

אמר "תהא שדה זו מופקרת ליום אחד, לשבת אחת, לחדש אחד, לשנה אחת, לשבע אחת" עד שלא זכה בה, בין הוא בין אחר – יכול לחזור בו. משזכה בה, בין הוא בין אחר – אין יכול לחזור בו. רישא רבנן, סיפא רבי יוסי!

אמר עולא: סיפא נמי רבנן היא. אי הכי, אמאי עד שלא זכה בה בין הוא בין אחר, יכול לחזור בו? שאני שנה ושבע דלא שכיחי.

ריש לקיש אמר: מדסיפא רבי יוסי – רישא נמי רבי יוסי, ורישא היינו טעמא – דלא לישתבח תורת הפקר.

אי הכי אפילו מיום הראשון נמי ליהוי הפקר! אמר רבה: מפני הרמאין, דמפקירין והדרין בהון.

אבל דאורייתא לא הוי הפקר?

If one said: This field will be ownerless for one day,^H 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. **Once one took possession of the field, whether it is he or whether it is another person, he is unable to retract his declaration.**^N This *baraita* is difficult, as the first clause is apparently in accordance with the opinion of the Rabbis, who hold that rendering property ownerless is unilateral and not contingent upon whether one took possession of it, and the latter clause is in accordance with the opinion of Rabbi Yosei, who holds that rendering property ownerless is complete only when one takes possession of that property.

Ulla said: The latter clause is also in accordance with the opinion of the Rabbis. The Gemara asks: If so, why is the ruling in the *baraita*: As long as one did not take possession of the field, neither the one who declared it ownerless nor another person, he is able to retract his declaration; according to the Rabbis, once he declared the property ownerless, although he can take possession of it, he is unable to retract the declaration. The Gemara answers: It is different when one declares an item ownerless for a year or a seven-year period, as doing so is uncommon. Since from the outset he limited the duration of ownerless status, clearly he reserved for himself certain rights; therefore, he can retract his declaration.

Reish Lakish said: From the fact that the latter clause is in accordance with the opinion of Rabbi Yosei, the first clause is also in accordance with the opinion of Rabbi Yosei. And in the first clause, this is the reason that one cannot retract his declaration once three days have passed: It is an ordinance instituted by the Sages to ensure that the halakhic status of ownerlessness would not be forgotten. If one could retract his declaration of ownerless status after three days, people would not distinguish between a case where another took possession, where, according to Rabbi Yosei, one is unable to retract the declaration, and a case where another did not take possession, where, according to Rabbi Yosei, one is able to retract the declaration. The result would be that people would mistakenly conclude that ownerless status can always be reversed, even after it was claimed by another. Therefore, the Sages instituted a limit of three days, after which one may not retract his declaration.

The Gemara asks: If so, then let the Sages institute that the item is considered ownerless even from the first day as well^N and that he cannot retract his declaration at all. Rabba said: The reason that the Sages did not render the item ownerless from the first day is due to the swindlers,^N who declare the field ownerless in order to render the produce of the field exempt from the requirement of tithing, and then retract that declaration and immediately reclaim the field. Therefore, the Sages instituted that ownerless status takes effect only after three days.

The Gemara asks: The Sages instituted that one cannot retract his declaration of ownerless status once three days have passed. However, by Torah law, isn't the item ownerless according to Rabbi Yosei, regardless of when he retracted his declaration as long as no other person acquired it?

HALAKHA

תהא שדה זו – This field will be ownerless for one day, etc. – מופקרת ליום אחד וכו' If one declares: This field will be ownerless for one day, for one week, for one month, for one year he can subsequently retract that declaration, provided that no one has yet taken possession of the field. This is due to the fact that it is atypical for one to declare a field ownerless for a fixed period,

and the Sages do not institute ordinances and issue decrees in unusual circumstances, in accordance with the statement of Ulla, which is the principal statement on the matter (Rambam *Sefer Hafla'a*, *Hilkhot Nedarim* 2:18 and *Kesef Mishne* there, citing Ran; *Shulhan Arukh*, *Hoshen Mishpat*, 273:10).

