

15 Mar-Cheshvan 5776
Nov. 16, 2016



Bava Metzia Daf 51

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

Tzvi Gershon ben Yoel (Harvey Felsen) o”h

May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

The Retraction of a Seller

Rami bar Chama’s host sold some wine, and he made a mistake about its true price (*that was not in his favor*). Rami bar Chama noticed his sadness. He asked his host: Why are you sad? His host replied: I sold wine and made a mistake (*about its true price*). Rami bar Chama told him: Retract. His host replied: I’ve already waited the amount of time it would have taken me to show it to another merchant or a relative (*to have them evaluate the price*). Rami bar Chama sent him to Rav Nachman. Rav Nachman said: This amount of time is only pertinent to a buyer. A seller can always retract (*on the basis that he undercharged*). What is the reason for this law? The buyer has the item, and therefore can show it to someone to evaluate its true worth whenever he wants, and that person will tell him whether or not he made a mistake. A seller who does not have the item in his hand will only be able to know its true value if he sees another identical item. Only then will he know if he made a mistake.

There was a man who was selling silk belts. He was asking for six *zuz* when they were actually worth five *zuz*. If people would offer him five and a half, he would sell them the belt. A buyer thought to himself: If I offer him five and a half, the half is considered something that I let him keep (*as it is less than a sixth more than the item is actually worth*). I will therefore give him his asking price of six, so I can summon him to judgment

and get back the extra *zuz*. He went before Rava. Rava said: We only learned the regular laws of *ona’ah* when the seller is a merchant. However, if it is a private person selling his belongings, there is no law of *ona’ah*. [*Rashi explains that this is because it should be assumed that a private person is fond of his belongings, and will sell them at a high cost. Therefore, a buyer from a private person is as if he explicitly is stating that he knows he will overpay, even more than a sixth, and does not care.*]

There was a man who was selling earrings. He was asking for sixty *zuz* when they were actually worth fifty *zuz*. If people would offer him fifty five, he would sell them the earrings. A buyer thought to himself: If I offer him fifty five, the extra five are considered something that I let him keep. I will therefore give him his asking price of sixty, so I can summon him to judgment and get back the extra ten *zuz*. He went before Rav Chisda. Rav Chisda said: We only learned the regular laws of *ona’ah* when the seller is a merchant. However, if it is a private person selling his belongings, there is no law of *ona’ah*.

Rava Dimi said (*regarding this law*): Well said! Rabbi Elozar also said this.

The *Gemora* asks: Didn’t the *Mishna* say that just as there is *ona’ah* for a private person, there is also *ona’ah* for a merchant? Doesn’t a private person mean a regular person selling his things?



Rav Chisda answers: There is *ona'ah* by a private person when he sells canvas clothing that is supposed to be sold (*i.e. when private people sell as a business out of their house*). However, when they sell their items that have become too expensive for them to maintain (*as they need cash*), they only sell for a lot of money. (51a)

Mishna

Both a buyer and seller have a prohibition against *ona'ah*. Just as there is *ona'ah* for a regular person, there is also *ona'ah* for a merchant. Rabbi Yehudah says: There is no *ona'ah* for a merchant. Whoever was over/under charged has the upper hand. He can either claim that he wants all of his money back, or he can claim that he only wants the amount that he was cheated. (51a)

Price Fraud

The *Gemora* asks: How do we know this (*that there is a prohibition of ona'ah*)? The *braisa* states: "*And when you will sell something to your friend...do not overcharge.*" This only tells me that there is a prohibition for a seller to overcharge. How do we know that a buyer cannot underpay? The verse states: "*Or if you buy do not do ona'ah (underpay).*" The Torah had to state this regarding both a seller and a buyer. If it only stated it by a seller (*that he should not overcharge*), I would think that this is because a seller is generally familiar with the price of his goods. However, a buyer who is generally not so familiar with the price might not have a prohibition to underpay. If the Torah only stated the prohibition against a buyer who underpays, I would think that this is because he is the one receiving goods, as people say, "If you bought

something, you have acquired." However, a seller who has lost goods (*and only received money which he might easily spend quickly*), as people say, "If you have sold, you have lost," perhaps does not have a prohibition of *ona'ah*. This is why the Torah makes sure to say the prohibition regarding both the buyer and the seller.

The *Mishna* states that Rabbi Yehudah says there is no *ona'ah* for a merchant.

