Q: How does the Sale of Hametz work?

A: There is a wide range of opinions regarding the appropriate way of selling Hametz. On one end there are those who say that the Sale of Hametz is an emergency measure, reserved only for commercial quantities of Hametz which cannot be consumed before Passover. According to this approach, individual household should not sell their Hametz but rather consume whatever is possible before Passover and throw the rest away. On the other end there are those who want to emphasize the validity of the Sale of Hametz. They deliberately leave large quantities of Hametz in separate refrigerators and freezers, to demonstrate that the sale is not just an emergency measure.

In order to understand these differences and answer the question we will have to travel back in time. The first mention of the sale was indeed regarding an emergency situation, where the owner of the Hametz cannot eat or get rid of the Hametz on time:

“A Jew and a non-Jew who are traveling in a ship and the Jew owns Hametz, he should sell it to the non-Jew and repurchase it after Passover.”

By the time of the Shulhan Arukh, the sale has become more commonplace, and so writes Rabbi Yosef Karo:

“If the Jew sold or gave the Hametz to a non-Jew, even though the Jew knows that the non-Jew will not touch the Hametz at all, and will give it back to him after Passover, it is allowed.”

R Yoei Sirkis, who lived a century later in Europe, already addresses the problem of commercial quantities of Hametz. He says that since many Jews own breweries and distilleries, where large quantities of Hametz are processed and stored, they cannot get rid of their Hametz before Passover. He insists that the sale will be an officially documented one, and R Betzalel HaCohen of Vilnius adds that the buyer must have access to the Hametz, including having the key, if necessary.
This is obviously not the case today. Even with detailed documents and official acquisition ceremonies conducted by the rabbis, the sale is clearly legal fiction. In many cases one person buys the Hametz of hundreds of thousands of sellers. The buyer has neither the financial means to pay for the purchase or access to the Hametz, which is usually behind locked doors and alarm systems.

How can we then continue selling the Hametz in the way we do today? The argument in favor of this “legal fiction” sale was first made by R Alexander Sender Schorr in the 18th century. He explains that the nullification of Hametz is enough to remove the Hametz from one’s possession. The sages also said that one should physically get rid of the Hametz, just to be on the safe side, but they left open the possibility to get rid of the Hametz through the sale.

The argument of R Schorr has been contested, but he relies on an earlier discussion of the nullification itself. R Moshe ben Nachman (Nachmanides) explains that the reason one can nullify the Hametz is that the Hametz is already forbidden by the law. By saying the formula of the nullification, the owner acknowledges the prohibition, and agrees to follow the law, so it is the power of the biblical law which renders the Hametz nullified. In the same manner the sale, as it is done today, is basically an acknowledgement that the seller does not want to own Hametz in a forbidden manner.

The sale of Hametz is not another step which follows the nullification of Hametz, but rather an independent process. The similarity is that in both cases the legality of the process is questionable. When we nullify Hametz we declare that we disown any Hametz which is in our possession. To make such a declaration regarding any other property, the law requires a Beth Din of three people, and there are indeed lengthy discussions in the Halakhic literature dedicated to the mechanism of nullification of Hametz, which are most eloquently presented by R Moshe ben Nachman (Nachmanides).

The arguments raised by Nachmanides are:

1. The Talmud uses the term ביטול – nullification, and not the more appropriate חסולה – disowning.
2. Nullification seems to work instantly while the rules of disowning require someone else to take possession of the disowned object. According to this rule, one who declares that he disowns his Hametz is still considered the owner and will be held accountable.

3. Disowning has to be explicitly stated, while the nullification can be done by though alone and does not need to be verbalized.

4. Disowning needs to be done in front of three people while this is not a requirement for the nullification.

5. Disowning cannot be performed on Shabbat since it is considered a transaction.

These are the problems which engulf the process known as ביטול or nullification of Hametz, now let us examine the sale:

When we sell the Hametz we conduct a sale which does not follow the basic rules of a transaction. In Israel, for example the rabbinate is authorized by hundreds of thousands of people to sell their Hametz to a non-Jew. I believe that in our daily life, no one would accept the validity of a contract in which the buyer does not have the means to pay for the merchandise, does not know where the merchandise is, and does not have access to the merchandise. We would also question the validity of a deal where the buyer is given seven or eight days to come up with the money and if he fails to do so, the deal is not cancelled but rather we buy it back from him for the same amount he initially invested. Furthermore, even in the age of eBay, no one would be willing to buy hundreds of thousands of open packages and bottles. The absurdity of the sale is most evident in the practice of some rabbis to sell the flavor of Hametz which is absorbed in the dishes. Who, in his right mind, would sell or buy impalpable, undetectable flavor, and how much would one pay for it?

Because of all of the above, and because of the fact that these sales of Hametz are still conducted each year all over the world, I explained that the underlying principle of the sale is similar to that of the nullification.

The Torah does not want us to eat Hametz and the Hametz therefore does not belong to us. One is still held accountable if he left usable Hametz in his house. The nullification takes care of the unknown Hametz and the sale takes care of the known Hametz. Both processes are consummated not by regular legal definitions but by an exceptional power which stems from the Torah.
prohibition to own Hametz. Since the actions of the person who nullifies or sells the Hametz are aligned with the intention of the Torah, the nullification and the sale are effectuated and valid.

One therefore can rely on the sale for all Hametz products which he or she owns, including open packages and half bottles of scotch. There is no need to physically sign a document or to pay any fee for the transaction, only to submit your name electronically to your rabbi or synagogue, or to me at rabbiovadia613@gmail.com

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2. דכתיב "לאחר侦察 המכסה... אעפי על הפקר ומ篙ה אינן ק"ב מלך. ז"ל דמה שאמרו בביטול בעלמא סגי vrouw, "ולפקד להו היתירא respectfully. שמי בכל מקום מי סני הפקר ששנו חכמי נצון (ע"ז נ"ב ב') נכרי מבטל כו' ע"בבודה זרה שלו ושל חברו - אינו הפקר, שאינו פקיר דבר שאינו שלו!
3. והניים שנינו (ביצה ל"ו ב') אין מקדישין ואין מערי כין ואין מחרימין גזירה משוםמקח וממכר, עוד קשה לי ששנו חכמים ז"ל בכל מקום מבטלו בלבו, וההמפרבר בפה הוא ולמה הזכירו בלבו בכאן.