Mekhirat Chamets: Selling your Chamets This Coming Pesach

In our days, most communities—Ashkenazi and Sephardic—arrange a Chamets-selling system in which the community members empower the rabbi to sell their Chamets.

This procedure is a Halakhic leniency done to avoid people from keeping "expensive" Chamets at home during Pesach.
Obviously, the validity of this selling should not be questioned, since every rabbi leads his community according to what he considers best for his congregants.

Personally, I don't sell my Chamets, and I encourage other Sephardic Jews to do the same.

Historically, Sephardic Jews did not practice the *mekhirat Chamets* (=selling of Chamets) procedure.
They simply got rid of their Chamets before Pesach began, fulfilling the Mitsva of *tashbitu*.

The only exceptional case in which Sephardic rabbis authorized selling the Chamets was the case of a food store owner. In this case, a non-Jew would make a down payment for the total of the merchandise, and from the moment he made that payment, the Chamets merchandise would belong completely to the buyer, and he would be entirely responsible for the goods if damaged, stolen, etc.

So, for example, if the goods were stolen during Pesach, the buyer would have to pay for them to the seller after Pesach.

The buyer would also rent the store where the merchandise was stored for the duration of Pesach, and he would keep the store's keys, which granted him total and unrestricted access to the premises of the store.
The non-Jewish buyer had the right to use, consume, or even trade the Chamets merchandise during Pesach. And if he wished to, he could pay the balance and keep the merchandise for himself.
As you can see, although the clear intent was that the seller would eventually buy back the Chamets after Pesach, the selling transaction was real, legal, and binding.
The rabbis would not have accepted any phony selling transaction that did not comply with Jewish and local law, because obviously, they took very seriously the prohibition of owning Chamets during Pesach.

Except for food business owners, the Sephardic community would not sell their Chamets. What would they do with their leftover Chamets food?

1. First, before Pesach, people would buy just whatever was necessary until Pesach, avoiding having extra Chamets-food close to Pesach.

2. Second, whatever leftovers of Chamets, if in good condition, would be given to a non-Jew as charity or as a gift. If that was not possible, it would be disposed of. Disposing of Chamets leftovers the day before Pesach is a Biblical Mitsva. So this is not considered "waste" (*bal tashchit*).

3. If some Chamets had accidentally not been detected, then the *bitul Chamets*—the formula of renunciation of our ownership of any unseen Chamets in our properties—would prevent the transgression of owning Chamets during Pesach.

If one follows these simple steps, then there is no real need

to “sell and buy back” any Chamets.
I would obviously encourage Sephardic Jews to preserve the ancient *Minhag* and not sell their Chamets, but get rid of it.

To clarify the technical problems involved in the *mekhirat Chamets* procedure, see below

Remember that you only have to get rid of Chamets which is a food item (for human or animal consumption).
You do not need to sell your pots and pans, or anything that might contain “invisible” Chamets (*Chamets balua’*). Just put those utensils away during Pesach.

Medical pills, perfumes, cosmetics, or any non-edible items can be kept, regardless of their composition.
Food items: you can keep anything as long as you make sure that it does not contain any of these five grains: wheat, barley, oats, rye, spelt. (FYI: anything that contains gluten is Chamets. Check online!)

Conclusion:
Selling or not selling your Chamets is, at the end of the day—like any other Halakhic leniency or stringency—a personal choice made in consultation with your community’s rabbi.

Those who wish to keep their valuable Chamets products (whiskey, vodka, or liquors made from grain alcohol, etc.) should arrange the selling of the Chamets through their local rabbinate and avoid online selling.

xxxx

original article cannot be found online anymore)

Rabbi Zini explains that the precedent for selling Chamets is learned from a Tosefta that says that if a Jew is on a ship, bringing with him some Chamets goods, and his ship is late and will not arrive before Pesach as planned, the Jew could give his Chamets to a non-Jew, and he is permitted to acquire the Chamets back from him after Pesach is over.
This case was considered by the rabbis an exceptional case, since this person is in the middle of the ocean and has no other resource than to sell all his merchandise.

