

Anatomy of a Sale:

Demystifying Mechirat Chametz

Smartphone apps download in seconds and enable complex technological tasks to be performed by novices. But behind the app that made its way to Google Play or the Apple App store lie thousands of hours of concept development, technological improvements and programming tweaks.

The *mechirat chametz* model that our community rabbis use to sell chametz has similarly developed from the basic idea of selling chametz to a sophisticated legal design. This article will outline the historical and halachic background that have brought the *mechirat chametz* process to its present form.

The Problem

Aside from the biblical prohibitions of consuming and deriving benefit from chametz, there exists an independent biblical prohibition to maintain ownership of chametz from midday on the eve of Pesach (from when the korban Pesach could be brought) until the holiday's conclusion. The Torah states:

שְׁבַעַת יָמִים שָׂאֵר לֹא יִמָּצָא בְּבֵיתְכֶם ...
שְׁמוֹת יֵב:יט

For seven days fermented dough shall not be found in your homes...

Shemot 12:19

It is this prohibition that obligates each Jewish home to remove all chametz from its domain. Not only



Rabbi Uri Orlian

Rabbi, YU Community Shul

Rebbe, J.S.S., Yeshiva Universty

Director, Contemporary Halacha Program, RIETS

are there negative commandments that prohibit ownership, there is also a positive mitzva to destroy chametz on the day before Pesach:

שְׁבַעַת יָמִים מִצּוֹת תֹּאכְלוּ אֹךְ בְּיוֹם הָרֵאשׁוֹן
תִּשְׁבִּיתוּ שָׂאֵר מִבְּתֵיכֶם ...
שְׁמוֹת יֵב:טו

For seven days you shall eat Matza, but on the first day you shall destroy fermented dough from your houses...

Shemot 12:15

These biblical injunctions were further buttressed by a rabbinic enactment that prohibits any benefit from chametz that was kept in Jewish possession over Pesach. For these reasons, selling one's chametz to a non-Jew became an essential part of the preparation for Pesach.

The History of Mechirat Chametz

The original form of *mechirat chametz*, which looked very different from ours, is described in the Mishna, *Pesachim* 21a:

כל שעה שמותר לאכול - ... מוכר לנכרי.
During the time that it is permitted to

eat, one can... sell to the gentile.

This Mishna portrays a classical sale: the seller hands the product to the gentile buyer, who takes it home, without any expectation of either party to reverse the sale following Pesach.

A more complicated transaction is recorded in the Tosefta, which describes the sale of chametz in a situation where the chametz is transferred out of the Jewish possession for Pesach, with the assumption that it will be repurchased at the holiday's conclusion:

ישראל וגוי שהיו באין בספינה וחמץ ביד
ישראל: הרי זה מוכרו לנכרי ונותנו במתנה
וחוזר ולוקח ממנו לאחר הפסח.
תוספתא, פסחים ב:יב

If a Jew and gentile were traveling by boat [such that there is no means of replenishing one's food stock after the holiday] and there is chametz in the hands of the Jew: He may sell it to the gentile or give it as a gift, and subsequently repurchase it from him after Pesach.

Tosefta, Pesachim 2:12

While the Tosefta adds the repurchase aspect of *mechirat chametz*, both

the Mishna and Tosefta involve the physical transfer of the chametz from Jewish to non-Jewish domain. This was the form of *mechirat chametz* throughout ancient and medieval times, until the 1600's, as highlighted by the *Shulchan Aruch*:

חמץ של ישראל שעבר עליו הפסח, אסור בהנאה... ואם מכרו או נתנו לאינו יהודי שמחוץ לבית קודם הפסח, אע"פ שהישראל מכרו לאינו יהודי ויודע בו שלא יגע בו כלל עד לאחר הפסח ויחזור ויתננו לו, מותר ובלבד שיתננו לו מתנה גמורה בלי שום תנאי. שולחן ערוך אורח חיים סימן תמה:ג

It is prohibited to benefit from chametz that belonged to a Jew over Pesach... and if he sold it or gave it to a Jew outside of his home before Pesach, even though the Jewish seller knows that the gentile will not touch the chametz at all until after Pesach, and afterwards, he will return the chametz, it is permitted, so long as the Jew gave it as a complete gift without any stipulation.

