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Bava Metzia Daf 74

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Daf Notes is currently being dedicated to the neshamot of

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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

Change of Price

Rav Chama said: If a man gave his fellow money to buy wine for him (*when the price was low*), and he negligently failed to do so, he must compensate him with wine according to the price that it is sold in the market of the port of Zolshafat (*and if there is a difference in price, the agent must pay for it*).

Ameimar said: I repeated this ruling before Rav Zevid of Nehardea, whereupon he said: Rav Chama’s ruling applies only to unspecified wine, but where he was instructed to buy this specific wine, it does not apply, for who knows if the seller would have sold it to him?

Rav Ashi said: Even when he asked him to buy unspecified wine, the agent is also not liable, for it is an *asmachta* (*that he promised without making a formal kinyan that he will be liable if he cannot buy the wine*), and an *asmachta* is not binding.

The *Gemora* asks: But according to Rav Ashi, how does this differ from what we learned in a *Mishna*: If a sharecropper writes: “If I will let the field lay fallow without cultivating it, I will pay with the best of my property” (*he is liable to do so*)!?

The *Gemora* answers: There, it is in his ability to cultivate it; here, it was not in the agent’s hands (*to buy the wine*). (73b – 74a)

Agency

Rava said: If three people gave money to one person to purchase something for them, and he purchased it for (only) one of them, the *halachah* is that he has purchased it for all three of them (*and they each own a portion of it*). This is so only if the agent did not tie and seal each package separately; but if he did, then for whom he has bought it, he has bought it, and for whom he has not bought it, he has not bought it. (74a)

Identification Mark

Rav Pappi said in Rava’s name: A mark of identification (*which the buyers would mark if they planned on buying it*) on the wine barrels can effect possession (*although they left the barrels in the possession of the seller*).

The *Gemora* asks: In respect of what law does it effect possession?

Rav Chaviva said: In respect of actual acquisition.

The Rabbis said: It is only for the acceptance of the curse (*if the seller decides to retract*).

And the *halachah* is that it effects possession only in respect of the acceptance to the curse. However, where it is the custom that this effects actual possession, it does result in a full acquisition. (74a)



Missing Processes

The *Mishna* had stated: If the seller was the earliest harvester [(meaning he was not a merchant who committed to supply wheat, but he actually had wheat), he can enter into a forward contract on his harvest (without having to wait for the market to set a price). This can also be done with vessels full of grapes or olives, on “eggs” of pottery (before they are made into pottery), and on plaster when going into the kiln.] Rav said: If only two processes are missing before the goods are completed, a forward contract may be made (for then it is considered as if the goods are in his possession); if three are missing, no contract may be made. Shmuel said: If the processes are to be done by the hands of man, even if a hundred are missing, a forward contract may be effected; if they are processes dependent on the hand of Heaven, even if only one is missing, no contract may be made.

The *Gemora* asks from our *Mishna*: He can enter into a forward contract on his harvest. But it still missing (three processes) the spreading out in the sun to dry, the threshing and the winnowing? [Why is the forward contract permitted according to Rav?]

The *Gemora* answers: The *Mishna* is referring to a case where it had already been spread out and dried in the sun.

The *Gemora* asks: But Shmuel holds that if a process is dependent upon the hand of Heaven, even when one process is missing, no contract may be made; does it not need winnowing, which is in the hand of Heaven?

The *Gemora* answers: It can be done with a sieve.

The *Gemora* asks on Rav from our *Mishna*: This can also be done with vessels full of grapes (a forward contract can be made on wine). But it is still missing (four processes) the heating (ripening), the placing in the wine press, the treading and the drawing into the pit?

The *Gemora* answers: It is like Rabbi Chiya taught in a *braisa* (regarding olives): A forward contract may be made on a heated (ripened) vat of olives; so here too, it is referring to a heated (ripened) vat of grapes.

But, the *Gemora* asks, there are still three processes still missing!?

The *Gemora* answers: It is referring to a place where the buyer is the one who draws it from the wine press into the pit.

The *Gemora* asks on Rav from our *Mishna*: This can also be done with vessels full of olives (a forward contract can be made on oil). But it is still missing (four processes) the heating (ripening), the bringing to the olive press, the treading and the drawing into the pit?

The *Gemora* answers: Rabbi Chiya taught in a *braisa*: A forward contract may be made on a heated (ripened) vat of olives

The *Gemora* asks: But three processes are still missing!?

The *Gemora* answers: It is referring to a place where the buyer is the one who draws it from the olive press into the pit.

The *Gemora* asks on Rav from our *Mishna*: This can also be done with “eggs” of pottery (a forward contract can be made on pots). But it is still missing (five processes) the molding, the drying, the placing in the kiln, the firing and the taking out from the kiln?

The *Gemora* answers: The *Mishna* is referring to a case where it was already molded and dried.

The *Gemora* asks: But three processes are still missing!?



The *Gemora* answers: It is referring to a place where the buyer is the one who removes the earthenware from the kiln.

The *Gemora* asks on Rav from our *Mishna*: This can also be done with plaster going into the kiln (*a forward contract can be made on limestone*). But it is still missing (*three processes*) the burning, the removing from the kiln and the crushing?