NOTES

Once one took possession, whether it is he or whether it is another person, he is unable to retract his declaration – מְשֻׁזְכָּה בָּהּ, בֵּין הוּא בֵּין אֲחֵר אֵין יָכוֹל לְחַזֵּר בּוֹ – Early commentaries ask: According to Rabbi Yosei, since another person did not take possession of the item, it was not ownerless; therefore, why would his taking possession of the item be effective in exempting him from tithing? He is merely taking possession of produce that is already his. Due to this question, the Rid holds that the text should be emended to read only: When another person takes possession he is unable to retract his declaration. One may infer that if the owner of the field reacquires the field, the status of the field remains unchanged.

Other early commentaries cite the version of the text that appears in the Gemara and therefore must address the difficulty. The Rashba explains that fundamentally, if the one who declared it ownerless claims the produce, its legal status should be like produce that was never declared ownerless; however, because the Sages did not want to distinguish between the cases, they ruled that even if he takes possession of the ownerless property, its status is like that of ownerless property that he acquired. The Ran explains in a slightly different manner: Since the field was declared ownerless, and anyone can take possession of it, he too can do so, and its status is like that of ownerless property that he acquired and not like that of property whose declaration of ownerless status was retracted.

If so, let the Sages institute that the item is considered ownerless even from the first day as well – אֵין הָכִי אֶפְיָלוּ – From Rashi's explanation, apparently this question is addressed to Rabbi Yosei; since an ordinance was instituted so that the halakhic status of being ownerless would not be forgotten, let the Sages institute that it takes effect on the first day. After Rabba's response to that question, the Gemara raises an objection: According to Rabbi Yosei, by Torah law it is not ownerless.

The Rid explains that the Gemara raises the question only according to the opinion of the Rabbis: Why is it not deemed ownerless immediately, as in their opinion that this is the fundamental *halakha*? Rabba answers that it is a decree issued due to the swindlers. Then the Gemara raises an objection according to the variant reading of the Rid: However, by Torah law it is ownerless.

Others hold that the question is posed to the opinions of both the Rabbis and Rabbi Yosei (*Tosafot*; Rabbi Avraham min HaHar). The understanding of the continuation of the Gemara depends on the different versions: The question is posed to the opinion of Rabbi Yosei according to the reading as it appears here, and is posed to the opinion of the Rabbis according to the variant reading of the Rid: However, by Torah law it is ownerless. However, the Rosh explains that the phrase in the version here: However, by Torah law, the item is not ownerless, is not a question; rather, it is the conclusion of the declarative statement of Reish Lakish that the item is ownerless by rabbinic ordinance, not by Torah law.

Due to the swindlers – מִפְּנֵי הַרְמָאִין – The Rosh asks: Since Rabbi Yosei holds that it is not ownerless by Torah law even after three days have passed, how would rendering their produce ownerless provide any benefit for the swindlers? He answers that once the Sages instituted that it will be ownerless, it is ownerless produce in every sense and it is the full-fledged property of anyone who takes possession of it. Therefore, the Gemara says that the produce will be exempt from the obligation to tithe, as its status is that of property declared ownerless by the court, whose status is ownerless in every sense.

HALAKHA

One who declares his vineyard ownerless – המפקיר את כרמו: If one declared his vineyard ownerless and then arose in the morning and reacquired it, he is obligated to leave single grapes, incompletely formed clusters of grapes, forgotten sheaves, and *pe'a*. This is because it is written with regard to all these: “Your field,” or: “Your vineyard” (see Leviticus 19:10) and that vineyard was his and remains his. However, if he acquired a field that had been declared ownerless by another, he is exempt from the obligation to separate the gifts to the poor. In both cases, he is exempt from the obligation to tithe the produce (Rambam *Sefer Zera'im, Hilkhot Mattenot Aniyyim* 5:27).

וְדַלְמָא אֲתֵי לְעִשׂוּרֵי מִן הַחַיִּיב עַל הַפְּטוֹר, וּמִן הַפְּטוֹר עַל הַחַיִּיב!

