chameitz that he personally dedicated to *hekdesh* but did not deliver. He kept it on his property during *Pesach*. It is unclear whether this view is followed by the poskim, or only cited as support. A case is discussed, in which a donor had dedicated flour to a particular needy person. He did not deliver it, and forgot about it before *Pesach.* In that case, both donor and recipient are not held liable. Part of the reason is because the donor could claim that he is not the owner. As for the recipient, among other reasons, it is not decidedly his until he actually receives it (there are ways for the donor to back out). One could only add to that in our case. The original donors have already given up their ownership. The trustees never really own it. The recipients are not determined until later, and could not be expected to disown or destroy it. This alone would appear enough to permit the *chameitz* after *Pesach*, even to Jewish recipients. Furthermore, if a religious recipient had disowned all his known and unknown *chameitz* before *Pesach*, he could claim that he is only taking possession of this now, after *Pesach.*

In our case, we must first determine whether anyone owns the *chametz,* and whether that owner could be liable for keeping it or not destroying it. The original owners have relinquished any claims on it. If indeed we consider it theirs, they must have included it in their *bitul,* nullifying their *chametz* on *Erev Pesach.* Usually, this does not relieve the *chametz* of its penalty. One who knows that his *chametz* will be permissible after *Pesach* due to his *bitul* might be insincere in the *bitul.* Therefore, the penalty is applied to this as well. However, in our case, the *bitul*, if it was applied to this *chametz*, was not to protect it for the owner. Therefore, it would not be included in the penalty. If the original owner no longer own it, it could be *hefker*, in which case, there is no penalty. If it belongs to the 'poor', they cannot be held liable. First, there is no single known owner to hold liable. Second, the potential 'poor' do not qualify until they arrive at the locker. Third, no-one would wish to assume ownership to his detriment. There is no Jewish guardian responsible for this *chametz* either. Even if there was a Jewish guardian, he would not be held liable for *tzedakah* food. The public facility might have some Jewish trustees. Assuming that they assume ownership of the *chametz* in their possession, all trustees would be partners. Since *chametz she'avar alav haPesach* is a Rabbinic penalty, one could rely on *berairah* to assume that the *chametz* parts of the partnership were property of the gentile trustees. [See Peah 5:4 6:1 Psachim 5a-6a 30b-31a 46b Yerushalmi 2:2 Baba Kama 93a Baba Metzia 30b Chulin 130a-b, Poskim. Tur, Sh Ar OC 435 440 443:2 441 448:1 etc. YD 153:4 CM 273:5 301:6, commentaries. Sdei Chemed, Chameitz 8:especially 5 7 14 23 32 52 78. Chelkas Yoav 19. Betzel Hachochma VI:95. Mikraei Kodesh Pesach I:62.]

In conclusion, the *chametz* in the locker is permissible.

On the Parsha ... *He shall come, the one to whom the house belongs, [to tell the Kohain about the nega] ... [14:35]* The Talmud *[Yuma 11b]* debates whether a *nega* defiles a public *shul.* Do the words *'asher lo habayis'* exclude public ownership. Perhaps the issue is whether the donations to build the *shul* are still owned by the donors. On the one hand, they gave the funds for public use. On the other hand, there was not necessarily a point at which it left their ownership.

Parshas Sazria-Metzora 5772 Vol. XV No. 27 בס"ד

HALOCHOSCOPE

This week's question:

An arrangement was made with a public facility to store kosher food in a locker for Jewish patrons. The food is left there by other patrons or donated. Some of this food is *chametz*, and was left there during *Pesach.* May this food be used after *Pesach*?

The issues [based partly on Halochoscope XI:14]**:**

A) Chametz she'avar alav haPesach

B) Who owned the *chametz?*

A) Chameitz She'avar Alav HaPesach

Keeping *chameitz* over *Pesach* is a violation of two Scriptural prohibitions. *Bal yaira'eh* forbids having *chameitz* in one's possession where it can be seen. *Bal yimatzei* forbids concealing it on one's property or owning it and having it stored off the premises. Having *chameitz* of a gentile on one's property is not included, unless the Jew is liable for the *chameitz* in his possession. Actually, due to the prohibition forbidding benefit from *chameitz*, it really is not in his jurisdiction. The Torah forbids one to make use of it. Yet, at the same time, the Torah considers the person holding it liable in these two *mitzvos*.

