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Ona'ah by Hekdesh

Rava said in the name of Rav Chasa: Rabbi Ami inquired: The *Mishna* lists cases that are not subject to *ona'ah* (*such as slaves, contracts, land and hekdesh*). Can these sales be voided (*because it is more than a sixth*) or not (*because no one was deceived regarding the nature of the merchandise or the amount that was sold, and with regard to overcharging, these items are excluded from the laws of ona'ah, and the aggrieved party therefore has no claim*)?

Rav Nachman said: Rav Chasa later said: Rabbi Ami resolved that they are not subject to *ona'ah*, but they are subject to the law of voidance of the sale.

Rabbi Yonah said that he (*Rabbi Yochanan; who ruled the same way below*) was referring to the case of *hekdesh* (*consecrated property*). Rabbi Yirmiyah said that he was referring to land. And they both said in the name of Rabbi Yochanan that these items are not subject to *ona'ah*, but they are subject to the law of voidance of the sale.

The *Gemora* notes: The one who holds (that the sale may be voided) regarding *hekdesh*, certainly would hold regarding land (that it may be voided). [*The fact that the voidance of the sale applies to consecrated property proves that this does not come within the category of overcharging, but of an erroneous transaction. Now, if this applies to consecrated property, which belongs to Heaven, and there obviously cannot be a mistake made by the seller, it surely holds true with respect to land. For since we have established that the voidance of the sale is not the same as overcharging, we have no verse to exclude land from.*] However, the one who holds (that the sale may be voided) regarding land, would not necessarily maintain (that it may be voided) by *hekdesh* as well. This would be like Shmuel's ruling, for Shmuel said: If someone redeems consecrated property worth a *maneh* using a coin worth only a *perutah*, it is valid! [*They both hold that the redemption of consecrated property is valid, even if it is being redeemed for much less than its true worth.*]

The *Gemora* asks on Rabbi Yonah: It was taught in a *Mishna* (*in Temurah*): If a consecrated animal was blemished (*and someone redeemed it with a less expensive animal*), it becomes *chulin*, but its value must be made up (i.e., he must compensate the Temple Treasury for the difference in value). Rabbi Yochanan said: It becomes *chulin* by Torah law, but its value must be made up by Rabbinic law. But Rish Lakish said: That its value must be made up is also a Torah law.

The *Gemora* analyzes the case: What are the circumstances? Shall we say that the animal was within the limit of *ona'ah*? In such a case, could Rish Lakish maintain that its value is made up by Torah law? Did we not learn in our *Mishna* that the following items are not subject to *ona'ah*: land, slaves, contracts and *hekdesh*? But if it refers to a difference involving a voidance of the sale (*where the price difference between the two animals was more than a sixth*), could Rabbi Yochanan in that case say that its value must be made up only by Rabbinical law? Didn't Rabbi Yonah say that he (*Rabbi Yochanan*) was

referring to the case of *hekdesh* (*consecrated property*), and Rabbi Yirmiyah said that he was referring to land, and they both said in the name of Rabbi Yochanan that these items are not subject to *ona'ah*, but they are subject to the law of voidance of the sale?

The *Gemora* answers: The *Mishna* refers to a case where the difference involves a voidance of sale (as the discrepancy is more than a sixth), but Rabbi Yochanan's view should be reversed to Rish Lakish and Rish Lakish's opinion should be reversed to Rabbi Yochanan (*and that is why R' Yochanan rules that the value must be made up by Torah law*).

The *Gemora* explains that they (*Rabbi Yochanan and Rish Lakish*) argue regarding Shmuel's *halachah*, for Shmuel said: If someone redeems consecrated property worth a *maneh* using a coin worth only a *perutah*, it is valid! Rish Lakish holds like Shmuel and Rabbi Yochanan does not.

Alternatively, you can say that everyone agrees to Shmuel, but the argument is if it should be done like Shmuel in the first place or not.

The *Gemora* offers another explanation as to the circumstances of the case in the *Mishna* (*in Temurah*): In truth, the *Mishna* is dealing with a case where the difference between the two animals was within an amount which constitutes *ona'ah*, and it is not necessary to reverse the opinions of Rabbi Yochanan and Rish Lakish. They argue regarding Rav Chisda's interpretation of the *Mishna*, for Rav Chisda said: When the *Mishna* ruled that *hekdesh* is not subject to the *halachah* of *ona'ah*, it meant that it is not subject to the ordinary *halachos* of *ona'ah* (*but rather, it would be treated in a stricter manner*), and even if the discrepancy would be less than the amount which would constitute *ona'ah*, it must be returned.

The *Gemora* asks on Rav Chisda from a *braisa*: The *halachos* of taking interest and *ona'ah* apply to a private person, but not to *hekdesh*!? [*This would seemingly contradict Rav Chisda!?*]

The *Gemora* answers: The *braisa* is not stronger than the *Mishna*. Just as the *Mishna* can be interpreted to mean that the regular *halachos* of *ona'ah* do not apply (*and we are stricter with respect of hekdesh*); so too, the *braisa* can be interpreted in that manner.