The *Gemora* asks: Just because he is a merchant, he has no law of *ona'ah*?!

Rav Nachman says in the name of Rav: Rabbi Yehudah is referring to a middleman who buys and immediately sells. Why doesn't *ona'ah* apply to him? He knows how much what he is selling is worth. He is clearly allowing himself to be "cheated." The reason he is selling at a loss is because he wants cash to make a great deal.

The *Gemora* asks: But now he is coming to us and saying that he made a mistake!?

Rav Ashi answers: What does it mean that a merchant does not have *ona'ah*? It means that the regular laws of *ona'ah* don't apply to him, and he can even retract a deal when he undercharged by less than a sixth. [*Rashi explained that this is because his livelihood is dependent on his profit margin.*]

There is a *braisa* that supports Rav Nachman's understanding of Rabbi Yehudah's position. The *braisa* states: A merchant has no *ona'ah* because he is an expert (*and therefore clearly wants to sell for less than the correct price*).



The *Mishna* states that whoever was over/under charged has the upper hand.

The *Gemora* asks: Who is the author of our *Mishna*? It is not Rabbi Nassan nor Rabbi Yehudah Hanasi. It does not seem to be like Rabbi Nassan, as our *Mishna* gives a choice by saying, "If he wants," whereas the *braisa* authored by Rabbi Nassan does not give such a choice. It does not seem to be like Rabbi Yehudah Hanasi, as our *Mishna* is speaking from the standpoint of the buyer, while the *braisa* speaks from the standpoint of the seller.

Rabbi Elozar said: I am not aware of the identity of the author of this *Mishna* regarding *ona'ah*.

Rabbah says: It is Rabbi Nassan. The proper text in his *braisa* should say, "If he wants."

Rava says: It is Rabbi Yehudah Hanasi. The topic he left out of the *Mishna* (the standpoint of the seller) was discussed in his *braisa*.

Rav Ashi says: The proof of this (Rava's) answer is that the *Mishna* previously stated that *ona'ah* applies both to a buyer and a seller. It proceeded to explain a case regarding a buyer. This proves that the *braisa* is the "leftover" second explanation regarding the seller. (51a)

On Condition

It was taught: A person says to his friend, "on the condition that you have no claim of *ona'ah* on me" (when they are conducting a sale). Rav says: The laws still apply. Shmuel says: They do not apply.

The *Gemora* asks: Let us say that Rav holds like Rabbi Meir and Shmuel holds like Rabbi Yehudah (and that essentially this is an old argument). The *braisa* states: A man tells a woman he is going to betroth her, "on condition that you do not claim food support, clothes, and marital relations." [These things are mentioned in the Torah as things that must be provided by a husband to his wife.] She is betrothed, and the condition is null and void. These are the words of Rabbi Meir. Rabbi Yehudah says: Monetary conditions are upheld.

Rav will answer: I can even hold like Rabbi Yehudah. Rabbi Yehudah only said the monetary conditions are valid because she knew exactly what they were and even so elected to waive her rights to them. However, in the case of *ona'ah*, he probably does not even know the real value, so how can he properly waive his rights?

Shmuel will answer: I can even hold like Rabbi Meir. Rabbi Meir only said his law where there is a clear contradiction to the Torah law (that says that a husband should provide these things). However, it is unclear here that anything is being uprooted, and it is therefore a valid condition.

Rav Anan says: I heard from Mar Shmuel that if someone says, "on condition that you have no claim of *ona'ah* on me," the law does not apply. However, if he says, "on condition that there are no laws of *ona'ah* in this sale," the laws do apply.

The *Gemora* asks a question from a *braisa*. The *braisa* states: If someone gives someone else merchandise to sell and expects a certain amount of money back by a certain date, or if he says, "on condition that you have no claim of *ona'ah* on me," the laws of *ona'ah* do not apply. According to Rav who says that he can even hold like Rabbi Yehudah, who is the author of this *braisa*?



Abaye says: We must indeed conclude that Rav holds like Rabbi Meir and that Shmuel holds like Rabbi Yehudah.

Rava says: This is not difficult. There is a difference between a case where he says, "on condition that you have no claim of *ona'ah* on me," and when he explicitly says that I know this is not the right price, and even so I want you to agree to a condition that you have no claim of *ona'ah* on me.

