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***Ulla’s Explanation of the Baraisa***

The *Gemora* cites a *Baraisa*: 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 *Baraisa* 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 *Baraisa* 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 *Baraisa* 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 Baraisa 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 *Baraisa* 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)

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 Baraisa: 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 Baraisa rules that he is exempt from ma'aser), for he will learn that this Baraisa 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 Baraisa 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 Baraisa according to Rabbi Yosi, we may assume that this Baraisa 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 Baraisa 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 Baraisa is discussing a case where he declared it hefker in front of two people and this Baraisa 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

## 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.