The *Gemora* asks: But the *braisa* concludes that this is a stringency of a private person over *hekdesh* (*and according to Rav Chisda's interpretation, hekdesh is stricter*)!?

The *Gemora* answers: It is stricter with respect of interest.

The *Gemora* asks: Why didn't the *braisa* state that *hekdesh* is stricter with respect of *ona'ah*?

The *Gemora* answers: The *braisa* does not have to mention that, for *hekdesh* is stricter than a private person in many *halachos*. It is a novelty, however, that a private person is stricter than *hekdesh* with respect of interest. (57a – 57b)

Interest by Hekdesh

The *Gemora* asks: What is the case of the *braisa* regarding interest with *hekdesh*?

It cannot be referring to a case where the treasurer lent a person one hundred which belonged to *hekdesh* on the condition to be paid back one hundred and twenty, for the treasurer has committed *me'ilah* (*by loaning out money belonging to hekdesh*), and the *halachah* is that once he has committed *me'ilah*, the money becomes deconsecrated and belongs then to the treasurer!? [*It*

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would therefore be forbidden to loan this money with interest!?]

Rav Hoshaya answers: The *braisa* is dealing with a case where a person has accepted to provide flour (*for the flour-offerings in the Temple*) at a price of four *se'ahs* per *sela*, and the price then rose to three (*se'ahs per sela*). [*Normally, the Rabbis decreed that one is not allowed to pay in advance for produce at a set price before the market price has been established; this has the appearance of interest. Here, with respect to hekdesh, it was permitted.*] This is as we learned in a braisa (in actuality it is a *Mishna*): If someone accepted to provide flour (*for the flour-offerings in the Temple*) at a price of four *se'ahs* per *sela*, and the price then rose to three (*se'ahs per sela*), he must provide it at the accepted price of four *se'ahs* per *sela*. If he accepted to provide it at a price of three *se'ahs* per *sela*, and the price then fell to four (*se'ahs per sela*), he must provide it at the new price of four *se'ahs* per *sela*, for *hekdesh* always has the upper hand.

Rav Pappa answers: The *braisa* is dealing with the stones that were used for construction of the Temple, which were given over to the treasurer. [*He may lend these out, for they were not consecrated yet.*] This is in accordance with Shmuel, who said that they would build with stones that were not consecrated (*in order that the builders should not inadvertently derive benefit from these stones*) and only afterwards would they consecrate them. (57b)

Scriptural Sources

The *Mishna* had stated: These items are not subject to the laws of *keifel* (*paying double – if they are stolen*).

The *Gemora* cites the source for this: The *braisa* analyzes the verse (*found in the topic of an unpaid guardian*) describing what items are subject to *keifel*. [*The Gemora will later discuss which case of keifel this is – that of a thief, or of a false claim of theft by the guardian*]. The verse states that *keifel* is applicable in the case of:

Al kol dvar pesha – on any criminal item:

al shor – on an ox
al chamor – on a donkey
al seh – on a sheep
al salmah – on clothing
al kol aveidah – on any lost item

The *braisa* breaks this verse into three main sections: a *klal* (*general introductory clause*), a *prat* (*specific instance*), and a *klal* (*general summarizing clause*). In this verse, the sections are:

Introductory *Klal* (*general*)	*Prat* (*instance*)	Summarizing *Klal* (*general*)
Al kol dvar pesha (any criminal item)	*Al shor (ox)* *al chamor (donkey)* *al seh (sheep)* *al salmah (clothing)*	*Al kol aveidah (any lost item)*

The construct of a *klal*, *prat*, and *klal* (*one of the thirteen constructs listed by Rabbi Yishmael*) tells us that we can abstract from the instance to anything that is *me'ein* the *prat* – similar to the instance in its essential characteristics. In this case, the *braisa* states the essential characteristics of the specific instance: They are movable and intrinsically valuable. The first characteristic excludes land (*and, by extension, slaves, which are equated with land in halachah*), and the second excludes contracts, which enable their holder to collect money, but are not intrinsically worth anything.

Finally, the *braisa* states that the end of the verse – *yeshalem shnayim l'rayayhu – he should pay double to his peer*, excludes *hekdesh*, which is not his peer.

The *Mishna* had stated that a thief will not pay four or five times the amount if he steals and slaughters a consecrated animal.

The *Gemora* notes the reason for this: A thief can pay only four or five, and not three or four (*and since he cannot pay double, like we just learned, he can't pay three or four*).

The *Mishna* had stated that an unpaid custodian does not swear if he was watching any of these things.