Rabbi Zini brings many sources, especially from the time of the Geonim, which sustain the opinion that the Tosefta refers to an exceptional case. He points out, for example, that the Mishna and the Gemara discussed at length all the different ways to dispose of Chamets (burning, throwing it into the sea, feeding it to birds, etc.) and never mentioned, discussed, or conceived selling the Chamets as one of the ways of disposing of Chamets.

Moreover, following the modern way of selling the Chamets, all the rules the rabbis instituted—like bediqat Chamets or bitul Chamets—would be meaningless and unnecessary.

Following the Tosefta, Sephardic rabbis authorized a food store owner to sell his Chamets to a non-Jew, since it is an exceptional case, and even then, they authorized it under very specific conditions.

Rabbi Zini also explains that in the case of the Tosefta, there was a transference of the goods from the Jew to the non-Jew. In other words, the non-Jew takes possession of the Chamets goods (*meshikha*), which is an unequivocal legal act of acquisition.

Rabbi Zini brings several sources which assert that if the goods would remain in the house of the Jew, that is an unequivocal sign of *ha'arama* (in this case, "a bogus sale").

This requirement—that the goods be transferred to the house of the non-Jew—is brought as a prerequisite for the valid selling of the Chamets by *Terumat haDeshen*, which is the source of the *Bet Yosef*.

Once and again, Rabbi Zini brings the Geonim and Rishonim, who, quoting the Tosefta, emphasize that the selling would be valid only if it is not a phony sale (*ubalvad shelo ya'arim*).

The next element which would be considered a sign of *ha'arama*, or a bogus transaction for most rabbis, is that the Tosefta discusses an exceptional case where a person is in the middle of the ocean, in a ship that was probably delayed for a few days and could not arrive at home before Pesach.

And, as Maimonides points out, *higi'a sha'at ha'hamishit*—the time for getting rid of Chamets had arrived—and this person has no other resource.

In halakhic terms, this is known as *she'at hadahaq*, extreme and unpredicted circumstances, the equivalent of *bedi'avad*.
However, when one deliberately plans to sell the Chamets every year as a way of circumventing the Mitsva of disposing of Chamets, according to Rabbi Zini, this is an unequivocal sign that the sale is insincere and therefore invalid.

Another point brought by Rabbi Zini is that, when valid and binding, this selling transaction implies that the buyer owns the Chamets and is entirely responsible for it.

The whole point of the sale is that once the non-Jew pays the down payment, the Chamets belongs to him. The balance is made into a debt (similar to a promissory note), and the fact that the buyer did not pay the balance yet does not affect his ownership of the Chamets.

In these conditions, the entire responsibility for those goods is the buyer's.
Thus, for example, if during Pesach the whisky that I sold to

the buyer and kept in my house was stolen or broken, I should not care, because the goods are under the buyer's responsibility and therefore he will pay me back for those destroyed goods once Pesach is over.

As we know, this is not the case in practical terms with the modern selling of Chamets. Most people would definitely care that the Chamets ("their" Chamets) not be stolen or damaged, which again is a sign that they consider this Chamets their property.

The main opinion among modern Halakhic authorities who accepts as valid this selling of the Chamets was the Hatam Sofer (1762–1839). And as we said, relying just on this opinion, against the opinion of most rabbis, would be an exceptional leniency–especially for Sephardic Jews who never followed this practice.

Even among Ashkenazi rabbis, this type of sale was criticized. The champion of this cause was no other than the Gaon of Vilna (1720–1797), who considered that whoever sells his Chamets with *ha'arama* is violating two Biblical prohibitions (*bal yera'e* and *bal yimatse*) and failing to comply with one positive Biblical commandment (*tashbitu*).