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לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן

CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

SUBLET PROFIT

In last week's article, we concluded that if the contract does not state otherwise, it is permissible to sublet an unfurnished unit, even without the owner's permission, to a similar-sized family.

The Greens lived upstate, but were going away for the summer. They planned to sublet their rented house.

"We pay $3,500 a month," Mr. Green said to his wife. "However, I think that people from the city would be willing to pay $5,000 to be here for the summer. It's still way less than sending kids off to camp."

"It doesn't hurt to try," replied Mrs. Green. "If we can get $5,000 – great!"

The Greens publicized that the house was available to sublet for the summer. They received several inquiries, and – after getting positive recommendations – sublet to the Browns, who had the same number of children, for $5,000.

The Greens notified the landlord that they would be away for the summer. "We arranged to sublet the house to the Browns," Mr. Green said. "They're a fine, responsible family, with the same number of children."

"Someone mentioned that you were looking to sublet," replied the owner. "I also heard that you were asking for $5,000 a month."

"Yes, for the summer people are willing to pay more," said Mr. Green.

"That you sublet to offset your rent – I understand," said the owner. "Add $1,000 for your furniture – also fine. But why should *you* be able to earn the remaining $500 profit off *my* house? The extra $500 should come to *me*!"

"I don't agree," countered Mr. Green. "You're getting your rent! What's it to you if we gain?"

The two called Rabbi Dayan and asked:

"Who gets the sublet profit, the tenant or landlord?"

"Nimukei Yosef (*B.K.* 9a) addresses this issue," replied Rabbi Dayan, "based on a case in the *Mishnah* (*B.M.* 35b) in which a person who rented a cow lent it to a third party, and it died."

BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

WHEN THE NON-JEW IS JEWISH

Q. A Rav sold the *chametz* of his community to a certain non-Jew, and after Pesach he discovered that the person's mother was Jewish, which renders him a Jew. May the *chametz* be used?

A. The *halachah* (*Shulchan Aruch Orach Chaim* 448:3) is that *chametz she'avar alav haPesach* (*chametz* that was in the possession of a Jew during Pesach) may not be used or even sold (*issur hanaah*). This is a penalty levied by *Chazal*, and it applies even if the owner of the *chametz* was *mevatel* (nullified) it before Pesach (which means that he did not transgress *bal yeira'eh* and *bal yimatzei*), because *Chazal* did not want people to keep *chametz* in their possession to use after Pesach while claiming that they were *mafkir* (relinquished ownership of) it. The penalty applies even to situations in which *chametz* remained in a person's possession in error (*shogeg*) or due to circumstances beyond his control (*oness*). Furthermore, the *chametz* is prohibited to all Jews, not only the person who had it in his possession over Pesach (*Ran*, *Pesachim* 7b). Most *poskim* rule that this applies even to *chametz* that was in the possession of a *mumar* (a Jew who does not keep the *mitzvos*) because he is still Jewish (*Taz* 448:4; *Mishnah Berurah* ibid. 11).

In this case, community members were relying on the Rav to sell their *chametz*, and they were also *mevatel* the *chametz* properly. There are two perspectives from which to view this case, and we will present the upsides and downsides of each, and in the final analysis, a Rav must be consulted regarding each individual case to determine which approach to take.

The first approach is to say that the sale to the person who turned out to be Jewish is a *mekach ta'us* (mistaken sale), because the sellers certainly did not want their *chametz* to be bought by a Jew. This would mean that the *chametz* remained in the possession of the original owners after they did *bitul*, but it was caused by an *oness* (*Shu"t Shoel u'Meishiv, Mahadura Telisa'i,* 2:60; *Shu"t Ha'elef Lecha Shlomo* 261; *Shu"t Maharash Engel* 7:143).

What is the *halachah* if a Jew did everything he was supposed to do to eliminate his *chametz* — both *bedikah* and *bitul* — but it was nevertheless found in his possession during Pesach?

Some *poskim* rule leniently, saying that the penalty *Chazal* imposed would not apply once a person did everything he was supposed to. According to this view,

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"Although the renter is not liable for *oness*, such as natural death, whereas the borrower is, Rabi Yosei rules that the borrower pays the value of cow to the owner, not the renter/lender, since he should not profit from the other person's cow (*C.M.* 307:5).

"Nimukei Yosef therefore concludes that if the tenant was not allowed to sublet the house – such as if he sublet to a larger family – the profit goes to the owner, since the tenant should not profit from the owner's house. However, if the tenant was allowed to sublet the house – either because he had explicit permission or because he sublet to a similar-sized family – the tenant keeps the profit (*Rema* 363:10).

