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Mishna

The *Chachamim* maintain that if one deposits produce with his friend, even if it becomes ruined because of mice or spoilage, he may not touch it. Rabban Shimon ben Gamliel maintains that he can sell the produce in court because this is akin to returning a lost article to its owner. (38a)

Reasons not to Sell

The *Gemora* asks: What is the *Chachamim*'s reason?

Rav Kahana said: A person would prefer a *kav* of his own produce more than nine *kavs* belonging to his fellow. [*This is because that which he toils for is regarded as more precious to him.*]

Rav Nachman bar Yitzchak said: It is because we are concerned that the owner might have designated that produce to be *terumah* or *ma'aser* for his produce from another place. [*It cannot be sold, for if it is terumah, it is forbidden to be eaten by a non-Kohen.*]

The *Gemora* asks from the following *braisa*: If one deposits produce with his friend (*even if it becomes ruined because of mice or spoilage*), he may not touch it; therefore, he (*the owner*) may designate that produce to be *terumah* or *ma'aser* for his produce from another place (*since he is confident that the custodian did not sell his produce*).

Now, according to Rav Kahana, it is understandable why the *braisa* states “therefore” (*for the reason he does not sell it is because a person would prefer a kav of his own produce more than nine kavs belonging to his fellow – therefore, the owner may designate that produce to be terumah or ma'aser for his produce from another place since he is confident that the custodian did not sell his produce*). However, according to Rav Nachman bar Yitzchak, why does the *braisa* state “therefore” (*the fact that the owner may designate that produce to be terumah or ma'aser is the cause for the prohibition – not the result of it!*)?

The *Gemora* answers: This is what the *braisa* means: Now that the Rabbis have prohibited the custodian from selling it because of the concern (*that the owner might have designated that produce to be terumah or ma'aser for his produce from another place*), therefore, the owner may designate that produce to be *terumah* or *ma'aser* for his produce from another place (*since he is confident that the custodian did not sell his produce*). [*It is both the cause for the prohibition and the result of it.*] (38a)

Normal Measure of Depletion

Rabbah bar bar Chanah said in the name of Rabbi Yochanan: The argument in the *Mishna* is only regarding a case where the produce was not reduced by more than its normal measure of depletion. If, however, the produce was reduced by more than its normal measure of

depletion, then even the *Chachamim* would agree that the produce must be sold in *Beis Din*.

The *Gemora* notes: Rabbi Yochanan is certainly arguing on Rav Nachman bar Yitzchak (*for he holds that it should not be sold out of concern that the owner might have designated that produce to be terumah or ma'aser for his produce from another place; this would be the case even with a high spoilage rate!*).

The *Gemora* asks: Would we say that he is disagreeing with Rav Kahana (*for if the owner would rather have one kav of his own – literally – that would be saying that he doesn't want his produce to be sold even if it is rapidly spoiling!*)?

The *Gemora* answers: Rav Kahana said his reason only when the produce was not reduced by more than its normal measure of depletion (*however, he would agree that the produce should be sold if it is rapidly spoiling*).

The *Gemora* asks: But does he not say that a person would prefer a *kav* of his own produce more than nine *kavs* belonging to his fellow (*which when taken literally means that the owner does not want his produce to be sold even if he is left with only one kav!*)?

The *Gemora* answers: Rav Kahana's statement was an exaggeration (*and the Chachamim would concede that the produce should be sold if it is rapidly spoiling*).

The *Gemora* asks on Rabbi Yochanan from a *braisa* (*cited above*): Therefore, he (*the owner*) may designate that produce to be *terumah* or *ma'aser* for his produce from another place (*since he is confident that the custodian did not sell his produce*). But why are we not concerned that the produce was reduced by more than its normal measure of depletion, and the custodian sold it (*before the owner made it into terumah or ma'aser*)? This would

result in the owner eating *tevel* (*produce that has not been tithed*)!?

The *Gemora* answers: Produce being reduced by more than its normal measure of depletion is not a common occurrence (*and therefore we have no need to be concerned for it*).

The *Gemora* asks: But if it does happen, how will we allow him to sell it? Let us be concerned that (*before it reached that point*) the owner designated that produce to be *terumah* or *ma'aser* for his produce from another place (*and the buyer will be eating terumah*)!?

The *Gemora* answers: We allow the custodian to sell it only to *Kohanim* for the value of *terumah* (*which is considerably lower, due to the fact that it is limited to Kohanim*).

The *Gemora* asks: And according to Rav Nachman bar Yitzchak (*who holds that it should not be sold out of concern that the owner might have designated that produce to be terumah or ma'aser for his produce from another place*), let the custodian sell it only to *Kohanim* for the value of *terumah*!?