The *Gemora* cites the source for this: It is written a *klal* (*general introductory clause*), a *prat* (*specific instance*), and a *klal* (*general summarizing clause*). In this verse, the sections are:

Introductory *Klal* (*general*)	*Prat* (*instance*)	Summarizing *Klal* (*general*)
Ki yiten ish el re'ehu (if a man gives his fellow)	*Kesef o' keilim (money or utensils)*	*lishmor (to watch)*

The construct of a *klal*, *prat*, and *klal* tells us that we can abstract from the instance to anything that is *me'ein* the *prat* – similar to the instance in its essential characteristics. In this case, the *braisa* states the essential characteristics of the specific instance: They are movable and intrinsically valuable. The first characteristic excludes land (*and, by extension, slaves, which are equated with land in halachah*), and the second excludes contracts, which enable their holder to collect money, but are not intrinsically worth anything.

Finally, the *braisa* states that the end of the verse – *rayayhu –to his peer*, excludes *hekdesh*, which is not his peer.

The *Gemora* expounds similarly to teach us the *halachah* mentioned in the *Mishna* regarding a paid watchman. (57b)

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: Is it permitted to sell *demai* without taking *ma'aser* from it, which one purchased from an a*m ha'aretz*?

A: Rabbi Meir – wholesaler – yes; retailer – no. *Chachamim* – even a retailer could.

Q: If one separates *ma'aser* from the hot (*freshly baked*) for the cold, is it valid?

A: Yes.

Q: By what items does the *Mishna* state that there is no *ona'ah*?

A: Slaves, land, contracts and *hekdesh*.

INSIGHTS TO THE DAF

Is a passport judged like a promissory note?

Our sugya explains that a promissory note (shtar) is not is not defined as an article subject to the obligations of safekeeping stated in the Torah (Shemos 22). One who accepts responsibility to guard a shtar does not have to compensate its owner if it is stolen or missing. The Gemara learns this rule from the verse: "If a person gives his fellow money or utensils to guard" (Shemos 22:6). Obligations of safekeeping apply only to things with intrinsic value whereas a shtar serves to collect a debt but lacks any value of its own.

Most Rishonim hold that even if someone is careless in safeguarding a shetar in a manner defined as neglect, he

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does not have to compensate the owner for damage (Tur, C.M. 301 in the name of Rif, Rosh, Raavad, Ramban and Rashba). Rambam (Hilchos Sechirus 2:3), though, maintains that the Torah lessened a keeper's responsibility for a shtar only in cases of theft or loss whereas he cannot be exempt in case of neglect, which resembles intentional harm. Rambam concludes that "this law is true for those who understand and should thus be applied". Remo (Shulchan 'Aruch, C.M. 301:1) rules that a keeper (shomer) of a shetar is exempt in case of neglect but the Shach (ibid, S.K. 3; #66, S.K. 122-126) determines the halachah according to Rambam.

The following incident further elucidates the fine definition of articles with no intrinsic value: Long ago, someone lent another his passport which the latter then lost. The Torah decrees that in such a case the owner may demand of the shomer to swear that the item was stolen or lost. The borrower claimed, though, that according to our sugya, obligations of safekeeping do not apply to articles with no intrinsic value. A passport, he asserted, lacks intrinsic value. It just enables its holder to travel and, as such, he is exempt from taking an oath. A local rabbi ruled in his favor but HaGaon Rabbi Shaul Yosef Natanson zt"l (Responsa Shoel uMeshiv, 1st ed., I, 38) utterly rejected comparing a shtar to a passport: A holder of a shtar does not need it for itself but only to collect a debt. The debt exists without the shtar and an honest debtor pays even without it. A passport, though, enables its holder to cross borders and he cannot do so without it: it is not only a means of identification but a means of transport. As such, it has intrinsic value and the shomer must swear.

Selling a passport: Some hold, however, that one who damages a passport does not have to compensate the owner. According to Nesivos HaMishpat (148, S.K. 1; see more material on this idea in Responsa Beis Yitzchak, E.H., I, 73, S.K. 9 and in Shach, 386), an article useful only to its owner, which he cannot sell to another, lacks marketing value and one who damages it does not have to compensate its owner. Still, Orchos HaMishpatim (32:1) asserts an idea valid in his era when Jews concealed their identity to flee anti-Semitic regimes. They needed others' passports and as those documents were offered for sale, they should be judged as having marketable value.

DAILY MASHAL

Shortly before his Chasunah, a bochur requested from several Gedolim and Roshei Yeshivah that they be Mesader Kidushin for him. He quickly discovered that they would be unable to accommodate him, as the Daf Yomi Siyum HaShas was taking place the same evening. Disheartened, the bochur mentioned to one of the Roshei Yeshiva that perhaps he should try to change his Chasunah date. The Rosh Yeshiva advised against it, saying: "What an "eis ratzon" to begin your married life – when all of Klal Yisroel is engaged in the Kevod Shomayin of a Siyum HaShas!"

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