

14 Nissan 5777  
April 10, 2017



Bava Basra Daf 78

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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

### **Overpaying**

The *Gemora* proves from a *Mishna* that the Sages agree to the concept of voiding a sale that was overpriced. The *Mishna* states that Rabbi Yehudah says that one who sells a *sefer torah*, animal or pearl is not subject to the standard rules of *ona’ah*, since these possess special value to specific buyers. A *sefer torah* is extremely valuable to all buyers, and an animal or pearl may be needed to match this buyer’s existing animal or jewelry, and thus be worth much more to him. The Sages respond that in these cases, *ona’ah* applies, indicating that they accept the concept of voiding a sale due to overcharging.

The *Gemora* answers this challenge with two possible answers:

1. When the *Mishna* said that the high price does not prove the cattle were sold, it means that the sale was overpriced, and it is void, due to *ona’ah*.
2. When the sale price was too high to assume that the buyer erred, we assume the buyer knew the true value, and gave the extra money as a gift. In the case of the *Mishna*, the price charged for just the yoke is too high for the buyer to have made in error, and we assume he meant it as a gift to the seller. (78a)

#### **What’s Included with a Donkey?**

The *Mishna* says that if one sold a donkey, he did not include its utensils. Nachum Hamadi says the utensils are included. Rabbi Yehudah says that it depends how the sale was phrased. If a donkey, with its utensils on it, was in front of a buyer, and the buyer asked the seller if he will sell him “this donkey,” he bought the donkey with the utensils. However, if the buyer asked the seller if this is his donkey, and does he want to sell it, then he only bought the donkey.

Ulla says that the dispute between Nachum Hamadi and the Sages is limited to utensils used for the donkey to carry cargo – sack, saddlebag, and side saddle. The Sages say that a donkey is assumed to be used for riding, and these are not included, while Nachum Hamadi says that it is assumed to be used for carrying cargo, and these are included. However, all agree that the utensils used for riding – the saddle, blanket, saddle harness, and bridle – are included in the sale, since all agree that a donkey is used for riding.

The *Gemora* challenges this from a *braisa*. The *braisa* says that if one says he is selling a donkey with its utensils, the sale includes the riding utensils, but not the carrying utensils. However, if he says that he is selling the donkey with everything on it, the carrying utensils are also included. The *Gemora* notes that in the first case of the *braisa*, the riding utensils are only included because the seller said that he is selling the donkey *with its utensils*, implying that if he just sold the

donkey, they are not included.

The *Gemora* deflects this inference, and says that the *braisa* only added the clause *with its utensils* to show that even this clause does not include the carrying utensils. The *Gemora* explains that the side saddle, used by women, is considered a carrying utensil, since a woman sits with both legs on one side of the donkey, not in the general riding position.

The *Gemora* questions the parameters of the dispute in the *Mishna*, offering two options:

1. The dispute is only a case where the utensils are on the donkey. If they are not on the donkey, even Nachum Hamadi agrees that they are excluded.
2. The dispute is only a case where the utensils are not on the donkey. If they are on the donkey, even the Sages agree that they are included.

The *Gemora* attempts to resolve this question from the *braisa* cited before. The *braisa* said that if the seller said he is selling the donkey *and everything on it*, the carrying utensils are included. The phrase indicates that the utensils are on it, and yet are not included without explicit mention. This *braisa*, following the opinion of the Sages, indicates that the Sages exclude cargo utensils even when they are on the donkey.

The *Gemora* deflects this by saying that the phrase should be amended to *and everything that is fit to be on it*, not indicating that they are on the donkey.

The *Gemora* then attempts to resolve this question from Rabbi Yehudah, who discusses a buyer who talks to a seller about a donkey with its utensils on it. The *Gemora* assumes that Rabbi Yehudah is discussing the same case as the Sages, indicating that they exclude the

utensils even if they are on the donkey.

The *Gemora* deflects this by saying that Rabbi Yehudah is discussing a different case than the Sages and Nachum Hamadi.

Ravina told Rav Ashi that perhaps we can resolve this question from the case of one who sells a wagon. The *Mishna* says that the mules that draw the wagon are not included. When Rav Tachlifa bar Maarava learned in front of Rabbi Avahu that the mules are included, Rabbi Avahu pointed out the *Mishna*, which says the opposite. Rabbi Avahu explained that the *Mishna* is a case where the mules are not attached to the wagon, while the text of Rav Tachlifa is a case where the mules are attached to the wagon. Ravina says that just as the earlier *Mishna* about the wagon is a case where the excluded item is not attached, our *Mishna* about the donkey is a case where the utensils are not on it.

