

OVERVIEW of the Daf

1) Declaring property ownerless (cont.)

The Gemara concludes citing a Baraisa that discusses details related to declaring property ownerless.

It is noted that the first part of the Baraisa seems to reflect the opinion of Rabanan whereas the latter part of the Baraisa seems to reflect the opinion of R' Yosi.

Ulla explains how the entire Baraisa could be explained as consistent with Rabanan.

Reish Lakish explains how the entire Baraisa could reflect the position of R' Yosi.

Rabbah responds to a challenge against the explanation of Reish Lakish.

An unsuccessful challenge to Reish Lakish's explanation is presented.

A Baraisa is cited that is consistent with Ulla's explanation but inconsistent with Reish Lakish's explanation.

One resolution to this challenge is offered. ■

REVIEW and Remember

1. Is a declaration that property is ownerless for a limited period of time effective?

2. Why did Chazal decree that the former owner of property cannot retract a declaration that his property is ownerless after three days?

3. What gifts of the field must be left for the poor when one reacquires the property he declared ownerless?

4. How does Reish Lakish explain the Baraisa that was cited to refute his position?

This week's Daf Digest is dedicated
 לעיני רבי אהרן בן ר' יעקב מאיר עי"ה
 By his children
 Mr. and Mrs. David Friedman

Distinctive INSIGHT

Forfeiture and repossession of the ownership of the field

ולשחר עמד ובצרו חייב בפרט ובעוללות ובשכחה ובפיאה

Ownerless produce that is collected is exempt from having to designate from it the gifts for the poor. The Rishonim (ר"ן, Tosafos and Rosh) write that nevertheless, in a case where a farmer abandons his ownership from his produce, but he then repossesses the fruits from this state, he is obligated to give the poor their portions. This is based upon the Gemara in Bava Kamma (94a), and the reason for this is that the verse (Vayikra 23:22) uses an extra word **תעזוב** to extend the obligation to this case. Rambam (Hilchos Matnos Aniyim 5:27) writes that if a farmer abandons ownership of his produce, and he wakes up the next morning and claims ownership of his own field, he is obligated to separate all gifts for the poor, as this is still considered "your field" and "your vineyard" as prescribed in the verse (Vayikra 19:9,10).

Rambam cites a different verse than the one brought in the Gemara. Meiri notes this discrepancy, and notes that according to the Gemara, the farmer recapturing his own fruits is specifically obligated to give the gifts to the poor, as the verse **תעזוב** is found in the text of the mitzvah of giving these gifts. However, according to Rambam, the verse from which we learn this halacha is in the context of defining the land itself as being owned by the same farmer who originally forfeited his ownership, rather than in terms of defining the status of the fruits. If we consider the land as never having been released by the farmer who took it back, Meiri notes that we should expect the farmer to be obligated in **מעשר** as well, and not just in the gifts to the poor.

קרית ספר (ibid.) explains that the lesson from the extra verse **תעזוב** teaches us that if one forfeits his field, and he then repossesses it, the field is and always was his, and he is therefore obligated to give the various gifts to the poor. However, the verse only teaches us this lesson in terms of the poor, but in regards to **מעשר** original status. In other words, we are dealing with a legal definition, and the ownership of the farmer in this case is only uninterrupted in reference to the gifts of the poor, but not in reference to **מעשר**.

The **יראים** (#124) adds that the only time the farmer who repossesses his own field is obligated to give the gifts of the poor is when his intention in declaring his field ownerless was in order to exempt himself from these gifts. His goal was insincere, and we therefore deny the legitimacy of his act. However, if he genuinely forfeits ownership of his land, he would, in fact, be exempt from designating these gifts if he would retake the ownership of his field and its fruits. ■

HALACHAH Highlight

Declaring property ownerless

המפקיר את כרמו

One who declares his vineyard ownerless ...

The Yerushalmi¹ teaches that the necessity to have three people present when making something ownerless applies only when the object is made ownerless by declaration. If, however, a person does an act that signifies that one is making an object ownerless, e.g. abandons the object in the marketplace, it is unnecessary for three people to be present since the act itself clearly demonstrates the intent to make this object ownerless.

Rav Moshe Stern², the Debrecziner Rov, ruled, in accordance with this principle, that one must be certain not to leave any chometz in the trash container in his yard on Erev Pesach once the time for the prohibition against owning chometz arrives. Although technically there should be no requirement to remove the trash bin from one's property since one can make something ownerless on his own property the same way he could make something ownerless in the market, nonetheless, halacha requires one to remove all chometz from one's domain. He cites a com-

ment of Magen Avrohom³ in support for this ruling.

There was once a person (Reuven) who threw something into the garbage can that was on his property and Shimon came along and took the object for himself. Reuven then decided that he wanted the item back and claimed that since it remained on his property he never lost ownership of the item. Rav Menashe Klein⁴, the Mishnah Halachos, explained that the halacha will depend on the layout of the yard. If the yard that contains the garbage can is closed or in some other way indicates that people should not walk on the yard, Reuven's claim is accepted. If, on the other hand, the yard is open and people could easily come and take things from the garbage can, Shimon's claim that the item was already ownerless is accepted. Mishnah Halachos proceeds to entertain the possibility that any time an item is thrown in the trash it is considered ownerless, regardless of how the yard is laid out. He also rules that if someone throws a pen into the garbage and another person takes it out, it certainly belongs to the finder. ■

1. ירושלמי שביעית פ"ט ה"ד

2. שו"ת באר משה ח"ג סי' ע"ד

3. מג"א סי' תמ"ה סק"ז

4. שו"ת משנה הלכות ח"ז סי' רס"ז ■

STORIES Off the Daf

The tobacco business

מופקרת ליום אחד

A certain religious tobacconist wished to sell his wares on Shabbos to make additional income. He asked the Rav of his town if there was some halachic way to permit this.

After spending some time considering the question, the Rav told him that there was a way. "All you have to do is declare the tobacco ownerless for Shabbos and have a non-Jewish seller in your shop. In Nedarim 44 we find that one can declare an object ownerless for even one day. For example, even though a Jew's animal may not perform מלאכה on Shabbos, one

who rents an animal to a non-Jew until Friday and the non-Jew fails to return it must avoid violation by declaring the animal ownerless for Shabbos. In my opinion you can do the same to bolster your income."

Needless to say, this heter for chilul Shabbos caused quite a stir. The parnassim of the man's community decided to refer the matter to the Chasam Sofer, zt"l, to prevent strife within the community.

The Chasam Sofer responded, "The Rav should not have issued such a psak. The Ridvaz writes that relying on declaring property ownerless even before three people is a last resort only to be used in the case of very great loss. He also permits it if the owner will fall into trouble with the government if he refuses to rent his

animals out for work on Shabbos. But even disregarding this, there is the serious halachic problem of מראית עין which is prohibited if people know the מלאכה being performed on Shabbos is for a Jew. How much more so is this prohibited regarding Jewish property where everyone knows he is making a profit on Shabbos! There is not even any loss in this case! It is certainly incumbent on the community to protest this blatant חילול שבת."

The Chasam Sofer concluded, "I am sure that the Rav will rescind his decision without any reservation immediately. Even our forefathers did not insist they were always correct. We should not hold ourselves above them. If he changes his mind he will surely not be embarrassed in this world or the next!" ■

