, *Shulchan Aruch* OC 448:5).

However, in a case when a person nullified his chametz and performed a thorough *bedikas chametz* (searching for any chametz prior to the Pesach), and then discovered a previously unknown stash of chametz on his premises after Pesach, the *Mishna Berurah* (448:25) rules that in a case of great loss, such chametz would be permitted for benefit after Pesach, although not for consumption. The *Aruch Hashulchan* (OC 448:8) appears to be lenient even with respect to consuming such chametz.

Buying Chametz from a Jewish Store Owner after Pesach

Absent any of these possible leniencies, chametz that was in the possession of a Jew over Pesach becomes forbidden not only for the Jewish owner but also for every other Jew in the entire world as well (see *Shulchan Aruch, Orach Chaim* 448:3). Furthermore, the chametz remains forbidden forever. This creates a difficult situation for individuals who wish to buy food after Pesach from a non-observant Jewish store and from Jewish supermarket owners who may have possessed chametz over Pesach. Indeed, in recent years it was discovered that one of the major suppliers of kosher liquor was owned by a Jew, thus prohibiting forever the chametz liquor that was in its possession during Pesach.

One might argue that there is a special dispensation in the Gemora (*Chulin* 4a-4b) to purchase chametz after Pesach from a non-observant Jew who only sins based on temptation (*mumar l'teavon*) and not out of rebellion, based on the premise that such an individual would trade his prohibited chametz for a non-Jew's permitted chametz after Pesach in order to mitigate his violation. However, most of the Jewish storeowners nowadays who possess chametz during Pesach are not individuals with either the knowledge or the inclination to take such measures to avoid benefiting directly from their chametz after Pesach, so this leniency is no longer applicable (see *Be'er Hetev*, 448:11, explaining that non-observant Jews today are considered to be in the more stringent category of *mumar l'hachis* for purposes of this halacha; see also *Igros Moshe, OC* 4:91).

The Problem with Stores that Sell Their Chametz but Remain in Operation on Pesach

The most obvious solution would be to effectuate a sale of the store owner's chametz ("*mechiras chametz*") before Pesach (see *Shulchan Aruch, Orach Chaim* 448:3). Even R. Yochanan would agree that if an individual sold his chametz during Pesach to a non-Jew, that individual and others may partake of such chametz after Pesach once it is purchased back from the non-Jewish purchaser. Indeed, selling one's chametz to a non-Jew has become the accepted practice of Jews all over the world (see *Shevet HaLevi* 4:49).

However, the major problem with this option is that the sale may not ultimately be legitimate if the Jewish storeowner leaves his business open

during Pesach, thus appearing to negate the fact that the chametz was sold to a non-Jew. Indeed, in many cases where Jewish-owned supermarkets and liquor stores participate in a sale of chametz prior to Pesach, they continue to sell that very same chametz during Pesach itself. Some authorities indeed have written that any such continued business activity nullifies the sale of chametz, so that all the chametz of those enterprises is considered *chametz she'avar alav HaPesach* and remains forbidden forever (see, e.g., Maharam Shick, OC 205).

Nonetheless, Rav Moshe Feinstein ruled (*Igros Moshe, OC* 1:149) that such a *mechiras chametz* remains valid because the storeowner who sold his chametz before Pesach intends to maintain the permissible status of any chametz that is not sold during Pesach. The chametz that is sold during Pesach constitutes an act of theft by the Jewish seller from the non-Jewish purchaser, but that is only an issue for the storeowner and not for the store's customers. Similarly, Rav Shlomo Zalman Auerbach (see *Halichos Shlomo, Pesach* 6:9) upheld the validity of such a sale based on the ruling of the *Noda B'Yehudah* (OC 18) that so long as a *mechiras chametz* transaction was performed by the parties prior to Pesach and could be enforced by the non-Jewish purchaser, it is a valid sale.

However, even Rav Feinstein conceded (*Igros Moshe, OC* 2:91) that the *mechiras chametz* would not be valid with respect to any new chametz that is purchased by the storeowner during Pesach, which would indeed remain forbidden for customers to purchase following Pesach. Accordingly, he ruled that a

kashrus agency could not ultimately recommend that customers purchase chametz from those stores after Pesach.

Selling the Entire Business during Pesach

Are there any other solutions? Some authorities suggest that maybe it is better to have the Jewish owner sell the entire business to a non-Jew for the duration of Pesach, in addition to selling the chametz to the non-Jew. This indeed would be a fine solution if the sale of the business would be genuine. However, the problem is that often the sale is obviously a sham. Accordingly, Rav Yisroel Belsky held that the sale of the business would be completely void even according to the reasoning of Rav Moshe Feinstein if the Jewish owner continued to run the business and derive profits from the business during Pesach, since it is clear in such a case that there was no interest in selling the business altogether (*Shulchan HaLevi* 1:12[18]; see letter from Rabbi Eli Gerstein to Rabbi Zvi Ryzman in *Ratz K'tzvi*, Pesach, pages 331-332).