Shulchan Aruch, Orach Chaim 448:3

In the 1600's harsh anti-Semitic decrees precluded Jews from many professions. Among the professions that Jews were able to enter was whiskey production. While the original model of handing the box of chametz to the gentile next door was fine for small quantities, Jewish whiskey manufacturers needed to find a halachic means of transferring the ownership of their extensive chametz inventory in a way that would not involve moving an entire distillery's worth of barrels to gentile domain. Furthermore, the cash value of a distillery's inventory may appear prohibitive to a potential [gentile] chametz buyer. A number of suggestions were made to resolve these two issues and these discussions provide the foundation for modern day *mechirat chametz*.

Kinyan

Property is transferred from one individual to another only via a *kinyan* — a formal act of acquisition. Will and intent do not suffice to transfer ownership. Different types of property are transferred via different *kinyanim*: real estate, animals, and *metalt'lin*, movable items [like chametz] each has its own manner of acquisition.

While discussing the prohibition of *ona'ah*, price gouging, the Torah outlines precisely how movable objects are transferred:

וְכִי־תִמְכְּרוּ מִמְּכָר לְעַמִּיתְךָ אוֹ קָנָה מִיָּד עַמִּיתְךָ אֶל־תֹּנֶנּוּ אִישׁ אֶת־אָחִיו: וַיִּקְרָא כה: יד

When you sell merchandise to your compatriot, or purchase from the hand of your compatriot, do not overcharge a man to his brother.

Vayikra 25:14

Armed with this pasuk, the Talmud presents an argument regarding what *kinyan* to utilize for selling *metalt'lin*:

אמר רבי יוחנן: דבר תורה מעות קונות... ריש לקיש אמר: משיכה מפורשת מן התורה. מאי טעמא דריש לקיש - אמר קרא: ... או קנה מיד עמיתך - דבר הנקנה מיד ליד. בבא מציעא מז:

Rabbi Yochanan said, "Coins acquire according to Torah law."... Reish Lakish said, "Meshicha (pulling the item with one's hand) is explicit in the Torah." What is Reish Lakish's reasoning? The verse states "or purchase from the hand of your compatriot" - something that can be transferred from hand to hand.

Bava Metzia 47b

While R' Yochanan assumes that transfer of property is effected upon payment, Reish Lakish takes note of the superfluous words "from the hand" to learn that a sale is only effected by taking from the hand

of the seller, literally, regardless of whether or not payment has occurred.

The Talmud, *Bechorot* 13a,¹ points out that this discussion of effective *kinyanim* is limited by the term *amitecha*, your compatriot, which would indicate that the *kinyan* specified relates only to a sale to a fellow Jew, as opposed to a gentile. Hence, if we assume that a Jew acquires an object through a cash payment, it would follow that a gentile acquires in the opposite way — through taking it by hand, *meshicha*. If a Jew acquires by taking it, a gentile would acquire via payment.

Transferring Chametz via Cash Payment or Hand-off?

How do we rule in this question? Since *mechirat chametz* involves transferring *metalt'lin* to a gentile, we must clarify if cash payment will suffice, or if each and every bit of chametz in each and every household will need to be lifted up by the hands of the gentile purchaser, which would make our modern *mechirat chametz* wholly impractical, if not impossible!

Rashi, *Kiddushin* 14b, follows Reish Lakish that a Jew acquires via *meshicha*, and a gentile, therefore, is *koneh* via cash payment. Rashi's grandson, Rabbeinu Tam,² on the other hand, rules inversely, like R' Yochanan, that a Jew acquires via money alone, and a gentile would therefore need to lift up an item in order to acquire it from the Jewish seller. Because of this dispute, Tosfot [in the context of selling an animal to a gentile] rules:

והרוצה לחוש לדברי רש"י ור"ת המקנה בהמה לעובד כוכבים לפוטרה מן הבכורה צריך שיתן העובד כוכבים כסף וגם משיכת העובד כוכבים. תוספות, עבודה זרה עא.

In order to account for the opinions of both Rashi and Rabbeinu Tam, if one wishes to sell an animal to a gentile in order to exempt it from the first-born-obligations, the gentile must pay for it with money in addition to pulling it by hand. **Tosfot, Avodah Zarah 71a**

For this reason, our *mechirat chametz* does require the gentile to provide a cash payment to the seller before Pesach. But how will the gentile fulfill the *kinyan meshicha* on all of the boxes and bottles of chametz to satisfy Rabbeinu Tam's requirement of taking the merchandise in hand for the sale to be effective?

