

15.4.10

43b (תניא המפקיר) → 45a (סיום הפרק)

- I Continuation of the analysis of the dispute between ר' יוסי and רבנן re: status of הפקר
- a (under assumption of continuing יוחנן ר' line of thinking, that יוסי ר' doesn't allow for רשות הפקר)
- b ברייתא:
- i רישא: you get 3 days to retract a declaration of הפקר
- ii סיפא: if you declared a time-limit on the הפקר, you have that long to retract it
- 1 challenge: seems like the רישא accords with רבנן (who allow for property to leave מפקיר's domain without yet entering anyone else's) and the סיפא accords with יוסי ר'
- (a) answer1 (עולא): even the סיפא is accepted by רבנן
- (i) Challenge: why can he retract it (if no one has claimed it yet)?
- (ii) Answer: time-limit הפקר is unusual and this indicates that he wants to maintain some rights
- (b) Answer2 (ריש לקיש): both are יוסי ר'; reason for not allowing retraction after 3 days in רישא – so as not to forget rules of הפקר
- (i) Challenge: if so, it should be unretractable from the 1st day
1. Answer: to block frauds who are מפקיר (in order to exempt the field from מעשרות) and then reclaim it immediately
- (ii) Challenge: if so, this field isn't really הפקר – he may come to tithe from חיוב על הפטור
1. answer: we tell him to take מעשרות internally within field
- (iii) challenge: ruling that if someone declares his vineyard הפקר at night and then harvests it the next morning – he is obligated to leave the gleanings etc. but exempt from מעשרות
1. explication: according to עולא, this can be רבנן, presenting the דאורייתא rule
2. however: according to ר"ל, why is it exempt from מעשרות (should be חייב: according to יוסי ר' it's not הפקר at all and according to רבנן, there are 3 days during which he can retract)
- a. answer1: ר"ל would explain that the entire ruling above is יוסי ר', and רבנן maintain that הפקר is effective immediately
- b. Answer2: our ruling may be a case where he declared הפקר in the presence of 2; the vineyard case refers to a declaration in front of 3 which is immediate הפקר as per יוחנן ר' ruling
- i. Dissent: ריב"ל - the only reason they suggested הפקר in the presence of 3 is so that 1 would claim it and the other 2 testify to his acquisition