If a Jew had *chameitz* in his possession over *Pesach,* it may not be benefited from after *Pesach*. The Talmud debates whether this is a Scriptural prohibition. We follow the view that it is forbidden Rabbinically. It is a penalty against the person who violated *bal yaira'eh*. It is an incentive to destroy it, rather than keep it in violation of *bal yaira'eh*. Thus, the factor determining whether the penalty applies is whether the violator was in violation of *bal yaira'eh*. There is also evidence that if one was somehow exempt from *bal yaira'eh*, but had the positive *mitzvah* to destroy it, *tashbisu*, his *chametz* is also forbidden. Some add, if the violator was in violation of *bal yimatzai*, such as if he owned the *chametz* but it was under guardianship of a gentile, it is included in this penalty.

Oness, where one is unable to control the circumstances of a violation, is usually exempt from liability. *Shogaig*, where one could have controlled it, but was unaware of the issues or circumstances, is liable but to a lesser degree. One would expect a penalty to be restricted to *maizid*, an intentional violator. In our case, this matter is debated. We follow the opinion that even if *chameitz* was in one's possession beyond his control, the penalty of *chameitz she'avar alav haPesach* applies. Proof for this view is brought from the case of a thief who steals *chametz* before *Pesach* and returns it after *Pesach*. The victim could claim that it is now worthless, and the thief should compensate him. Nevertheless, the Talmud says that the thief may return it as is. The question is, why is it indeed forbidden after *Pesach?* The owner was unable to destroy it or sell it while it was in the possession of the thief! This shows that *oness* is also penalized. If *shogaig* or *oness* were exempt, one might intentionally keep the *chameitz*, claiming he was a *shogaig* or *oness*.

The exact situations of *shogaig* and *oness* where the penalty applies are debated. If the Jew was aware that he had the *chameitz*, but did not realize that he had to destroy it, or he had no time to destroy it, the penalty applies. A debatable case is where a Jew was unaware that a gentile employee had caused his grain to leaven. Or, a Jew might be unaware that an item belongs to him, rather than to a gentile supplier or purchaser. This could be relevant to our case.

Forbidden benefit would include eating it, using it to feed animals or any other personal use, selling it, or even giving it away such that the donor receives a benefit. This benefit need not be material. If the donor wins favor in the eyes of the recipient, he will benefit in the long term. In cases of major loss or desperate need, leniencies are applied. This would be based on the factors involved in the individual case. If there is a question about the circumstances, or if there is debate on the particulars, a lenient view might be accepted. The leniencies might include selling the *chameitz* to a gentile. This way, no Jew will consume the *chameitz*, but someone will benefit from its value. [See Psachim 5b, 12b 27b-29a 42a-46a, Poskim. Tur, B.Y. Sh. Ar. OC 442, 448, commentaries.]

B) Who owned the chametz on Pesach?

In our case, various issues must be addressed. The original owners of the *chametz* have donated it. In their eyes, it no longer belongs to them. No new owners took possession of it. The people who made the arrangement with the public facility never had any intention of claiming the food for themselves. The facility is not owned by Jews, but is public. There might be some Jewish trustees. Was anyone liable for *bal yaira'eh*, *bal yimatzai*, or *tashbisu*? Was anyone in violation, even as an *oness*? If no Jew owned the *chametz*, or if no Jew was in violation, there should be no penalty on its use after *Pesach.*

Our case could be compared to *hefker,* disowning an item. Generally, one must remove the item from his property in order to properly declare it *hefker*. If it remains on his property, it is hard to consider it *hefker*. In addition, there is an opinion that one must make such a declaration in the presence of three others. Assuming that one need not necessarily fulfill these conditions, one must at least be somewhat conscious of the *hefker.* Even *yiush*, giving up hope on lost or stolen property, is a conscious act. *Yiush shelo mida'as*, a case where one would have *yiush* had he known, but was really unaware, is debated by the Talmud. We follow the view that it does not disown the owner from his property. Furthermore, the status of *yiush* itself, and to a degree, *hefker*, is also debated. Some consider it ownerless. Others maintain that the owner still has some form of connection to it, but that he has relinquished any actual claims. Nonetheless, the poskim rule that *chametz* that was truly *hefker* is exempt from the penalty after *Pesach*.

