

## When You Can't Buy Chametz Back After Pesach

By Rabbi Zachary Truboff

Published March 2023

As a synagogue rabbi, one of the most complicated *halakhic* rituals is arranging the sale of *chametz* before Pesach. Rather than consist of simple agreement between buyer and seller, the *chametz* is sold through a variety of *kinyanim*, which can include the giving of silver (*kesef*), renting land and acquiring property along with it (*kinyan agav*), a contract (*shtar*), and even a handshake agreement (*situmta*). These various methods are used to account for strict *halakhic* opinions that disqualify some while allowing for others. This way, even if not all of the modes of acquisition work, at least one does.

As part of the sale, the non-Jew typically does not pay the full value of all the *chametz* being sold but rather offers a down payment. This payment transfers ownership of the *chametz* fully to the non-Jew before Pesach with the stipulation that a full and proper valuation of the *chametz* is to be determined after Pesach. At that time, the non-Jew will pay the remaining amount owed. As we all know, however, this is not what happens. When the non-Jew makes clear they do not want to pay for the full value of the *chametz*, this then opens the door for the rabbi to buy it back and return it to its original owners. When synagogues provide a time for when *chametz* can be eaten after Pesach, it generally assumes that the rabbi has already reacquired the *chametz* from the non-Jew. However, what happens if the non-Jew does not show up at the designated time after Pesach? Is there any way for the rabbi to regain possession of it?

Rabbi Shlomo Kluger (1785-1869), a well-known rabbi and posek, in Brody, Poland was asked this very question. A sought after *halakhic* authority who published thousands of *teshuvot* in a collection titled *ha-Elef Lecha Shlomo*, Rabbi Kluger addresses a case (Siman 221) in which *chametz* was sold to a non-Jew before Pesach who was then arrested during the holiday and put in jail. This then left the original seller unable to reacquire the *chametz* after Pesach. Though in this case it appears that the non-Jew never paid the full value of the *chametz*, Rabbi Kluger rules that the Jew cannot simply take back the *chametz*, even though it remains in their physical possession. Because there was a full transfer of ownership to the non-Jew before the holiday, taking back the *chametz* would be stealing.

Rather, Rabbi Kluger argues that the transaction must be viewed in the following way. The non-Jew still owes a debt to the Jew from whom he bought the *chametz*. Even though the *chametz* remains in the Jew's physical position, it is to be treated as collateral, which cannot be taken by the lender even if the borrower has not repaid their debt. Rather, the value of the collateral must first be determined by the *beit din* to ensure that when the lender takes

possession of it, its value is not greater than the original loan. In this case, Rabbi Kluger argues, one can assume that the non-Jew did not intend to pay for the full value of the *chametz* because they did not show up at the appointed date to do so. Therefore, under these circumstances, the *beit din* can estimate the value of the *chametz*, take possession of it, and return it to its original owners, due to the failed nature of transaction. In this way, the *chametz* can be returned to its original owners without giving the impression that the sale was just a deception.

---

### Ha-Elef Lecha Shlomo (221)

Question: If one sold their *chametz* to a non-Jew but during Pesach they were arrested and therefore one could not buy the *chametz* back from them after Pesach, what is the ruling?

Answer: To say that he [the Jew] can take the *chametz* in place of his money [i.e. the remaining money still owed him by the non-Jew] does not appear correct to me for this would be a deception, for if the *chametz* really belonged to the non-Jew but was held by a Jew as collateral for a loan or if he has sold some objects another time to a non-Jew but he [the non-Jew] had not paid, it is certain that he [the Jew] would not be able to take them for himself without a court ruling. For even if a non-Jew owes one money, one cannot collect the collateral for himself, because who “assessed this for you?” as it says in *shas* and *poskim*. (See Ketubot 98a in which collateral requires a public assessment before the lender can take full possession of it)

Stealing from a non-Jew is prohibited just as it would be from a Jew, and one cannot according to the Torah collect it for themselves. If one was to take it for themselves without an official legal ruling it would make clear from the very beginning of the sale that it was nothing but a deception. One must be concerned with the position of the Taz (448:6) that it is prohibited to take the non-Jew to non-Jewish court for this reason [to try to get back the *chametz*] for it will look as if the original sale was just a deception.

Therefore, it appears he should go to the *beit din* and have them estimate the value of the *chametz* that the non-Jew is to pay him. In this case even regarding a Jew and even without any concern of deception, the *beit din* can allow it [the collateral] to be taken [by the owner]... Even though one must generally give the borrower time and make it known to him [that the collateral is being taken], that is only if one is concerned the borrower might seek to redeem it. Here, however, there is a clear assumption that the non-Jew will not pay him [the full value of the *chametz*], and he does not want the *chametz*. Therefore, even in a similar case involving a Jew [where one knows that the borrower does not want to redeem the collateral], one would not need to tell them in advance. Since the *beit din* that has decided the ownership of the *chametz*, the [original] sale does not appear as a deception because [this decision was done] with the permission of the *beit din*.

---

**Rabbi Zachary Truboff ('10)** is the Director of Rabbinic Education for the International Beit Din and the author of "Torah Goes Forth From Zion: Essays on the Thought of Rav Kook and Rav Shagar". Before making aliyah, he served for nearly a decade as the rabbi of Cedar Sinai Synagogue in Cleveland, Ohio. Currently, he lives in Jerusalem with his wife Jen and their four children.