This question is what has led to the complexity and intricacy of the modern *mechira*. To ameliorate the possibility that the cash payment is not sufficient, and *meshicha* is necessary, yet not physically possible, rabbinic literature has suggested the performance of additional modes of *kinyan*, each of which carries additional complications, in the hope that between them all, a definitive and reliable transfer of chametz from Jewish owner to gentile buyer will transpire.

Kinyan Chatzer

The Torah teaches that a person's *chatzer*, courtyard, can acquire on his or her behalf. This means that if a property owner wishes to take possession of an item that is situated upon his property, the item belongs to the property owner. The Talmud clarifies the nature of this *kinyan*:

מר סבר: חצר משום ידה איתרבאי, כי היכי דאית לה יד - חצר נמי אית לה. ומר סבר: חצר משום שליחות איתרבאי בבא מציעא י'

One opinion holds that chatzer is extended from the hand: just as a person

can acquire by taking into their hand, so too, into their property. The other opinion holds that chatzer functions like an agent.

Bava Metzia 10b

Just as halacha recognizes the actions that a person's agent performs as though the act was performed by the person him or herself, so too, a person's real estate can serve as the agent to acquire objects on the property owner's behalf.

Accordingly, the Jew first sells or rents to the gentile³ the space in the kitchen/pantry/wine-cellar where the chametz is stored. Once the gentile acquires legal rights to that [tiny] bit of real estate, he can subsequently acquire the Jew's chametz that is situated upon that plot via this *kinyan* of *chatzer*, thereby bypassing entirely the potential need for a *meshicha* of each and every chametz item.

Kinyan chatzer, however, has its shortfalls as well, that make it problematic to rely upon as a substitute for the *meshicha*. The aforementioned Gemara in *Bava Metzia* mentioned the possibility that *chatzer's* efficacy is premised upon the halachic construct of agency — that a person's property can acquire whatever is resting upon it. When applied to *mechirat chametz* specifically, there arises a fundamental obstacle:

The Talmud notes that when the Torah introduces the concept that a *shaliach*, agent can accomplish on behalf of his sender, it limits agency to “*attem*” - “you.”

מה אתם בני ברית, אף שלוחכם בני ברית. קידושין מא:

Just as you are people of the covenant, so too, your agents must be people of the covenant.

Kiddushin 41b

This teaches that the halachic concept of agency is limited to Jews specifically. The aforementioned Gemara, *Bava Metzia* suggested that *kinyan chatzer's* effectiveness is because the property serves as an agent to acquire whatever is situated upon it, on behalf of its owner. If so, *chatzer*, which works through agency, should not be an effective mode of *kinyan* for a gentile to acquire chametz.

Kinyan Chalipin

A similar issue may arise with another type of *kinyan*. In the Book of Ruth, we read

וְזֹאת לְפָנִים בְּיִשְׂרָאֵל עַל־הַגְּאוּלָּה וְעַל־
הַתְּמוּרָה... שְׁלַף אִישׁ נַעֲלוֹ וְנָתַן לְרַעְיוֹ וְזֹאת
הַתְּעוּדָה בְּיִשְׂרָאֵל:
רות ד:ז

And this was the custom in Israel regarding sale and exchange... a man shall take off his shoe and hand to his friend, and this was the proof in Israel.

Ruth 4:7

This verse is the source for the *kinyan* of *chalipin*, exchange, where one party⁴ hands some item of value [in Ruth, a shoe was mentioned] to the other as a symbolic exchange, which in turn, transfers ownership of the actual item they wish to transfer. As such, the gentile should hand a personal belonging to the Jewish seller, thereby acquiring the Jew's chametz. The *Shach* (*Choshen Mishpat* 123:30), however, argues that *kinyan chalipin* should not work for a gentile. This can be supported by the very verse that is the source for *kinyan chalipin*, which concludes “*and this was the proof in Israel*” - which indicates its effectiveness as a mode of transfer in Israel, but not for a gentile.

There was a time when the famed 47th Street diamond industry in New York City was primarily composed of European Jews who signaled the conclusion of a deal with a handshake and an utterance of “*mazal u’beracha!* — luck and blessing!”