Rav Ashi objected, and noted that an earlier *Mishna* that discussed selling a boat excluded its workers and contained merchandise, thus discussing something that is resting on the sold item. Rather, each *Mishna* is its own case, and we cannot prove the circumstances of one from another one.

Abaye says that the following *Tannaim* hold that when one sells an item, all of its necessary utensils are included:

1. Rabbi Eliezer, who says that if one sells an olive press, he includes the pressing beam.
2. Rabban Shimon ben Gamliel, who says that if one sells a city, he includes the Santar (surrounding fields, or worker who demarcates the boundaries).
3. Rabbi Meir, who says that if one sells a vineyard, he includes all the items used for it.

4. Rabbi Nasan and Sumchus, who says that if one sells a ship, small accompanying boats are included.
5. Nachum Hamadi, who says (in our *Mishna*) that if one sells a donkey, its utensils are included.

Rava explains Rabbi Yehudah's opinion: If the buyer says "this donkey," he knows the donkey is owned by the seller, and points it out to include the utensils on it. However, if he says "this donkey, which is yours," he is referring to the donkey only to verify that it belongs to the seller, and does not mean to include the utensils. (78a – 78b)

### **What's Included in the Sale?**

The *Mishna* says that if one sells a donkey, he includes the donkey's nursing foal, while if he sells a cow, he does not include its nursing calf. The *Mishna* then lists items that are included in a sale:

1. If one sells a dump, he includes the manure.
2. If one sells a pit, he includes the water in it.
3. If one sells a beehive, he includes the bees.
4. If one sells a dovecote, he includes the doves.

The *Gemora* explains that the *Mishna* is discussing one who specified that he wanted to buy a mother animal, who is nursing. In the case of a cow, we assume he simply wants to consume the milk, and did not include the calf. In the case of a donkey, he cannot drink the milk, so his specification must indicate that he wants to buy its nursing foal as well.

The *Mishna* referred to the nursing foal as a *seyach*. The *Gemora* explains that this name comes from the root for speech (*sicha*), since such a young child follows a nice sounding voice. (78b)

### **Bilam's Words**

Rabbi Shmuel bar Nachmaini quotes Rabbi Yochanan, who explains the verse recorded as Bilam's proclamation, which led Sichon the king of the Emorim to triumph over Moav, allegorically:

Literal Verse	Allegorical Explanation
Therefore, the rulers said:	Therefore, <i>those that rule over their evil inclination</i> said:
"Come to cheshbon,	"Let us make a <i>calculation (cheshbon) of this world</i> – the loss from a <i>mitzvah</i> , offset by its reward; and the gain from a sin, offset by its punishment,
The city (ir) of Sichon should be built and established	If you do this, you will be <i>built</i> in this world, and <i>established</i> in the world to come. If one follows his evil inclination, like a <i>foal (ayir)</i> , that follows a sweet sounding voice,
For a fire came out of cheshbon	A <i>fire</i> will come from <i>those who make life's calculation</i> , and consume those that do not,
A flame from the city of Sichon	A <i>flame</i> from the righteous, who are compared to trees ( <i>sichim</i> ),
It consumed Ar of Moav	That will consume those that follow their evil inclination ( <i>as if it were their father [av]</i> ), like a <i>foal (ayir)</i> follows a sweet sounding voice
The masters of the heights of Arnon	And those that are <i>high in their haughtiness</i>

The *Gemora* then explains a following verse of Bilam allegorically:

Literal Verse	Allegorical Explanation
And their sovereignty was lost from <i>Cheshbon</i>	The wicked say there is no <i>Sovereign</i> , and no <i>calculation</i> ( <i>cheshbon</i> ) for deeds done
It was removed from <i>Divon</i>	Hashem says to wait until the time of <i>judgment</i> ( <i>din</i> ) comes
And we destroyed ( <i>nashim</i> ) <i>Nofach</i>	Until a <i>fire</i> ( <i>aish</i> ) that needs no <i>fanning</i> ( <i>nifuach</i> ) will come
That reaches until <i>Maidva</i>	And consume them until their soul is in <i>pain</i> ( <i>mad'iv</i> ) (or, until what must be <i>done is done</i> ( <i>Avid</i> ))