And that ordinance could lead to a problem, as perhaps he will come to tithe^N from produce that requires tithing by Torah law for produce exempt from tithing by Torah law^N and from produce exempt from tithing by Torah law for produce that requires tithing by Torah law. By Torah law, the produce is not ownerless and requires tithing. However, due to the ordinance, people might relate to it as ownerless produce and assume that one is exempt from tithing it. Alternatively, they will erroneously conclude that the obligation to tithe from that produce is by rabbinic law and will tithe the produce from it that one is exempt from tithing by Torah law, or they will tithe that produce from produce that one is exempt from tithing by Torah law. The result will be produce that is not properly tithed, as one may tithe produce that one is obligated to tithe by Torah law only from other produce that one is obligated to tithe by Torah law.

דְּאָמְרִינן לֵיהּ: כִּי מַעֲשֶׂרֶת – עֵשֶׂר מִימֵהּ וּבֵיהּ.

The Gemara answers: That problem will not arise, because if the declaration of ownerless status is retracted after three days, we say to the person who ultimately takes possession of the produce: **When you tithe, tithe from that produce itself.** In that way, the above problem does not arise.

מִתִּיבֵי: הַמְּפָקֵר אֶת כְּרָמוֹ, וְלִשְׁחַר עֵמֶד וּבְצֵרוֹ – חַיִּיב בְּפֶרֶט וּבְעוֹלֹלוֹת וּבְשִׁכְחָה וּבְפִיאָה, וּפְטוֹר מִן הַמַּעֲשֵׂר.

The Gemara raises an objection from a *baraita*: **One who declares his vineyard ownerless,^H and at dawn he arose and picked grapes from the vineyard, is obligated in the mitzva of leaving individual fallen grapes left for the poor [peret], and in the mitzva of leaving incompletely formed clusters of grapes for the poor [olelot], and in the mitzva of leaving forgotten sheaves, and in the mitzva of *pe'a*,^N produce from the corner of the field or vineyard, as the obligation to separate those gifts from the poor is incumbent upon the one who harvests the field (see Leviticus 19:9–10). And he is exempt from the obligation to separate the tithe from the grapes.** Because the vineyard is ownerless, there is no obligation to tithe the produce.

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And perhaps he will come to tithe, etc. – וְדַלְמָא אֲתֵי לְעִשׂוּרֵי וְכוּ: This question has been explained differently by the commentaries according to various opinions. Rashi proposes two interpretations. According to the first, this question is difficult according to the opinion of Rabbi Yosei, who says that if the owner retracts the declaration within three days, the produce is not considered ownerless at all and his obligation to tithe is by Torah law. The concern is that when he takes possession of the produce he will think that it is in fact ownerless by Torah law, and it is actually the Sages who instituted the requirement to tithe. That will result in his utilizing that produce to tithe other produce, produce that he is obligated to tithe by rabbinic law. According to Rashi's second explanation, the question relates to the other aspect of this *halakha*, the fact that after three days have passed, even if he retracts his declaration the produce remains ownerless, although by Torah law it is not ownerless until it enters the possession of another. The owner of the produce who retracted his declaration will mistakenly think that the produce is ownerless by Torah law and that the obligation to tithe it is by rabbinic law.

Rabbeinu Yitzhak, cited by *Tosafot*, and the Rosh explain that the question and answer are according to the opinions of both Rabbi Yosei and the Rabbis. The Rid and Rabbeinu Tam, cited by *Tosafot*, explain that since he is told that he is required to tithe the produce he will mistakenly think that he is obligated to do so by Torah law and will come to use it to tithe produce that one is obligated to tithe by Torah law. In their opinion, the question is posed only to the opinion of the Rabbis, as according to Rabbi Yosei it is not ownerless by Torah law, and one is obligated by

Torah law to tithe the produce. Therefore, there is no concern, as he can actually utilize it to tithe produce by Torah law.

From produce that requires tithing for produce exempt from tithing by Torah law – מִן הַחַיִּיב עַל הַפְּטוֹר: The prohibition against tithing from produce that one is obligated to tithe for produce that one is exempt from tithing also applies to produce that one is totally exempt from tithing, e.g., non-sacred produce from which *terumot* and tithes were taken; however, that is an uncommon circumstance. The concern relates to the more common circumstance where one tithes from produce that one is required to tithe by Torah law for produce that one is required to tithe by rabbinic law, e.g., produce that grew in an unperforated flowerpot, which is exempt from tithing by Torah law because it does not grow in the ground, but which requires tithing by rabbinic law, or produce that grew in the countries bordering on Eretz Yisrael, in which the Sages instituted that one is obligated to tithe.