This is as the *braisa* states: When is there *ona'ah* (even with a condition)? It is if he states this in a general way. However, if he explicitly states this, for example by the seller telling the buyer that he knows that the object he is selling him for two hundred *zuz* only has a true market value of one hundred *zuz*. He is only selling it to him on condition that he will have no claim of *ona'ah* on him. In such a case *ona'ah* indeed will not apply. (51a – 51b)

Trading on Trust

The *braisa* states: If someone gives someone else merchandise to sell and expects a certain amount of money back by a certain date, he should not consider the good merchandise as face value and the bad merchandise as credit. Rather, they are both credit or they are both given at face value.

[*Rashi* explains that if the owner of the merchandise has two choices when giving someone else the merchandise to sell. He can either demand from the second party that he immediately pay a fixed price for the merchandise, or he can tell him to pay him when he sells them. Things that sell quickly are usually done the first way, while things that sell slowly usually have the

second arrangement. If he has both the first and second types of merchandise, he should not sell the same person the good merchandise on condition that he try as hard as possible to sell the bad merchandise, and only have to pay the total amount when he finishes selling the bad merchandise. This is because it looks like he is lending with interest, because he is not paying a separate amount for pushing the bad merchandise. Additionally, according to the Ritva's understanding of Rashi, a person buying both types of merchandise would not usually pay the prime price for the first type of merchandise.]

The *braisa* continues: He should pay him the wages of a porter, and if needed for a camel rental, and for an inn. He does not get other wages (*these are just expenses*), as he already is getting paid.

The *Gemora* asks: Where are the wages of the seller coming from?

Rav Papa says: They are coming from the four out of one hundred *zuz* that a seller of canvas clothes earns (*when selling for the owner*). (51b)

INSIGHTS TO THE DAF

Stipulation regarding Marital Relations

The *Gemora* cited a *braisa*: If someone says to a woman that she is betrothed to him on condition that he does not owe her support, clothes, or marital relations, the *kiddushin* is valid, but the conditions are invalid; these are the words of Rabbi Meir. Rabbi Yehudah says: In monetary matters, the condition is upheld.



The *Gemora* explains that Rabbi Yehudah holds that one can make a condition modifying the obligations stipulated by the Torah regarding monetary law.

This would explain why Rabbi Yehudah holds that the condition is valid when he stipulated that he does not owe her support or clothing; however, why is it valid when he stipulates that he will not have marital relations with her? This is not a monetary law!?

Rashi, because of this, writes that the husband remains obligated to have marital relations with her, for this is not a financial right. Depriving a wife from relations would cause her physical distress and therefore the condition is void.

The Mishnah Lamelech challenges this from a *Gemora* which states that one can say to his fellow, "Hit me and you will be exempt." Evidently, one can waive physical anguish! Furthermore, we find that a woman can release the husband from his marital relations!?

Some answer that Rashi himself, cited in the Shitah Mikubetzes in Kesuvos (56a), states that the condition is void, for we assume that a woman will not waive her rights regarding anything which causes physical anguish; however, if she explicitly forfeits those rights, they are forfeited.

Rabbeinu Chananel holds that a man may stipulate on marital relations, and a wife can waive her rights to it as well. This is because the pleasure of relations belongs to her and it would be regarded as a financial right.

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

Q: What is the *halachah* regarding price fraud less than a sixth according to the Rabbis?

A: The *Gemora* is uncertain if there is an immediate *mechilah*, or it is only after the time it takes to show the purchase to a merchant or a relative.

Q: What is the *halachah* regarding price fraud less than a third but more than a sixth according to the conclusion of the *Gemora* in Rabbi Tarfon's opinion?

A: The sale is valid and the overcharge is returned.

Q: According to the conclusion of the *Gemora*, up to how long can a sale be voided?

A: Only after the time it takes to show the purchase to a merchant or a relative.

DAILY MASHAL

The Magen Avraham cites the Arizal that one should purchase his necessities for Shabos on Friday, and not on Thursday. This is hinted at in Scripture when it is written regarding the manna that they prepared it on the sixth day.

There are those who cite our *Gemora* as a proof to this, for Rashi writes that there was a banker in the villages on Friday, for that was when people would come to him to exchange their coins in order to purchase food for Shabbos.

This can also be proven from the *Gemora* in Taanis which states that it would be regarded as a curse if it rains on Friday – even in the times of Eliyahu HaNavi. This is because people need to go to the market in order to properly prepare for Shabbos.

