

20 Tammuz 5775
July 7, 2015



Nedarim Daf 44

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

Ulla’s Explanation of the Braisa

The *Gemora* cites a *braisa*: If someone says that his field shall be declared ownerless, he is able to retract for three days. (*The produce is therefore subject to the requirements of ma’aser.*) Afterwards, he may not retract. If he said that the field should be ownerless for one day (*anyone can acquire it on this day, and it will remain theirs forever*), or for one week, or for one month, or for one year, or for seven years, the following is the *halachah*: If neither he nor anyone else has taken possession of it, he may retract from his *hefker* declaration (*even after three days; this follows Rabbi Yochanan’s view on 43a, in his explanation of Rabbi Yosi’s opinion that hefker does not leave his possession until someone else acquires it*). Once either he or someone else took possession of it, he may not retract from his *hefker* declaration any longer.

The *Gemora* asks: Can it be that the first part of the *braisa* is following the Rabbis’ opinion (*that he may not retract from a hefker declaration after three days even if no one took possession of it yet*), and the end part of the *braisa* is following Rabbi Yosi’s opinion (*that one may retract as long as no other person took possession of the property*)?

Ulla answers: The latter part of the *braisa* is following the opinion of the Rabbis.

The *Gemora* asks: If so, why is he able to retract from his *hefker* declaration? The Rabbis hold that he cannot retract!

Ulla explains: When he declares that it should be *hefker* for a year or seven years, it is different, because this is uncommon.

Ra”n Elucidated

[*It is not common for people to declare things ownerless in such a manner. Since this person deviated from the normal way, we surmise that since he didn’t want to make it ownerless forever, and it is still bound to him, his intention was that even in the time that he made it ownerless, he did not want it to leave his possession until some other person took possession of it. Therefore, the Rabbis maintain concerning a temporary declaration of hefker just as Rabbi Yosi holds regarding a permanent declaration. The last part of the braisa is therefore consistent with the opinion of the Rabbis just as it is with that of Rabbi Yosi, because regarding a temporary hefker declaration, they do not disagree.*] (43b2 – 44a1)

Rish Lakish’s Explanation

Rish Lakish suggests an alternative explanation: Since the end part of the *braisa* is in accordance with Rabbi Yosi, the first part should follow him as well. (*If so, he should be able to retract even after three days?*) The reason why he is unable to retract after three days is because we do not want the rule of *hefker* to be forgotten.

Ra”n Elucidated

[In truth, Rabbi Yosi maintains that he may retract even after three days as long as no one else has taken possession of it. The reason that we rule that he may not retract is because of the following: If he would be allowed to retract, people would come to say that even if he did not change his mind, when someone else takes possession of it, they are not acquiring it from hefker. For since before he took possession of it, the one who declared it hefker could have retracted, it follows that it was still in his possession, and it emerges that the second one is not acquiring it from hefker; but rather, he is merely receiving a gift.

They would, therefore, think that the produce is obligated in ma'aser, and would come to take ma'aser from a different place for it, and they would be taking from produce that is subject to the ma'aser requirement for what is not subject to the ma'aser requirement. And they might also take ma'aser from this produce for a different place, and they would be taking from produce that is not subject to the ma'aser requirement for what is subject to the ma'aser requirement. It was for this reason that they decreed that after three days, one is not allowed to retract, so that by Rabbinic law, it would be ownerless.]

The Gemora asks: If so, let it be regarded as hefker even on the first day?

Rabbah answers: It was because of the cheaters, who declare their fields to be hefker (in order that it should be exempt from ma'aser) and then, they would retract. (For three days, the Rabbis upheld the Biblical law that the hefker declarations may be retracted. It would emerge that any property reclaimed by the owner within three days would be known that it was never regarded as hefker in the first place, and the produce is still subject to the ma'aser requirement.)

The Gemora asks: Implicit in this explanation would be that under Biblical law, the property is not regarded as

hefker (if he retracted after three days, and therefore, the produce is subject to the ma'aser requirement). But perhaps, he might take ma'aser from produce that is subject to the ma'aser requirement for what is not subject to the ma'aser requirement and he might take ma'aser from produce that is not subject to the ma'aser requirement for what is subject to the ma'aser requirement?

The Gemora answers: We are not concerned about this, for we tell him: If you will take ma'aser for this produce, take from within the produce itself. (44a1 – 44b1)

DAILY MASHAL

Hefker

Hashem spoke to Moshe in the wilderness of Sinai.

The Midrash notes the Torah's emphasis on the place where the Torah was given to Klal Yisrael. Chazal say, "The Torah was given through three media: fire, water and wilderness." What is the significance of these three? Just as these three are accessible and free to everyone, so, too, is the Torah. Furthermore, one must make himself hefker, ownerless, like a wilderness, devoid of all self, in order to acquire Torah.

Harav Yehudah Tzedaka, zl, suggests that these three items allude to the criteria through which one will achieve success in Torah study. Fire is a reference to the passion and enthusiasm one must manifest when learning Torah. Water symbolizes humility, since it always flows downward to the lowest area. The wilderness represents the will of Hashem Who gave the Torah and wants that the individual who studies His Torah give up everything - himself and his possessions - in the pursuit of his studies. The lomeid Torah, one who studies Torah, must be satisfied with a simple life, devoid of luxury and excess.