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Nedarim Daf 45

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

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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

Hefker

The Gemora asks on Rish Lakish (who held that the reason why one is unable to retract after three days is because we didn't want the rule of hefker, in regards to ma'aser, to be forgotten) from the following braisa: If a man declares his vineyard hefker and rises early on the following morning and picks his fruit, he is obligated in peret (one or two grapes that fall off from the cluster during the cutting, which must be left for the poor), oleilos (a small, underdeveloped cluster of grapes), shich'chah (one or two vines which were forgotten while harvesting are left for the poor) and pe'ah (leaving over a corner of the field for the poor); but he is exempt from giving ma'aser.

Ra”n Elucidated

[Normally, ownerless crops are exempt from all of these; however, since in all these (excluding ma'aser) the Torah uses an extra expression of abandoning (ta'azov), it is inferred that the obligation applies in any case where he is keeping

them for himself. But since there is no extra expression by ma'aser, there is no distinction between a case where others harvest it or if he himself harvests it; there is still no obligation for ma'aser.]

Now as for Ulla, it is understandable (why the braisa rules that he is exempt from ma'aser), for he will learn that this braisa is also in accordance with the Rabbis' opinion (that hefker leaves his possession immediately, even prior to someone else acquiring it), and it is stating the Biblical law (that hefker is exempt from ma'aser, whereas the previous braisa was discussing the Rabbinical law that there would be an obligation to separate ma'aser, since he has the ability to retract for the first three days). However, asks the Gemora, why is he exempt from ma'aser according to Rish Lakish?

Ra”n Elucidated

[Since Rish Lakish explains the first braisa according to Rabbi Yosi, we may assume that this braisa follows Rabbi Yosi as well. According to



Rabbi Yosi, who maintains that one has the Biblical right to retract from hefker within three days, provided that no one else acquired it, so why, when he arises and harvests it will he be exempt from ma'aser? For since he didn't say explicitly that he is taking possession of it from hefker, we interpret it to be an act of repossession (he is retracting from his original hefker). It emerges that he is harvesting his own crops, not something from hefker! If so, why is he exempt from ma'aser?]

The Gemora answers: Rish Lakish can tell you that this braisa is following the opinion of the Rabbis (who hold that under Biblical law, one cannot retract from hefker, and therefore, the produce is still subject to ma'aser).

Alternatively, you can answer that the first braisa is discussing a case where he declared it hefker in front of two people and this braisa is referring to a case where he declared it hefker in front of three people.

Ra"n Elucidated

[Both braisos are following Rabbi Yosi's opinion. Rabbi Yosi only said that one has the ability to retract from his hefker if he made this declaration in front of only two people. In this case, it is regarded as a gift, and it therefore does not leave

his possession until another person acquires it. It is not regarded as hefker to everyone, because something that happens in the presence of only two people does not become public knowledge.

However, when he declares it hefker in front of three people, it becomes public knowledge. It is therefore not considered like a gift and he is relinquishing ownership immediately upon his declaration. He is therefore not able to retract from his declaration.]

This distinction is supported by that which Rabbi Yochanan said in the name of Rabbi Shimon ben Yehotzadak: If one declares something hefker in front of three people, it is hefker. If he does so in front of only two people, it is not hefker.

Rabbi Yehoshua ben Levi said: Biblically, it is considered hefker even if his declaration was only in front of one person. Why was it decreed upon that it should be in front of three? It is in order for there to be one person who will take possession and two people to testify to this. (44b1 – 45a1)

WE SHALL RETURN TO YOU,

EIN BEIN HAMUDAR

Mishna

The *Mishna* states: If two partners vowed against deriving benefit from each other, they are both forbidden to enter the courtyard (*because that would be regarded as benefiting from the other; this Tanna is of the opinion that indulgence (something that the owner would normally give away without charging for it) is forbidden for one who has been forbidden benefit by a neder*).

Rabbi Eliezer ben Yaakov said: Each one of them is permitted to enter into his own portion of the courtyard.

Ra"n Elucidated

[The *Gemora* explains this to be referring to a courtyard to which no law of division applies, but in a courtyard to which a law of division does apply, everyone agrees that it is forbidden. In *Meseches Bava Kamma (51b)* it is explained that the point of their dispute is whether the principle of retroactive clarification applies or not. Rabbi Eliezer holds that the principle of retroactive clarification can be applied, and each is entering his own property. The *Chachamim* hold that it cannot be applied.

The Ra"n asks: Even if this principle does not apply, why should it be forbidden for him to enter the courtyard? Since it is a courtyard to which no law of division applies, and neither partner can force the other to divide it, nor prevent him from entering the courtyard, how is he able to forbid it to him? A person cannot forbid something that does not belong to him! Even had each made a neder forbidding the benefit of the other to himself, why would they be forbidden? Behold, when each one enters the courtyard, it is from his own property that he is having benefit, not from that of the other one, since the other one cannot prevent him.

