



שבת קודש פרשת שופטים | מסכת נדרים דף מד'

This week's newsletter has been dedicated liluy nishmas Chaya Rivka bas R' Dovid

INSIGHTS FROM
OUR CHABUROSForfeiture 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"י, 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 Aniym 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 being 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 the Torah does not consider the land in its 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.

PARSHA CONNECTION

In this week's daf the גמרא discusses someone who is מפקיר an object of his for a specific time frame. We find a similar concept by a gift, whereby one can give a gift to Reuven and say ואחריו to Shimon, meaning that the gift is not permanently Reuven's (see בבא בתרא דף קלו ע"ב). While it's possible to give a limited time present when it comes to inheritance it's always permanent. The אלשיך הקדוש uses this distinction to explain a seemingly difficult possuk in Parshas Mishpatim. The Possuk פרק טז

דברים פרק טז (פסוק כ) . צדק צדק תרדף למען תחיה את-הארץ אשר-ה' אלקיך נתן לך . What does the Torah mean when it says that you shall inherit the land which Hashem gave you? If you already have it through the gift how can you now inherit it? The אלשיך explains that while we got Eretz Yisrael as a gift, a gift can be limited in time, as we found out through the various galuos. The Torah is saying that if we will be vigilant in ensuring צדק like it says צדק צדק תרדף, our reward will be "inheriting" the land which means that it will be permanently ours.

STORIES
OF THE DAFThe 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

עין which is prohibited if people know 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 שבת חילול. 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!"

HALACHA 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.

The Debrecziner Rov² 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 comment 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 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. The Mishnah Halachos⁴ 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

MUSSAR FROM THE DAF

Becoming like the wilderness

שדה זו מופקרת "ליום אחד", "לשבוע אחת", "לחדש אחד",
"לשנה אחת", "לשבע אחת" — עד שלא זכה בה, בין הוא
בין אחר יכול לחזור בו.

If one said: This field will be ownerless for one day, for one week, for one month, for one year, or for one seven-year Sabbatical cycle, as long as no one took possession of the field, neither the one who declared it ownerless nor another person, he is able to retract his declaration

Bamidbar Rabbah 1:7 teaches: "Why was the Torah given in the wilderness? To teach you that if a person does not make himself ownerless (hefker) like the wilderness, he cannot acquire the words of Torah."

The Midrash explains that just as the midbar is open to all and belongs to no one, so too a person must humble himself, remove any preconceived notions, and be fully "open" to receiving Torah. Yet, many people try to make themselves hefker, to open themselves to Torah and still struggle to truly learn it and acquire. Why is that? Our Gemara teaches that if a person declares his field hefker for a set time—a day, a week, a year he can still retract this declaration until someone takes possession. This implies that the field is not truly hefker unless the owner fully renounces it.

Perhaps this is the key insight for Torah learning. During seder, a person may commit to being mafkir himself to Torah, but during the rest of the day, he reverts to his preconceived notions and personal preferences. In other words, his "ownership" of his ego, ideas, and habits remains intact. If, however, he would truly mafkir himself completely surrendering his thoughts, habits, and will to the Torah then he would find genuine success in learning. We see from here a profound Mussar lesson: when we seek to learn and acquire Torah, we must commit fully to becoming hefker, like the wilderness. Our actions, opinions, and choices should be guided entirely by the wisdom and rationale of the Torah, allowing its words to take root deeply within us.

POINT TO PONDER

The Gemara says that after three days someone who was מפקיר will not be able to take it back הרמאים. Why are they called רמאים? If someone brings produce into his house in a way that is exempt from Maaser

(לא ראו פני הבית), he is not called a רמאי. It may be wrong to do so, but it's not רמאות.

Response to last week's Point to Ponder:

The Gemara quotes a ברייתא that within 3 days one can undo his הפקר and repossess his property. According to this הלכה why aren't we concerned in the משנה where it says that he should be מפקיר the food? Maybe he will undo the הפקר tomorrow or the next day?

The מחנה אפרים offers the following two answers. Either because it's a rare circumstance and in a situation like this the חכמים didn't make a גזירה, or because it is a שעת הדחק since he has nothing to eat the חכמים left it with the דאורייתא.

For more points to ponder by Rabbi Yechiel Grunhaus, or insights by Rabbi Yitzchok Gutterman, please visit our website, dafaweek.org, or download the app

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