The *Gemora* answers: The following is what they are arguing about: Rabbah bar Chanah maintains that produce being reduced by more than its normal measure of depletion is not a common occurrence at all, and when it does happen, it is only after a considerable amount of time. Therefore, if the owner would designate that produce to be *terumah* or *ma'aser* for his produce from another place, we can safely assume that he did so before the produce was reduced by more than its normal measure of depletion. Therefore, if it does become reduced by more than its normal measure of depletion, he can sell it to *Kohanim* for the value of *terumah*.

Rav Nachman bar Yitzchak, however, holds that it is indeed common for produce to become reduced by more than its normal measure of depletion, and consequently, it can happen immediately. If we would allow the custodian to sell the produce to *Kohanim*, it might occur that he will hurry to sell it, and when the owner designates that produce to be *terumah* or *ma'aser* for his produce from another place, he will not have known that it was already sold. It will emerge that he will be eating *tevel*!

The *Gemora* asks on Rabbi Yochanan from another *braisa*: If one deposits produce with his friend, and it begins to rot; wine, and it becomes vinegary; oil, and it putrefies, or honey, and it turns rancid, the custodian may not touch it; this is the viewpoint of Rabbi Meir. But the *Chachamim* maintain: He can remedy this by selling the produce in *Beis Din*; and when he does sell it, he must sell to others, but not to himself (*in order that he should not be suspected for buying the produce at a cheaper price*).

Similarly, when the charity administrators have no poor people to whom to distribute their funds, they should change the copper coins (*for large silver ones*) with others, but not to themselves.

Also, when the administrators of the soup kitchen have no poor people to whom to distribute their food, they should sell it to others, but not to themselves.

Now, when the *Tanna* of the *braisa* had stated: "produce, and it begins to rot," surely that means - even more than its normal measure of depletion (*and nevertheless, a Tanna holds that it should not be sold – contrary to Rabbi Yochanan's opinion that everyone would agree in such cases*)!?

The *Gemora* answers: No: It means within the normal measure of depletion.

But, the *Gemora* asks: "Wine, and it becomes vinegary; oil, and it putrefies, or honey, and it turns rancid" are more than the normal measure of depletion!?

The *Gemora* answers: These are different, for having arrived at that stage of spoilage, they remain so (*and therefore Rabbi Meir rules that they should not be sold – for what purpose would it serve?*).

The *Gemora* asks: Now, when oil putrefies, or honey becomes rancid, what are they fit for (*that the Chachamim maintain that they should be sold*)?

The *Gemora* answers: Putrefied oil is of use to leather merchants (*for softening the leather*), and rancid honey can be used for the soreness of camels.

The *Gemora* asks: If these items have arrived at their last stage of spoilage, why do the *Chachamim* say to sell them?

Rav Ashi answers: They are sold for the benefit of the barrels (as they will become ruined). The dispute between Rabbi Meir and the *Chachamim* is if we are concerned for a minor loss or not. (38a – 38b)

Rulings

The *Mishna* had stated: Rabban Shimon ben Gamliel maintains that he can sell the produce in court because this is akin to returning a lost article to its owner.

It was stated: Rabbi Abba the son of Rabbi Yaakov said in the name of Rabbi Yochanan: The *halachah* follows Rabban Shimon ben Gamliel. Rava said in the name of Rav Nachman: The *halachah* follows the *Chachamim*.

The *Gemora* asks: Didn't Rabbi Yochanan say this before (*why state it again*)? For Rabbah bar Chanah said in the name of Rabbi Yochanan that whenever Rabban

Shimon ben Gamliel is mentioned in the *Mishna*, the *halachah* always follows him, besides in three cases, one regarding a guarantor, Tzidon and one regarding a last proof (*brought by a litigant after Beis Din's deadline*). [These are referring to three different cases in the *Talmud*.]

The *Gemora* answers: It is an Amoraic dispute (*as to what Rabbi Yochanan holds*). (38b)

Extrapolating from the Mishna

The *Gemora* notes: It may be inferred from Rabban Shimon ben Gamliel that he would hold that we would bring down a relative (*the closest heir*) to the property of a captive (*to work the field and to protect it*). [This is comparable to his ruling in the *Mishna* that we allow the custodian to sell the rotting produce in order to protect the owner from further loss.] And it may be inferred from the *Chachamim* that they would maintain that we would not bring down a relative to the property of a captive.