*The Ra"n explains: It is impossible to say that each one has permanent physical ownership of the whole courtyard, for if it belongs to one it does not belong to the other. It is also impossible to say that at the time that he makes use of it, it becomes retroactively revealed that at the time that they acquired it he acquired physical ownership of it for that moment, since the principle of retroactive clarification does not apply. Rather, each one of those partners has a permanent physical ownership of the courtyard, which is his portion, and also has rights to the portion of the other, that by law the other cannot prevent him, even though he doesn't own it physically. The *Chachamim* therefore hold that those rights that he has to the portion of the other can be removed through a neder. That is why it is forbidden. Konamos free it from those rights, as the *Gemora* will say at the end of this *Mesechta*.*

Rabbi Eliezer ben Yaakov disagrees with them, because he holds that the principle of retroactive declaration does apply. For this reason we say that at every moment he enters the courtyard, he is entering his own portion, and the courtyard physically belongs completely to him for that use. He is not using it by virtue of rights, but by physical ownership. For whenever it can be said that each one has a physical ownership, it is fitting to say that it is a matter of rights, because that which remains permanently a certain way without their mutual consent is not considered rights.

The Chachamim, too, only treat it as rights because it is impossible for them to treat it as physical ownership, since the principle of retroactive clarification does not apply.] (45b)

INSIGHTS TO THE DAF

Hefker in Front of Three

Rabbi Yehoshua ben Levi said: Biblically, it is considered *hefker* even if his declaration was only in front of one person. Why was it decreed upon that it should be in front of three? It is in order for there to be one person who will take possession and two people to testify to this.

The Rishonim ask from the Mishna that we learned above (43a), which stated: If a person vowed not to have benefit from someone and these two people were walking together on the road, and the person who cannot benefit from his friend had no food, the *halacha* is that if there is nobody else around, he can put the food on the rock or fence and say, “These are ownerless for anyone who wants to take them.” The other person can then eat. If they are the only two present, it should not be regarded as *hefker*?

The Ritva answers that the Rabbis were lenient in a case where there was an extreme necessity to provide the person with food. They ruled in this case that the Biblical law stands and the *hefker* is valid.

The Bach answers that even when there are not three people present, the *hefker* is valid. The Sages instituted that he can retract from his *hefker* declaration if three people weren’t present. However, as long as he did not retract, the *hefker* is completely valid.

The Shach cites Tosfos that the Rabbinical decree requiring three people to be present was only said in regard to the *hefker* of land; however, regarding movables, such as food, it does not apply.

DAILY MASHAL

HOW MANY JEWS ARE NEEDED TO MAKE SOMETHING PUBLIC?

Shmuel once said to Rav Chana Bagdasaah (*from Baghdath, or an Aggada expert*), "Go out and bring me ten people (*so that the ruling should be publicized*) in order for me to say to you before them that one who gives something to a fetus, the fetus has acquired it."

It would seem from this Gemora that if something should be publicized, ten people are required.

This is also evident from the Gemora Sanhedrin (74b) which states that a person who is in public must be martyred even for a minor precept rather than violate it. Rabbi Yaakov said in the name of Rabbi Yochanan: The minimum for publicity is ten. This is derived from the verse [Vayikra 22:32]: *And you shall not profane My holy name; but I will be holy among the children of Israel.*

It is written [Bamidbar 16:21]: *Separate yourselves from among this congregation, that I may consume them in a moment.* An analogy is drawn from the use of congregation (*edah*) in two passages; one, just quoted, and the second, [ibid 14:27]: *How long shall I bear with this evil congregation.* 'Congregation' there refers to the Spies sent out by Moshe. As Yehoshua and Calev had dissociated themselves from their evil report, ten were left, all Israelites. Thus we see, that ten Israelites creates a quorum.

This applies to desecrating the Shabbos in public as well. The Peri Megadim (Sifsei Daas Y"D 2:17) states in the name of the Rashba: If there are ten men present when one violates the Shabbos, one is regarded as a desecrator of Shabbos in public.

This would seemingly be inconsistent with our Gemora which states according to one opinion: A protest must be lodged in the presence of three people because this way, we are certain that the protest will become known.

The Gemora in Gittin (33a) also states that three people make a matter public. The Gemora rules that if a husband wishes to nullify a *get*, he must do so in front of three people. This is to ensure that the matter becomes known, and his wife will not mistakenly get married.

The Sdei Chemed (V p. 260) answers: Three people are sufficient when we wish to make something public knowledge; once three people know about the matter, we are certain that the public will become aware of this. However, when something must be performed in public, it is only regarded as being public, if ten Jews are present at the moment it occurred.