Rashi cites two reasons for the prohibition against tithing from produce that one is obligated to tithe for produce that one is exempt from tithing, and vice versa. The first reason is that if one tithes from produce that he is exempt from tithing for produce that one is obligated to tithe, it appears that he is redeeming the *teruma* and tithes of the latter produce with money, or its equivalent, and there is no concept of redemption with regard to *teruma* and tithes. The other reason is that if one tithes from produce that one is obligated to tithe for produce that one is exempt from tithing, then even if he gives the *teruma* and the *teruma* of the tithe to a priest, it is problematic.

The priest who receives it will think that it is actual *teruma*, and since one is exempt from separating *halla* from dough made from *teruma*, the concern is that the priest will not separate *halla* from dough made from that produce, even though it is not actual *teruma*.

Is obligated in the mitzva of leaving individual fallen grapes, and in the mitzva of leaving incompletely formed clusters, and in the mitzva of leaving forgotten sheaves, and in the mitzva of *pe'a* – חַיִּיב בְּפֶרֶט וּבְעוֹלֹלוֹת וּבְשִׁכְחָה וּבְפִיאָה: Produce that is ownerless in every sense is exempt from all the gifts typically separated from produce, i.e., *teruma* and tithes, as well as gifts to the poor, e.g., single grapes or incomplete clusters. However, here the reference is to a case where the ownerless status is partial. Therefore, there is a distinction between gifts to the poor, which one is obligated to separate, and *teruma* and tithes, from which one is exempt.

Most commentaries explain that the reason for the distinction between these *halakhot* is based on the Gemara in tractate *Bava Kamma* (94a). With regard to gifts to the poor, the term “you shall leave” is written twice (Leviticus 19:10, 23:22), from which it is derived that the obligation is in effect even in cases of uncertainty. The Rambam explains that only with regard to gifts to the poor is the term “your field” written, indicating that even if he declared it ownerless and reacquired it, it remains his field and he retains the obligation to give these gifts. However, with regard to *teruma* and tithes, where those terms are not employed, one is exempt even in cases where the ownerless status is less than full-fledged.

Granted according to Ulla, who explained that the Rabbis taught the previous *baraita* – **בְּשֵׁלְמָא לְעוּלָא דְרַבְּנֵי קַתְנֵי לָהּ**: According to Ulla, who holds that the first *baraita* cited previously with regard to ownerless status is in accordance with the opinion of the Rabbis, the very declaration of the field as ownerless renders it ownerless according to the Rabbis. Therefore, once the field is declared ownerless there is no obligation by Torah law to tithe the produce. That is the reason it says in the *baraita*: And he is exempt from the obligation to separate the tithe. Although the Sages instituted that one is required to tithe the produce, he is exempt by Torah law. There is an obligation by Torah law only to leave the gifts for the poor, i.e., single grapes, incompletely formed clusters of grapes, forgotten sheaves, and *pe'ea*. However, according to the opinion that the *baraita* is in accordance with the opinion of Rabbi Yosei, who holds that by Torah law the field is not rendered ownerless by means of the declaration until another takes possession of it, why would he be exempt from separating the tithe? According to Reish Lakish, even Rabbi Yosei agrees that for the first three days following his declaration he is not exempt from separating the tithe, even by rabbinic law (see Rabbi Avraham min HaHar).

בְּשֵׁלְמָא לְעוּלָא – דְרַבְּנֵי קַתְנֵי לָהּ,
וְדְאוּרֵייתָא קַתְנֵי לָהּ. אֶלָּא לְרִישׁ לָקִישׁ,
אֲמַאי פְּטוּר מִן הַמַּעֲשֵׂי?

