

Buying Chametz Online for After Pesach

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In today's hi-tech world, many of us choose to do our grocery shopping online, rather than enter a crowded supermarket. A frequent question asked is whether one may order *chametz* online during *Chol Hamoed* Pesach (from a non-Jewish vendor), so that it will be delivered immediately after Pesach. If this is not ideal, can one at least order their *chametz* before Pesach, scheduling to have it delivered right after Pesach in order to avoid the post-Pesach crowds in the stores?

As is well-known, it is forbidden for a Jew to own *chametz* at any point during Pesach. This is known as the prohibition of *bal yairaeh u'bal yimatzei* (not to have *chometz* seen or found in one's possession). Some *Poskim* are concerned that if one were to buy *chametz* online during *Chol Hamoed*, the payment would be an act of acquiring *chametz*, even though the *chametz* did not yet enter the property of the buyer. There would seem to be support for this view from a *Gemara* (*Menachos* 108b cited in C.M. 214:12) that if one makes a *kinyan* (acquisition) in an effort to sell "one of his homes", the *kinyan* is binding, even though the exact home that the seller wishes to transfer to the buyer is not known at the time of the sale. The seller can then go at a later point in time and select whichever house he wants to give to the buyer. This would seem to be similar to our situation, where one is purchasing a box of *chametz* cereal online, the *kinyan* would be binding even though it is not yet known which exact box of cereal the seller will be selecting to give to the buyer.¹

Most *Poskim*, however, do not view the online purchase as an acquisition in which the seller immediately transfers ownership of the item into the domain of the buyer; rather, one is merely placing an order that obligates the seller to deliver the item

at a later time. Until the item, in this case *chametz*, is received, it is not considered to be under the ownership of the buyer. The proof of this is that the seller takes full responsibility of the product until it is received by the buyer. In addition, if the seller realizes that the item is out of stock, he has the ability to cancel the order. However, if one places an order for a specific box of cereal that is put aside to be delivered after Pesach, and payment is made, then the buyer would be considered the owner of that *chametz* on Pesach.²

רוצה בקיומו - BENEFITTING FROM THE EXISTENCE OF CHAMETZ

Another concern with ordering *chametz* online would be the prohibition of *rotzeh b'kiyoma* (benefitting from the existence of *chametz*). The *Gemara* (*Avodah Zarah* 63b) discusses a case in which an individual would like to be hired to break barrels that contain *yayin nesech* (wine that is forbidden to benefit from) for the purpose of discarding the wine. The *Gemara* suggests that perhaps it should be forbidden, since the barrel breaker is benefitting from the existence of the wine. After all, if the wine were to leak out from the barrels, he would be without a job and lose the opportunity to receive payment. *Shulchan Aruch*³ (O.C. 450:7) extrapolates from this *Gemara* that it would be forbidden to lease a pot to a non-Jew on Pesach for the purpose of the non-Jew using it for *chametz*. The Magen Avrohom explains that the Jewish owner benefits from the existence of the *chametz* in the pot, as the pot would break on the fire if not for the *chametz* food inside of it.⁴

The case above discussed by the *Shulchan Aruch* (ibid.) refers to a case in which one **leases** a utensil to a non-Jew to use for his *chametz*. What would be the *halacha* if one were to **lend** a pot to the non-Jew? The *Biur Halacha* cites an argument between the *Chok Yaakov* and *Nesivos* (*M'kor Chaim*) on this point. The *Chok Yaakov* holds that there is no difference; since the Jew is interested in the existence of the *chametz* to save his pot from breaking, it would therefore be subject to the prohibition of *rotzeh b'kiyoma* (benefitting from the existence of *chametz*). The *Nesivos*, however, holds that *rotzeh b'kiyoma* is only a concern if the Jew is making a profit from the existence of *chametz*. In the case where one leases a pot to use for *chametz*, the Jew is making a profit,

since if the pot would break over the fire, the non-Jew would not have to pay for the rental. However, if one lends a pot to a non-Jew, there is no gain to the Jew by having *chametz* cooked in his pot.⁵

The *Chasam Sofer* (116) holds like the *Nesivos* as well. He cites the *Magen Avraham* who says that one should not sell or give *chametz* to a non-Jew prior to Pesach on condition that it be returned after Pesach since we are more stringent with regards to Pesach (*chumrah d'Pesach*). Why didn't the *Magen Avraham* just say that it is forbidden because of *rotzeh b'kiyoma*? The *Chasam Sofer* proves from this that *rotzeh b'kiyoma* is only forbidden if the Jew will profit from the existence of *chametz*, not merely if he is saving himself from a loss.

A Belzer chossid who had a piece of challah from his Rebbe that was very dear to him once asked the *Arugas Habosam* (OC 112) if he would be permitted to sell it with his *chametz* to a non-Jew who he knew would return it after Pesach. The *Arugas Habosam* did not allow him to do so, based on the *halacha* of *rotzeh b'kiyoma*. Accordingly, it would not be permitted to make or buy fancy cakes prior to Pesach for a *simcha* planned immediately following Pesach, even though one sells it to a non-Jew beforehand. Similarly, according to the *Chok Yaakov*, it would seem to be prohibited. However, according to the *Chasam Sofer* and *Nesivos* mentioned above, it should follow that it would be permitted, as there is no profit in the existence of the *chametz* that is in the possession of the non-Jew.