Kinyan Situmta

Because of the impossibility of *meshicha*, and the questionable efficacy of *kesef*, *chatzer*, and *chalipin* as modes of acquisition, the contemporary *mechirat chametz* utilizes an additional, fourth *kinyan* — *situmta*.

האי סיטומתא קניא. למאי הלכתא?...
באתרא דנהיגו למקני ממש - קנו.
בבא מציעא דע.

This Situmta acquires. For what purpose?... In a place where this is used to actually acquire, it acquires.

Bava Metzia 74a

Rashi explains that *situmta* means a label that was marked onto the wine merchant’s barrels to indicate that a customer had purchased this part of his inventory. Rabbeinu Chananel,⁵ however, suggests that *situmta* is a handshake that merchants commonly

do to indicate the closing of a deal. He adds that so too, any other customary industry or region specific acts that demonstrate the mutual agreement of buyer and seller can also function as a halachically acceptable mode of acquisition, even though they aren’t outlined in scripture or in the Talmud.

There was a time when the famed 47th Street diamond industry in New York City was primarily composed of European Jews who signaled the conclusion of a deal with a handshake and an utterance of “*mazal u’beracha!* — luck and blessing!” Rabbeinu Chananel would view that industry specific custom as a legally binding method of transfer for halachic purposes, as well.

In the U.S., auto sales are generally concluded with the signing of a lease or document of sale. Accordingly, even though use of a contract is not a recognized mode of acquisition for a car purchase in the eyes of halacha, it would be recognized as a binding *kinyan situmta* by virtue of it being the customary method of transaction. It follows, therefore, that our *mechirat chametz* incorporates both a signature and a handshake as an additional way of transferring chametz from Jew to Gentile.

This *kinyan*, too, may not be independently sufficient for our *mechira*. Inasmuch as the source for this mode of acquisition is a single section of the aforementioned Talmud, not all Rishonim interpret this passage as teaching us this new type of *kinyan*. The Ritva, indeed, offers an alternate explanation: *situmta* is merely a token that merchants hand to one another as a *kinyan chalipin*. The Ritva concludes his explanation by stating that customary modes of transaction do not have the capacity

to substitute for an established, Torah-acceptable *kinyan*.

Kinyan Agav

In the effort to cover all bases, yet another *kinyan* is employed in the sale of chametz — *agav* — which literally means “on the back of,” but can be understood as a “piggyback transfer.” Consider the beracha recited on a bagel with cream cheese. Inasmuch as the cream cheese is secondary to the main food, the bagel, a beracha is recited only on the bagel, but extends to cover the cream cheese as well. This obviates any need for an independent beracha on the *tafel*, secondary food, the cream cheese, because it piggybacks on the *ikar*, primary food. Similarly, explains R’ Shimon Shkop,⁶ the variety of possession in this world can be divided into two populations: real estate, and everything else. As the word “real” estate indicates, land ownership is in a position of significance above other possessions because it cannot be destroyed.⁷ *Kinyan agav* states that by dint of performing a *kinyan* on a piece of land, which is preeminent, the effect of that *kinyan* [the transfer of ownership] will simultaneously apply also to the less significant, moveable objects that are for sale.⁸

Accordingly, the *mechirat chametz* will include a sale or rental of any piece of land to the gentile buyer,⁹ and by dint of that real estate acquisition [which is *ikar*], the buyer will simultaneously acquire all chametz [which is *tafel*] owned by the Jewish seller, wherever that chametz may be.¹⁰

Commentators dispute whether this piggyback *kinyan* is *de’oraita*, learned from scripture, or if it was created as a rabbinic institution. If *agav* is

indeed rabbinic, its application to *mechirat chametz* may be questionable, as follows: The entire enterprise of *mechirat chametz* is in order to prevent the Torah [ie. biblical] violation of owning chametz. Accordingly, the chametz should be removed from Jewish possession by a method of transaction that the Torah itself recognizes, so that according to biblical law, the chametz items are not owned by the Jew. Would *agav*, which is not a Torah authorized *kinyan* at all, rather merely rabbinically recognized as a method of transfer, have the capacity to make the chametz leave Jewish possession in the Torah's eyes? In other words, can a rabbinic *kinyan* work to obviate a biblical prohibition? Perhaps not.