The Gemara asks: **Granted**, this is so according to Ulla, who explained **that the Rabbis taught** the previous *baraita*^N and explains that although the Sages instituted that the ownerless status does not take effect completely until three days have passed, by Torah law it takes effect immediately, **and that this *baraita* is taught in accordance with Torah law.** That is the reason that one is exempt from tithing the grapes. **However, according to Reish Lakish, why is he exempt from separating the tithe?** Until three days after the declaration, neither by Torah law nor by rabbinic law does ownerless status take effect.

אָמַר לָךְ: כִּי אָמַרְי אֲנָא – לְרַבִּי יוֹסֵי,
הָא – רַבְּנָן הִיא.

The Gemara answers that Reish Lakish could have **said to you:** Although **when** I explained the first clause and the latter clause of that *baraita* **I said** that both are **in accordance with** the opinion of **Rabbi Yosei**, who said that an ownerless item leaves the possession of the owner only when it enters the possession of another, **this *baraita* is in accordance with the opinion of the Rabbis**, who hold that it leaves the possession of the owner immediately upon the declaration of ownerless status.

Perek IV Daf 45 Amud a

אִיבְעִיתִי אִימָא: הָא – דְאֶפְקֵיָהּ בְּאַנְפִּי
תְּרִין, וְהָא – דְאֶפְקֵיָהּ בְּאַפִּי תְּלָתָא.
דְאָמַר רַבִּי יוֹחָנָן מִשּׁוּם רַבִּי שְׁמַעוֹן בֶּן
יְהוֹצְדָק: כָּל הַמַּפְקִיר בְּפָנֵי שְׁלֹשָׁה – הֵוֵי
הַפְּקוּר, בְּפָנֵי שְׁנַיִם – לֹא הֵוֵי הַפְּקוּר.

If you wish, say instead: That *baraita*, in which it is taught that the item does not leave the possession of the owner until it enters the possession of another, is referring to a case **where** one declared it ownerless **before two people**; **and this *baraita***, in which it is taught that the item is ownerless when it is declared ownerless, is referring to a case **where** one declared it ownerless **before three people.** **As Rabbi Yohanan said in the name of Rabbi Shimon ben Yehotzadak:** With regard to **anyone who declares an item ownerless before three people, that item is ownerless; if he does so before two people, it is not ownerless.**^N

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בְּפָנֵי שְׁנַיִם לֹא הֵוֵי הַפְּקוּר – Before two people, it is not ownerless – The Ran cites two explanations. According to the first, this means that there were two people there, one of whom declared the item ownerless; before three means that there are two others in addition to the one declaring the item ownerless. According to the second explanation, before two means that there are two others in addition to the one declaring the item ownerless, and before three means there are three in addition to him.

The difference between the explanations is somewhat dependent upon the understanding of Rabbi Yosei's opinion. It could be understood that if there is only one person other than the owner, it would not be considered a declaration of ownerless status; it would be considered a gift to that person. Alternatively, it could be explained that only when the declaration is before three people does it become public, and the item immediately becomes ownerless. However, when the declaration is before fewer than three it does not become public, and the status of the item is like that of a gift. *Tosafot* explain that in the case of a declaration before two, since it does not become public, there is concern that he might be employing artifice to avoid tithing; therefore, it is not considered ownerless. Another

possibility is that the concern is that it is a gift like the gift of Beit Horon (Ritva).

The Rabbis also disagreed with regard to the meaning of the phrase: It is not ownerless. Some interpret that it means that a field does not become ownerless immediately but only after three days, due to the concern that he is employing artifice to exempt himself from tithing. It does not have full-fledged ownerless status, in the sense that he can retract his declaration; however, if another took possession of it, he acquires it outright (Rosh). It could also be said that if the declaration was before two people, it is not considered ownerless at all (Rosh; *Talmidei Rabbeinu Peretz*). The Rosh comments that one could explain that there are three opinions: According to Rabbi Yohanan himself, not in the name of his teacher, until someone takes possession of the item, the item is not ownerless at all. In the name of his teacher, Rabbi Yohanan holds that there is a distinction between a declaration before two people and a declaration before three people. And Rabbi Yehoshua ben Levi holds that the item is ownerless by Torah law whether he declared it ownerless before two or he declared it ownerless before three.