Rav Yehudah in the name of Rav says that anyone who abandons the words of Torah is consumed by fire, as the verse says, “I will face them, from the fire (Torah) they left, and the fire will consume them”. When Rav Dimi came from *Eretz Yisroel*, he quoted Rabbi Yonasan, who said that one who abandons the words of Torah falls in Gehinom, as the verse says, “one who veers from the wise path, will rest in the company of Refa’im.” Refa’im is a reference to Gehinom, as the verse says, “[one who follows his evil inclination] does not know that Refa’im is there, and those who follow the evil inclinations will go to their grave.” (78b – 79a)

### INSIGHTS TO THE DAF

#### *A Donkey's Use*

Ulla says that Nachum Hamadi and the Sages only dispute whether cargo utensils are included in the sale of a donkey. The Sages say that a donkey is used for riding, and cargo utensils are not included, while Nachum Hamadi says that a donkey is used for cargo, so these utensils are included. The Rashbam implies

that Nachum Hamadi holds that donkeys are used only for cargo, while the Rashba and Ritva say that Nachum Hamadi holds that donkeys are used for both cargo and riding.

#### ***Utensils on or off?***

Ulla limits the dispute of Nachum Hamadi and the Sages to cargo utensils. The *Gemora* then raised the question of whether the dispute is only when the utensils are on or off the donkey. The question was unresolved. The Rambam (Mechira 27:4) rules that riding utensils are included, even when not on the donkey, while cargo utensils are not included, even when on the donkey. The Rashba and Rema, however, rules that only riding utensils are included, and only when they are on the donkey. The Rashba and Rema understand that the *Gemora's* question is on both elements of the *Mishna* – the case of riding utensils and cargo utensils. The Rambam and Rif, however, understand that Ulla was making a categorical statement that riding utensils are included, whether on or off the donkey. The *Gemora's* question was only on the disputed items. Since the *Gemora's* question is unresolved, we cannot transfer the cargo utensils from their original ownership, since the buyer needs a bona fide proof to remove it from the current possession. See Taz HM 220:7, and Gra HM 220:9 for further discussion of the differing opinions.

#### ***Empty Beehive and Dovecote***

The *Mishna* lists items that are included in a sale – a pit includes its water, a waste pit includes its manure, a beehive includes its bees, and a dovecote includes its doves. The Rashbam says that these are all cases of ancillary items being included in the sale of the main item. Therefore, if one sells only the ancillary items, the



main item is not included. The Rosh, however, quotes a Tosefta that says that if one sells all the bees or doves, the beehive or dovecote is included, since one has no need for an empty beehive or dovecote.

### ***A Pit's Water***

The *Mishna* says that when one sells a pit, its water is included. The Rambam (Mechira 27:10), Rif, and Shulchan Aruch (HM 220:16) rule that the water is not included, while the Rama (ibid), based on the Rashbam and Rosh, rules that the water is included. Although the *Mishna* says the water is included, Rava (BB 79b) says that Rabbi Nasan, a minority opinion, is the author of the *Mishna*, while the Sages say the water is not included. The Rashbam explains that when the *Gemora* identifies a statement of an amora as following a minority opinion, the statement is being rejected. However, all Rava said is that the *Mishna* is following the minority opinion of Rabbi Nasan, but we still rule like the *Mishna*. The Rambam and Rif, however, infer from the language of Rava that he doesn't rule like the *Mishna*. If Rava simply wanted to identify the author of the *Mishna*, Rava could have simply said that the *Mishna's* author is Rabbi Nasan. Since Rava mentioned the fact that it's a minority opinion, he was ruling against it.

### **HALACHOS OF THE DAF**

(Choshen Mishpat Siman 220)

When selling a donkey, the following items are included even if the donkey is not wearing it at the time of the sale:

1) Blanket – the donkey wears it the whole day to keep warm.

2) Saddle.

Not included in the sale, even if the donkey is wearing it at the time of sale:

1) Sack – used to store cargo.

2) Sidesaddle – used by women when riding donkeys.

In an instance where the seller specified that "I'm selling the donkey and everything that is on it", then even the sack and sidesaddle are included in the sale.

The reason why the blanket and saddle are included, and not the sack or sidesaddle, is because only the items that are used to ride the donkey are included in the sale, and not the cargo. Even though a woman rides on the sidesaddle, it is still considered cargo, since the women sit in a position similar to cargo.

As mentioned yesterday, the amount paid is not an indication if other items are included in the sale.