One could suggest that even according to the *Chok Yaakov* it would be permitted to sell *chametz* that one needs for after Pesach. The *Maharam Shick* (225) says (based on *Tosfos* in *Avodah Zarah* 64a) *rotzeh b'kiyoma* is only a concern if one does a *maaseh* (an action) in conjunction with his desire to have the *chametz* in existence. For example, in the case of *Shulchan Aruch*, when one leases the pot to a non-Jew, the rental is a *maaseh* done by the Jew with his pot that demonstrates his desire to have the non-Jew's *chametz* in existence. However, selling one's *chametz* is not an act that demonstrates this and is therefore permitted.

Returning to our original question, is one allowed to order *chametz* online during *Chol Hamoed* to be delivered after Pesach? Although many *Poskim* hold that there is no concern of violating the prohibition of owning *chometz* since the payment is deemed an "order" and not a purchase, there would still be

a concern of *rotzeh b'kiyoma*, as ordering an item together with payment is considered an act of showing that one is interested in the existence of the *chametz* over Pesach. However, according to the *Nesivos* and *Chasam Sofer*, since there is no profit to the Jew from the existence of the *chametz* over Pesach, it would be permitted to make the order. Since the *Mishnah Berura* does not issue a final ruling on the argument between the *Chok Yaakov* and the *Nesivos*, one should avoid ordering *chametz* during *Chol Hamoed* to be delivered after Pesach. Even according to the *Nesivos*, it would be somewhat inappropriate for one to engage oneself with the purchase of *chametz* during Pesach (see *Piskei Teshuvos* 307 note 1). In cases of necessity, one should order the *chametz* prior to Pesach to be delivered after Pesach. Doing so would help alleviate some of the concerns with regards to the prohibition of owning *chometz* (see footnote 1). In addition, according to some *Poskim*⁶, there is only a *rotzeh b'kiyoma* concern if one does the *maaseh* (of renting the utensil, or in this case, making the order) on Pesach itself, as opposed to before Pesach.

Wishing everyone a *chag kasher v'sameach*.

1 The *Rashba* (שו"ת ח"ב סי' פ"ב) asks on this halacha, that being that the seller did not make known which house he intended to sell at the time that the *kinyan* was being made, perhaps the entire transaction should be null and void under the principle of *אין ברירה*. The *Rashba* answers that *ברירה* only comes into play if the *קנין* is necessary to work retroactively. According to the *Rashba*, when does the transfer of ownership of the house take place? The *Maharsham* (חלק א סימן נד) cites the *Nesivos* and *Beis Efrayim* who say that as soon as the seller selects the house to be sold, the house is transferred into the domain of the buyer. If we apply this *Rashba* to our situation of ordering *chametz* online, one may conclude that the *chametz* is transferred into the possession of the buyer at the time that the seller selects a particular box of cereal he intends to send to the buyer. If that selection takes place on Pesach, the buyer would be in violation of *ימצא* and *בל יראה*. This would be problematic even if the buyer made arrangements to sell his *chametz* before Pesach, and the *chametz* item was ordered before Pesach, since this box of *Cheerios* was not yet in the buyer's possession when he sold his *chametz*, and the item only became his possession when the seller selected it. Additionally, if one placed the order on Pesach, even if the selection of the specific box is done after Pesach, it would be problematic. The *Rashba* only delays the transfer of ownership because of *ברירה*. However, in a situation such as ours, where *ברירה* would result in a *חומרה* (i.e., becoming the owner of *chametz* at the time of the *קנין*), perhaps we would apply the principle of *יש ברירה*. וצ"ע.

2 The *Maharam Shick* (siman 225) addresses the issue that even if *Reuven* is not actually the owner per se of the *chametz*, perhaps if *Shimon* is obligated to give *Reuven* *chametz*, that would be sufficient grounds to cause *Reuven* to be in violation of *ימצא*. We know that a *בכור* is entitled to sufficient grounds to cause *Reuven* to be in violation of *ימצא*. We know that a *בכור* is entitled to *פי שנים* of the inheritance. However, the double portion is limited to assets that are *ימצא* – that are *מוטוק*, in the hands of the deceased at the time of his death. If the father was a *בכור* and there was a *מוטוק*, he always gave his *ולחים* gifts to this particular child, he would be a *מוטוק* in it prior to receiving it, as if it is actually owed to him. If he passes away, the *בכור* would receive *פי שנים* from it as it qualifies for *ימצא*. The *Maharam Shick* suggests that the same should be true for *chametz*. If the *chametz* is paid for and is now owed to the Jew, this should be a violation of *ימצא*, as it is considered *ימצא*. However, *Maharam Shick* dismisses this notion, as the *ולחים* are *דברים המבוררים* are specific items owed to the *בכור*, as opposed to the *chametz* that the seller owes to the buyer, there is no specific item of *chametz*, hence that *chametz* is not considered *ימצא*.

3 See *Pri Chadash* that disagrees with *Shulchan Aruch* and holds that the principle of *קנין* is only said regarding *Avodah Zarah* and not at all regarding *Issurei Hana'ah*.

4 Cf. *Maamer Mordechai* and *Chazzon Ish* 46:8 who offer an alternative explanation.

5 When it comes to *קנין* regarding *Avodah Zarah*, everyone agrees it would be prohibited for a Jew to be a *שומר חנם* even though there is no profit obtained. This is because when it comes to *Avodah Zarah*, the *Torah* not only wants us not to benefit, but rather to obliterate it from the world (see also *Kehillos Yaakov Avodah Zarah siman 15:1*).

6 מקור חיים בחידושים סי' ק"א ולא כשולחן הרב הובא בבאר וצ"ע.



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