The *Gemora* answers: The *Mishna* is referring to a case where the buyer is the one who crushes it.

The *Gemora* asks: But Shmuel holds that if the processes are to be done by the hands of man, even if a hundred are missing, a forward contract may be effected; why must it have placed into the furnace (*it should be permitted even before that*)?

The *Gemora* answers: The *Mishna* means that the contract may be arranged when it is ready for placing in the kiln. (74a)

Pottery

The *Mishna* had stated: One can enter into a forward contract on “eggs” of pottery (*before they are made into pottery*).

The *Gemora* cites a *braisa*: One cannot enter into a forward contract for “eggs” of pottery until they are molded; this is Rabbi Meir’s opinion. Rabbi Yosi said: This refers only to white earth (*which was not readily available, and therefore the seller must actually possess it*); however, regarding black earth, such as that of Kfar Chananya and its vicinity, Kfar Shichin and its vicinity, an arrangement may be concluded, for even if this merchant does not have, another one has.

The *Gemora* relates an incident: Ameimar paid money for earthenware when the potters had already stocked themselves with the black earth.

The *Gemora* asks: In accordance with whom did he do this? He could not have been following Rabbi Meir, for he ruled that no contract may be made until they are molded! It cannot be Rabbi Yosi either, for he said that even if this merchant does not have, another one has (*so why would he have to wait for this merchant to buy the black earth*)!?

The *Gemora* answers: In truth, it was in accordance with Rabbi Yosi, but in Ameimar’s locality, black earth was rare and expensive. Therefore, if he possessed it, each of them would rely on it; but if not, they would not rely on it. (74a)

Fertilizer

The *Mishna* had stated: One can enter into a forward contract for fertilizer the whole year. Rabbi Yosi says: One can only enter into a forward contract for fertilizer if he has fertilizer in his garbage area. The *Chachamim* permit this.

The *Gemora* asks: the *Chachamim* are saying the same thing as the *Tanna Kamma*!?

Rava answers: The difference between them would be in the rainy season. [*During the winter, the manure was left outside for it to be trampled and decompose. Consequently, very little dried manure for fertilizing was available. The Tanna Kamma permits a forward contract even for winter because he has dung from his animal. The Chachamim allow this only in the summer, when it is readily available, but not in the winter, when there may be a shortage amongst all the merchants.*] (74a – 74b)

Mi Shepara

The *Mishna* had stated: One can stipulate that he wants the best price (*even if there is a price decrease*). Rabbi Yehudah says: Even if a person did not explicitly stipulate that he wants the best price, one can say, “Give me the best price or give me my money.”

The *Gemora* records an incident: A man once paid money in advance for his father-in-law’s dowry. Subsequently, the dowry fell in price (*and the father-in-law did not want to pay the expensive price; the son-in-law, therefore, wished to retract from the deal with the seller*). They came before Rav Pappa. Rav Pappa said to the buyer: If you have stipulated for the best price, you can take it at its present price; but if not, you must accept it at the original price.

The Rabbis protested to Rav Pappa: And if he did not stipulate like that, must he accept it at the previous price? Surely it is only money that has changed hands, and money does not effect an acquisition!?

Rav Pappa replied: I too spoke only with reference to the acceptance of the curse (*the “mi shepara” – for someone who reneges on a deal*). If he stipulated for the best price, and the seller wishes to retract, the seller must accept the *mi shepara*; if no stipulation has been made, and the buyer wishes to retract, the buyer must accept the *mi shepara*.

Ravina asked Rav Pappa: How do you know that our *Mishna* follows the opinion of the Rabbis who disagree with Rabbi Shimon and maintain that money does not effect acquisition, and nevertheless, only if he stipulated for the best price does he receive it at its present value, but if not, he must accept it at the previous price? Perhaps the *Mishna* is following the viewpoint of Rabbi Shimon, who maintains that money does effect acquisition, so that if he stipulated for the best price, he receives it at its

current value, but if not, he must accept it at its previous price, because his money has effected acquisition for him; whereas in the opinion of the Rabbis, whether he stipulated or not, he can take it at its present price, for a man’s intention (*when he is entering into a forward contract*) is for the best price?

Rav Pappa replied: It must be that Rabbi Shimon ruled that money effects acquisition only if the price remained the same; but when there were two prices, did he still rule like that? For should you not concede to this, does Rabbi Shimon maintain that the acceptance of the *mi shepara* never applies to the buyer (*if he always acquires it, when will he be merely morally obligated to keep his word although he has not acquired it*)? And if you would reply that indeed it is so, surely it has been taught in a *braisa* authored by Rabbi Shimon: In any event, such is the *halachah*; but the *Chachamim* said, Hashem, who punished the generation of the flood, will punish one who does not keep his word. What is meant by “in any event”? Is it not that there is no difference whether the seller or the buyer retracts; he must accept the *mi shepara*? This proves that Rabbi Shimon ruled that money effects acquisition only if the price remained the same; but when there were two prices, he did not rule that way (*it does not effect acquisition, and the mi shepara curse would be applicable in such cases*).