The *Gemora* asks on the comparison: Perhaps Rabban Shimon ben Gamliel ruled like this only in the case of the produce, since the principal itself will be destroyed (*if the custodian does not sell it*), but by the captive, he may hold that we do not bring the relative down (*for the damage to the fields, even if they are left unattended, will be minimal*). And perhaps the *Chachamim* rule here (*that the produce should not be sold*), in accordance with either Rav Kahana's reason or Rav Nachman bar Yitzchak's reason, but regarding the captive, it may indeed be that we bring the relative down (*for their reasons are not applicable*).

The *Gemora* proves that these two opinions are independent of each other, for Rava said in Rav Nachman's name that the *halachah* follows the *Chachamim*, and nevertheless Rav Nachman ruled that a

relative is brought down to work a captive's property. (38b)

Property of a Captive

It was stated: If a man is taken captive, Rav said that we would not bring down a relative to his property, and Shmuel said that we would. Now, if it was heard (*either by way of a rumor, or through one witness*) that the captive was dead, all would agree that we would bring down a relative (*for even if it would emerge that the captive was alive and he would return before the relative eats from the produce, he will receive his share like a sharecropper, and if the captive does not return, he inherits it all – either way, he will make sure to do a good job*). They disagree where it was not heard that he had died. Rav said that we do not bring down a relative, for he might cause the property to deteriorate (*for he will not fertilize it, and he will constantly plant there – ultimately ruining the land*). Shmuel said: We do bring down a relative, for since a master said that we evaluate for them just like a sharecropper, he will not allow the field to be ruined.

The *Gemora* asks from a *braisa*: From the implication of the verse (*discussing those who oppress widows and orphans*): “*And I (God) shall become incensed, and I shall kill you with the sword,*” I know that their wives shall be widows and their children shall be orphans; why then does the Torah state: “*And your wives shall be widows, and your children shall be orphans*”? This teaches us that their wives will seek to remarry and we will not permit them (*for Hashem is cursing them that they will be taken captive and we will not know if they died or not*), and their children will desire to go down to their father's property and we will not allow them. [This contradicts Shmuel, who rules that we do allow the relatives to go down to the captive's field!]

Rava answers: The *braisa* means that they are not permitted to go down and sell the property.



The *Gemora* relates: It once happened in Nehardea, and Rav Sheishes decided the matter by reference to this *braisa*. Rav Amram asked him: But perhaps the *braisa* meant that they are not permitted to go down and sell the property? Rav Sheishes retorted: Perhaps you are from Pumbedisa, where they can push an elephant through the eye of a needle (*an analogy to a forced answer*)? For this *halachah* is comparable with the *halachah* of the wives! Just as they are not permitted to remarry at all, so here too, they are not permitted to go down at all. (38b)

DAILY MASHAL

Pain for the Deceased

The Iyun Yaakov asks: What is the curse to the dead sinner if his wife will not be allowed to remarry? There is no pain at all! On the contrary, the Zohar writes that this would be regarded as an honor to the deceased!?

He answers that nevertheless, at the time that the woman desires to remarry, she will be embarrassed, and Chazal say that a man does not want his wife humiliated before a *Beis Din*!

The Ben Yehoyada writes that these men were killed by sword and buried immediately. There were no witnesses available to verify their identity. It will therefore be necessary to open their graves to see if there are any identifying marks to help us determine who they were. This is considered painful to the deceased, and this is the meaning of the curse.

He adds that these women, who will never be allowed to remarry, will eventually curse their own husbands for being the cause of their present predicament. This will be painful for the deceased!

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: What is the *halachah* if a fellow says, "I stole from one of you two, but I do not know from which one?"

A: He pays both, for he wants to fulfill his Heavenly obligation.

Q: What is the *halachah* in the following case: Two people deposited money with a guardian, one deposited one hundred and one deposited two hundred, and each claims that he was the one who deposited two hundred?

A: Each one receives one hundred, and the other hundred is left until Eliyahu ha'Navi arrives (*to settle the issue for us*). Rabbi Yosi says: If this is the law, what does the liar lose by lying? [*He will receive his money back, and merely cause the other person to lose!*] Rather, all of the money deposited is left until Eliyahu ha'Navi arrives.

Q: What is the *halachah* in the case where a house fell on a person and his mother? The inheritors of the son claim that the house first fell on the mother and killed her. The inheritors of the mother claim the son died first. [*If the mother died first, the son inherited her before he died, and passed this along to those who inherit him. If he died first, he never received a portion from her estate.*]

A: Beis Shammai and Beis Hillel agree that it should be divided. Rabbi Akiva says: I admit that the possessions should stay where they are.