However, if the sale of the business is genuine, some authorities allow such a sale in cases of great loss and dire need, as long as the sale complies with all necessary halakhic specifications (see *Aruch Hashulchan* 448:20, *Dovev Meisharim* by the Chebiner Rav, 2:4). For example, at the Chicago Rabbinical Council, we recently facilitated such a sale of chametz

from a major Jewish-owned liquor supplier to a non-Jew, subject to the following stipulations: (a) the Jewish owner may not have any involvement in the business during Pesach; (b) the non-Jewish purchaser must be someone who is capable of running the business during Pesach (such as the manager of the store); (c) there must be an accounting made of all the profits generated during Pesach; and (d) the non-Jewish purchaser must receive payment of all of those profits. If such a sale is made properly under proper rabbinic auspices, it would be permissible to purchase chametz from such businesses and stores immediately after Pesach because none of the chametz would have been owned by a Jew during Pesach.

Partial Jewish Ownership

What if the Jewish owner is only a partial owner of the establishment? If the Jewish owner is only a minority owner of the establishment, some authorities (see *Zecher Yitzchok* by the Ponevezher Rav, #8) allow the purchase of chametz after Pesach from such an establishment even if there wasn't a valid sale of a store's chametz. However, other authorities are stringent in a case where a Jew owns a substantial minority interest in a corporation that enables him to have a substantial voice in the management of the enterprise (see *Igros Moshe EH* 1:7). Nonetheless, there is greater room for leniency when the store is owned by a publicly held corporation in which Jews only have a minority

stockholder interest, since according to a number of rabbinic authorities the Jewish stockholders would not be considered owners of the assets of the business but rather only stakeholders in the revenue stream of the non-Jewish owners (see *Minchas Yitzchok* 3:1, *Igros Moshe*, id).

Moreover, Rav Asher Weiss (*Minchas Asher*, volume 1, simanim 105-106) suggests that there is never any halakhic ownership by a Jew in any corporation that possesses chametz, regardless of the degree of Jewish ownership or involvement, since the respective roles of equity holders, administrators, and major decision makers reside in three different bodies (shareholders, CEO, and board of directors). However, his position does not appear to represent the predominant view among most rabbinic authorities.

How Long to Wait before Buying Chametz after Pesach

If a Jewish-owned store did not sell its chametz in a valid fashion, one may not buy chametz products from the store until it can be safely assumed that the products most likely came into the store's possession after Pesach (see *Mishna Berurah* 449:5). In terms of how long one should wait, the amount of time may vary based on the shelf life of the product in question.

The usual amount of time that is recommended by the rabbinic authorities with respect to most store items is until either Lag B'Omer or



Find more shiurim and articles from Rabbi Yona Reiss at <https://www.yutorah.org/Rabbi-Yona-Reiss>

Shavuot. As a general rule, rabbinic authorities are more likely to rely on a shorter time span when there are other mitigating considerations, such as a case when the Jew is only a minority owner in a corporate entity, or if there was at least a questionable sale, or when the turnover rate for the chametz product in question is relatively short.

Other Considerations

It is important to note that in addition to Jewish shop owners, there are also Jewish distributors of food, and sometimes a store owned by a non-Jew may still have many products that could be prohibited for consumption if the products came from a Jewish distributor who owned or purchased the chametz during Pesach.

The kashrus agencies do their best to research these types of issues, but there is sometimes room for leniency when one is not able to ascertain the original source, particularly when there is no compelling reason to presume that the chametz in the supermarket came from a prohibited source (see generally, *Igros Moshe, Orach Chaim 4:96*, who is lenient in certain doubtful situations regarding supermarkets).

Concluding Thoughts

The Gemora relates (*Berachos 17a*) that Rabbi Alexandri would append a prayer to his Shemoneh Esreh in which he would cry out to Hashem that we all want to do the will of the Almighty but the “yeast in the dough” (a term for chametz) and the oppression of the hostile kingdoms get in the way. Rashi comments that the “yeast in the dough” refers to the evil inclination within each of us.

Our punctilious observance of the laws of abstaining from *chametz she’avar alav HaPesach* enables us to come closer to performing the will of Hashem during the entire year. It is therefore appropriate to conclude this article with the final words of Rabbi Alexandri’s prayer: “May it be Your will that we be rescued from these negative forces and that we return to You to fulfill the precepts of Your will with a full heart.” Chag Kasher v’Sameach.

VISIT THE PARENTS THIS PESACH IN

חברון



View weekly tour dates and book your tour at hebronfund.org
additional tours added over Pesach and Summer!

Book your family favorite Hebron tour!



NCSY GIVE Summer Program enjoying the 4D Movie Ride at the new Hebron Museum

A day of holy sites and memorable experiences



Fun and inspirational tours for all ages!



Return visitor? Explore new sites with Rabbi Simcha Hochbaum!



Rabbi Simcha Hochbaum will connect you and your family to the Land of Israel & your roots

A highlight of your entire Israel vacation!

Round-trip private coach bus transportation from Jerusalem to Kever Rachel & Ma'arat HaMachpela

TOP 10 MOST VISITED SITES IN ISRAEL



Sign up for our newsletter online and receive your digital copy

THE HEBRON FUND 2019-20 ARTISTS CALENDAR



For more info visit hebronfund.org
info@hebronfund.org | (718) 677-6886