Rav Acha, the son of Rava, asked to Rava: But does it not follow that there should be no acceptance of the *mi shepara* in this case, since the father-in-law had only appointed the son-in-law at the outset as his agent (so how can the son-in-law be responsible at all)?

He replied: The son-in-law was a merchant who buys and sells (*and he was acting for himself in mind*). (74b)



Mishna

A man may loan to his sharecropper wheat for the same amount of wheat, but only if the wheat will be used for seed, but not for food. For Rabban Gamliel used to loan wheat for wheat when it was used for seed; but if at the time of the loan, wheat was expensive, and then became cheaper, or if it was cheap and became more expensive, he would take from them according to the cheap price. This was not because this was the *halachah*; but rather, it was because he desired to be strict with himself. (74b)

Loaning to a Sharecropper

The *Gemora* cites a *braisa*: A man may loan to his sharecropper wheat for the same amount of wheat, but only if the wheat will be used for seed. This is only if the sharecropper has not entered the field (*and started to work on it*), but if he has entered the field (*and started to work on it*), it (*the loan*) is forbidden.

The *Gemora* asks: Why does the *Tanna* of our *Mishna* draw no distinction between entering the field or not, whereas the *Tanna* of the *braisa* does?

Rava replied: Rabbi Idi explained the matter to me: In the place of our *Tanna*, the sharecropper provided the seed, and whether he has yet entered the field or not, as long as he has not provided the seed, the owner can remove him. Therefore, when he enters the field and the owner provided the seed, he, in essence, is agreeing for a lower rate. But in the place of the *Tanna* of the *braisa*, the owner provided the seed. Therefore, if the sharecropper has not yet entered the field, so that the owner can still remove him, when he does enter, it is for a lower rate; but if he has already entered, so that he cannot be removed, it is forbidden. (74b)

Se'ah for a Se'ah

The *Gemora* cites a *braisa*: A man may say to his fellow, "Lend me a *kor* of wheat," and he can stipulate a price with him. If it depreciates, he returns the same amount of wheat; if it increases in value, he repays its original value.

The *Gemora* asks: But was there not a stipulation (*for the price*)?

Rav Sheishes answered: The *braisa* meant to say that if no stipulation is made, and it depreciates, he takes the same amount of wheat; if it increases, he repays its original value. (74b – 75a)

INSIGHTS TO THE DAF

Verbally Committing to a Certain Mohel or Sandak

The Rishonim discuss a case where a father committed to honor someone with part of the *bris* ceremony, either as a *sandak* or a *mohel*, and then changed his mind. (See Beis Yosef YD 264)

The Maharam says that since these commitments are routinely made and kept, the commitment is enforceable in court.

Rabbeinu Yechiyel limits this to a commitment made after the baby was born.

The Radvaz holds that if the commitment was made before the baby was born, he is not obligated to honor it at all, for this would have the status of selling something that is not yet in existence. However, if he told him this after the baby was born, since these commitments are routinely made and kept, he cannot retract from his words. He concludes by saying that it is a well established principle by us that a custom is extremely significant, and one should not break it.



He proves this from our *Gemora*, which states: Rav Papi said in Rava's name: A mark of identification (*which the buyers would mark if they planned on buying it*) on the wine barrels can effect possession (*although they left them in the possession of the seller*). This proves that although a proper *kinyan* was not performed, the making of an identifying mark can effect acquisition based on the custom of that locality.

The Rosh disagrees and says that only a standard *kinyan* is enforceable.

Rabbeinu Tam says that if one committed to a *mohel* to do his son's *bris*, this has the status of a verbal commitment, and one who does not keep it is considered untrustworthy.

The Pri Yitzchak says that committing to a *mohel* has the status of a small gift, since the father typically cannot perform the *bris*, and he is simply giving the right to choose the *mohel*. However, committing to a *sandak* is a large gift, since the father himself can do that, and he is giving that right to the *sandak*. Since it is a large gift, a verbal commitment would not be binding.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: Is one permitted to give money to an agent in an expensive place to buy wheat to return with from a cheap place?

A: Yes.

Q: Is one permitted to give money to an agent in an expensive place to buy scrap metal to return with from a cheap place?

A: No.

Q: If one lends his sharecropper seeds, what should he do to avoid the prohibition of *ribbis*?

A: He should work a portion of the land (*this way, he will have acquired the land in the amount of the wheat that grew there*).

DAILY MASHAL

Financial advice

The Torah says, "Do not give him your money for interest, nor your food for interest" (Vayikra 25:37; the first "interest" appears as *neshech*, the second as *marbis* and the Mishnah and Gemara clarify the fine differences). HaGaon Rabbi Shimon Sofer zt"l said that this verse may be interpreted as referring to someone in such dire straits that he feels he must borrow from another Jew and agree to pay interest. Such a person is advised *uvemarbis lo titen ochlecha*: do not give your food for interest, but also refrain from squandering on luxuries, such as unnecessary food (*marbis* may mean both "interest" or "too much") and you will not have to resort to paying interest.