"Several *Acharonim* explain that – unlike the cow, where the renter has no ownership rights in the cow itself, and therefore the borrower's payment goes to the owner – the tenant owns the usage rights, so that when he sublets according to the *halachah*, he profits from his *own* usage rights, not from the landlord's property. However, when he sublets in a manner that is not allowed, beyond his rights, the profit goes to the owner, since the tenant should not be profiting from the owner's property (*Ketzos* 363:8).

"Machaneh Ephraim (*Sechirus* #19) further suggests that even if the tenant wrongly sublet to a larger family, the profit goes to the landlord only if he initially rented it out to the tenant at a discount. However, if the tenant initially rented the house for its full value, but succeeded in subletting for more, the tenant can keep the profit, since here there is no loss to the owner. Other *Acharonim* do not accept this distinction (*Emek Hamishpat, Sechirus Battim* 62:14-16).

"Thus," concluded Rabbi Dayan, "since the Greens rightfully sublet to a similar-sized family, they can keep the profit."

Verdict: If the tenant sublet for a profit, if he sublet in a permitted manner, he can keep the profit; if he sublet in an unauthorized manner, the profit goes to the owner.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial Practice #20
Measures

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' חי' בת ר' שמואל חיים ע"ה

Q. Does it make a difference whether I sell items in feet or meters, pounds or kilos, liters or gallons?

A: The *Mishnah* (*B.B.* 88b) teaches that in places where it is common to sell in a large measure, a person should not sell in a small measure, and vice-versa, even if the price is adjusted accordingly (*C.M.* 231:8).

This is for two reasons: 1. Typically, the seller adds a drop "extra" to each measure, since it is not possible to measure exactly. Therefore, by using a larger measure than customary, there are less "extras" than expected; a smaller measure, more "extras" than expected (*Sma* 231:13).

2. People may mistakenly think that this measure is standard also when buying from others, and miscalculate the price. For example, a person may not notice the difference between a quart and a liter, or between a meter and a yard, when comparing the prices (*Sma* 231:14).

Therefore, you should sell using the measures that are standard and the common practice in that location.

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someone who stands to incur a major financial loss (*hefsed merubah*) may certainly rely on those opinions at least to derive benefit from (i.e., but not eat) the *chametz* (*Mishnah Berurah* 448:25).

In our case, since the *bitul* is in effect (see below), and the members of this community did what they were supposed to do by selling their *chametz* to someone they thought was not Jewish, the situation was one of *oness*, so according to this lenient view, they may derive benefit from the *chametz*.

The second approach is that the sale to that non-observant Jew was valid, and the *chametz* was in his possession over Pesach (*Imrei Eish*, *Orach Chaim* 24; *Minchas Pittim* 448:3).

Although this should render the *chametz* prohibited, we can nevertheless permit someone who will incur a heavy financial loss to have the Jewish buyer of the *chametz* exchange it for *chametz* that belonged to an actual non-Jew, or sell it to a non-Jew, and whatever he receives in exchange will be permissible for use. But the original owners may not be the ones to sell the *chametz* to the non-Jew, because that would constitute deriving benefit from it (*Mishnah Berurah* ibid. 11; see other approaches in *Magen Ha'elef* 448:4; see *Shaarei Teshuvah* ibid. 11).

The downside of the first approach is that some *poskim* say that if the sellers claim that there was a *mekach ta'us*, then it means that the *chametz* was actually in their possession over Pesach, and it would be better for it to be in the possession of the non-observant Jew so that the original owner does not transgress *bal yeira'eh* (*Imrei Eish* loc. cit.). The *poskim* who do advocate for that approach maintain that there is no violation of *bal yeira'eh* either way because the person was *mevatel* his *chametz*, and there are numerous *poskim* who rule that *bitul* takes effect even on *chametz* that was sold (*Bechor Shor, Pesachim* 21a; *Mekor Chaim* 448:5, *Ketzos Hachoshen* 194:3). The fact that the *chametz* was in the possession of the owners, in violation of *Chazal's* edict that it should be eliminated, is not an issue, since that was due to a complete *oness* (see *Nesivos* 234:3).

The *poskim* who say that the sale may not be nullified rule according to the *poskim* (*Shu"t Chasam Sofer, Orach Chaim* 62; *Pri Megadim* 448, *Eishel Avraham* 10; *Seder Mechiras Chometz LehaRav*; *Nishmas Adam* 130:8) who say that *chametz* that was sold is not included in the *bitul*, and reversing the sale would mean that, in retrospect, the owner transgressed *bal yeira'eh*.

The downside of the second approach is that if the sale is not nullified, we need the non-observant Jew to deal with the *chametz*, which isn't always practical.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com