Did the donors in our case declare the food *hefker*? They did not leave it out in the public domain for all takers. They seem to have had in mind specific recipients. This might not qualify as *hefker*. The Talmud debates whether limited *hefker* counts. The typical example is *hefker la'aniyim*, something left for the poor. For example, *peah*, the corner of a field, is not reaped. It is left for the poor, but not to specific recipients. In our case, we may consider the people who avail themselves of the food in the locker to be such a limited group. In fact, a man of means who is away from home and has no money to procure food is considered poor at that moment. In this respect the beneficiaries of this

kosher food are a targeted group of 'poor'.

We will review an earlier issue of Halochoscope regarding *chametz* donated to a communal institution, who distribute it to the poor. There is a possibility that our case could resemble this in a small way.

There are various different types of ownership. The most straightforward is when an individual owns something outright. A partnership can be more complex. In the case of *chameitz*, the main issue would be whether a Jew owned it during *Pesach*. For these purposes, if both partners are Jewish, there is no question that they were in violation. Neither of them can blame his partner, since normal partnerships give an equal share to each party. If one partner is gentile, his share was never included in the violation. If the entire inventory was *chameitz*, this does not help. If some items were not *chameitz*, it might help. When the profit is divided, the Jew could use *brairah*, a form of retroactive predetermination, to claim that he never owned the *chameitz* part. This is relied on sometimes. A publicly owned company, and according to many, a limited liability corporation, are considered less owned than a regular partnership. An estate inherited by more than one heir, before it is divided, is considered owned by the heirs. However, their ownership is not of a personal nature, but in lieu of the deceased. In certain respects they are partners, and in certain respects they are not considered proper partners. The nature of the 'partnership' itself is debated by the poskim. This makes a difference regarding some *halachos*. *Hekdesh*, property dedicated to the Temple, and for many purposes, *tzedaka*, is not considered owned by anybody. It is managed by the appointed *gizbor*, treasurer, and the *bais din*, Rabbinical council, is liable for its assets. A communal organization is also not really owned by its trustees, nor by the community as a partnership. The Torah specifically exempts *chameitz* that 'belongs' to *hekdesh* from *bal yaira'eh.* The exemption applies to the Jew on whose property the *hekdesh chameitz* is stored. *Hekdesh* is not a person and is obviously not liable. This *chameitz* is never included in the penalty.

Hekdesh is ultimately the 'property of Hashem'; *tzedaka* is ultimately the 'property of the poor'. It is collected on their behalf. In our case, this would mean that Jewish poor, specifically those who receive the goods, owned the *chameitz* over *Pesach*, albeit inadvertently. One cannot acquire something on behalf of another to his detriment. Therefore, one could argue that *bais din* could not acquire the *chameitz* if it would mean that the poor recipient would violate *bal yaira'eh.* It would then be the liability of the donor to the organization, or of the seller. However, if the *chameitz* is procured at a time that one is not in violation yet, this objection to possession would not block the validity of the acquisition. Furthermore, financial liability for *chameitz* is often enough to implicate the person on whose property it is held in *bal yaira'eh.* Until it is distributed, *bais din* or the trustees or their hired managers are liable for the products. They could thus be liable for *bal yaira'eh*. Usually, this is invoked when the owner is gentile and the guardian is Jewish. If both are Jewish, the true owner is the one held liable. Here, assuming the true owner is the ultimate Jewish recipient, he might not be considered liable. Perhaps the guardian is then liable. However, the poskim invoke a Talmudic ruling that a guardian of *tzedakah* funds is not financially liable like a regular guardian.

The poskim cite a *Yerushalmi* that considers an individual liable or *bal yaira'eh* on