

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. According to Reish Lakish, how many people must be present for a declaration that property is ownerless to be effective?
2. What is the advantage of having three people present when one declares property ownerless?
3. According to R' Yehoshua ben Levi, why did Chazal mandate that three people should be present when one declares property ownerless?
4. What is the dispute between the Tanna Kamma and R' Eliezer ben Yaakov?

This week's Daf Digest is dedicated
L'ilui Nishmas David ben Yacov
David Goldberg, Los Angeles, CA

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

Distinctive INSIGHT

The rationale of the opinion of Rebbe Eliezer ben Yaakov
רבי אליעזר בן יעקב אומר זה נכנס לתוך שלו וזה נכנס לתוך שלו

The Mishnah teaches the halacha of two people who owned a yard in partnership, until they each declared an oath prohibiting the other from deriving benefit from him. Tanna Kamma holds that neither partner may enter into the land, as doing so would necessarily be stepping upon land owned partially by the other. Rebbe Elazar ben Yaakov argues, and he holds that each one may enter the yard, as we consider it as each is treading upon the part of the yard that is his own. ר"ן explains the rationale for Rebbe Eliezer ben Yaakov's lenient opinion. He understands that when partners own land jointly, the agreement is that when each one of the partners uses a part of the yard, he is completely the owner of that area, and it is transferred to him for the time he uses it. The other partner, in turn, may also use the yard, and when he does so he is considered the full owner. It is as if the two partners agreed that Reuven should use the property for one week, and Shimon will then use it the next week. So, here, too we view it as if Reuven is the owner as he passes through the land, and Shimon is the owner as he walks through the land. Each is using his own property, and no one is using anything of the other.

Lechem Mishnah (Hilchos Nedarim 7:2) notes that the words of ר"ן can only relate to a yard which is small (אין בו דין חלוקה), where the two partners cannot use it simultaneously. This is where we say that each uses it exclusively of the other, and at that moment, the one using it is the full owner. However, Rebbe Eliezer ben Yaakov would not allow any one of the partners to use the object or property when the item owned jointly can be used by both partners together, or where the yard is large enough for the both of them. In this case, the usage is not done exclusively so that we could say that each is the full owner as he uses it.

This approach helps us explain the ruling of Rambam who rules that neither partner may enter and benefit from the communally owned shul, while at the same time Rambam rules that they may each enter the mutually owned yard. ר"ן (46b) poses this as an inconsistency in Rambam, but according to Lechem Mishnah we can now resolve it. The yard is only permitted to be entered when it is a small area which is used by only one of the partners at a time. As each enters the yard, he is the exclusive owner, and he is not benefiting from the other. However, the shul is a larger building which can be used by both partners at the same time. Here, we cannot say that the partners enter without benefiting from the other. ■

HALACHAH Highlight

Declaring a house ownerless to avoid the obligation to affix a mezuzah

ור' יהושע בן לוי אמר דבר תורה אפילו באחד הוי הפקר ומה טעם אמרו בשלשה וכו'

And R' Yehoshua ben Levi says that Biblically a declaration of hefker in the presence of even one person is sufficient and what is the reason Chazal mandated that it should be made in the presence of three?

The story¹ is told of Rav Zalman of Vilna that he once arrived at a hotel on Erev Shabbos and as he was about to enter the building he noticed that the mezuzah was in a place that was not compliant with halacha. Due to the late hour there wasn't enough time to fix the problem so Rav Zalman refused to enter the building until the owner declared the building ownerless in front of three people. Rav Chaim Palagi² records this incident and questions its veracity since it is not necessary to make a declaration that something is ownerless in front of three people. Furthermore, the implication that a guest may not enter into the home of his host who did not properly affix a mezuzah is difficult to accept since there is no source that supports this stringency. Some authorities³ suggest that the source for requiring the hotel owner to make his declaration be-

fore three people is the opinion of R' Yehoshua ben Levi in our Gemara who maintains that although Biblically, a declaration to make something ownerless can be made in front of a single person, nevertheless, Chazal decreed that the declaration must be made in the presence of three. Rav Zalman, out of his deep piety, wished to comply with all opinions and therefore had the owner make his declaration in the presence of three people.

On a practical note Sefer Mezuzas Melachim⁴ cites this option of declaring one's property as ownerless in order to avoid the obligation of affixing a mezuzah but limits it to cases where it is not possible to affix a mezuzah. For example, if a mezuzah falls on Shabbos or if one finds himself in a location where a kosher mezuzah cannot be obtained one may rely on this leniency. The author proceeds to cite the story of Rav Zalman and the assertion of Rav Chaim Palagi that there is no prohibition for a guest to stay in a home that does not have a mezuzah. Accordingly, he suggests that Rav Zalman had the owner declare the property ownerless not for himself but rather so that the owner would be able to reside in the house on Shabbos. ■

1. הובא המעשה בספר רוח חיים מהגה"ר חיים פאלאג'י יו"ד סי' רפ"ט סק"ב
2. ספר רוח חיים שם
3. ע' מתיבתא למס' נדרים פניני הלכה דף מ"ה ערך "הפקרת הבית כשאין בו מזוזה"
4. ספר מזוזת מלכים ס"ק י"ט אות ו' ■

STORIES Off the Daf

Private property in the public domain

"כל המפקר בפני שלשה הוי הפקר .."

On Nedarim 45 we find various halachos of making something ownerless.

Before Pesach most people have loads of chometz to throw out, a lot of which is definitely forbidden to keep in one's domain during Pesach. The most natural place to put this chometz is in the trash can, where it will sit until the next day of garbage collection.

A certain man had placed huge quantities of chometz in his trash can

and then realized that he may have a halachic problem. It was close to Pesach and the garbage would not be collected until the day after Yom Tov. Perhaps he was required to place the chometz elsewhere. Although he doubted this, since who would take chometz out of a trash can, he nevertheless decided to ask just in case.

When this question reached Rav Moshe Feinstein he ruled that it was indeed forbidden for him to leave the chometz in garbage bin. "If a trash can is privately owned it is forbidden to leave chometz there during the chag. Although your average person from the city of New York would not remove food from the garbage can, this doesn't help here for a different rea-

son. In Orach Chaim 445:3 we find that if one placed chometz for the birds in a place where it was hefker for all to take, he must destroy it before the time when it is prohibited to keep chometz in his domain. The Taz and Magen Avraham both explain that this refers to leaving the chometz in a spot on his own property where anyone could come and take it. This is why he may not leave it there during the time when chometz may not be held in one's domain.

Rav Moshe concluded, "He must destroy it, and the same is true regarding chometz left in a privately owned garbage can even when it sits on the street!" ■