Summary of *Kinyanim*

In summary, the only definite way to transfer moveable objects [such as chametz] to a gentile is by cash payment (*kinyan kesef*) coupled with lifting each piece of chametz (*kinyan meshicha*). Since the latter is not feasible, the gentile also performs *kinyan chatzer*, *chalipin*, *situmta*, and *agav*, despite the shortfalls in each, in the hope that between all the *kinyanim*, the chametz will surely transfer from Jew to gentile.

If I Sold My Chametz, Where is the Money?

People often question the legitimacy of the chametz sale, after all, the chametz stays put, and the seller does not receive any compensation

from the alleged buyer. These issues notwithstanding, the sale is indeed for the full value of every bit of chametz. The way in which the finances are arranged are based on the Talmudic¹¹ concept of *zakef alav b'milveh*, which, loosely translated, means a down payment.

If the chametz is worth \$5,000, a down payment of [let's say] \$100 will be handed over. This will constitute a *kinyan kesef* through which the gentile will acquire all \$5,000 worth of goods at that moment [before Pesach], and the outstanding \$4,900 will be converted into a loan that is due at some later date. [The sale is absolute, such that even if the gentile defaults on the outstanding loan, the effect of the sale will not be negated].

For the purposes of a chametz sale, the ideal due date would be the night after Pesach concludes. At that time, the gentile must pay the outstanding \$4,900. If he chooses to pay in cash, the monies will be carefully divided among the sellers to compensate them for the chametz that was purchased from them. If the buyer prefers, he can repay the outstanding \$4,900, not in cash, but in the form of the \$4,900 worth of chametz that he now owns. If he chooses this latter option, which most chametz buyers do, the gentile's chametz sitting in the kitchens and pantries of the Jews' homes will revert back to its original, Jewish ownership in place of its value being returned in cash.

This financial setup enables the chametz to be entirely out of Jewish possession for the duration of Pesach,

but, if the gentile so desires, revert back to Jewish ownership immediately after the chametz prohibition expires.

The Moral of the Mechira

Rabbinic literature views chametz as symbolic of the *Yetzer Hara*, evil inclination. The dough that has been left alone until it has the opportunity to sour and rise represents man's tendency towards laziness, sloth and procrastination.

Mechirat chametz is but one of numerous attempts to rid ourselves of all chametz in our possession. It can be included with *bitul*, nullification of chametz, *bedika*, searching out chametz, and *bi'ur*, destroying chametz. May our involvement in these chametz- eradicating activities be an outward expression of our inner desire to rid ourselves of those negative traits that chametz embodies, releasing us from the shackles of bondage to our inner weaknesses, so that we may become free on this holiday of freedom.

Notes

1. Which deals with selling an animal to a gentile in order to avert the need to sacrifice its first born offspring.
2. Cited in Tosfot, *Kiddushin* 14b.
3. While there is a dispute if a gentile acquires *mitalt'lin* through cash or *meshicha*, it is agreed that he can rent real estate via cash alone [real estate purchases may require signing a document of sale in addition to a payment]. So our *mechirat chametz* will involve two cash payments: one for the chametz, and a separate payment to acquire the real estate upon which the chametz is situated.
4. There is a dispute in *Bava Metzia* 47b, whether the buyer hands the symbolic item to the seller, or vice versa.
5. Cited in Rosh, *Bava Metzia* 5:72.
6. *Sefer Sha'arei Yosher*.
7. This is reflected in secular law, as well, inasmuch as certain law codes recognize the sale/transfer of land only when a deed

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is filed with the appropriate governmental authority, while all other possessions can be sold with cash alone.

8. Whereas the aforementioned *kinyan chatzer* means that land that is my possession can acquire moveable items that rest upon it, *kinyan agav* means that *as I* acquire a portion of land, the moveable items,

wherever they may be located, will transfer ownership under the umbrella act of acquisition performed on the land.

9. As discussed above in *kinyan chatzer*, there is no dispute that land can be rented to a gentile via a cash payment.

10. See *Shu't Rashba* v1:934 & 935, that even if the seller does not own land to sell or

rent to the buyer, moveable items can be transferred by allowing the buyer access to the seller's *makom kavua* — set seat in the synagogue, and piggybacking the moveable items atop that transfer.

11. *Bava Metzia* 115a, *Bava Kama* 109a.

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