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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

1. Bad Seeds

If one sells produce, or even flax seeds, they are not assumed to be for planting. Therefore, if the buyer planted them, but nothing grew, the seller is not responsible. Rabban Shimon ben Gamliel says that if the seller sold garden seeds that are not eaten, then the seller is responsible if they did not grow. (92a)

Most Likely..?

The *Gemora* cites the dispute of Rav and Shmuel in the case of one who bought an ox, and discovered that it gores. Such an ox is usable as meat, but unusable for plowing, since it is violent. Rav says that since most people buy oxen for plowing, we can assume this buyer did so. Therefore, the sale was void, as it was made in error, and the buyer can return the ox for a refund. Shmuel says that the seller can claim that he sold the ox for the purpose of meat, and the sale is valid. The *Gemora* defines the parameters of the dispute:

Buyer buys oxen for...	Rav	Shmuel
Meat	Valid	
Plowing	Void	
Meat and plowing	Void	Valid

The case of the dispute is a buyer who buys oxen for meat and for plowing, but the purpose of this specific purchase is unclear. The *Gemora* specifies that if the price of an ox for meat and the price of an ox for plowing is different, we can determine the nature of the sale from the price paid. The

case in dispute is if the price of meat increased to the point that the price of both types of sales are the same. Although the buyer can sell his ox for meat to recoup his payment, Rav's position that the sale is void allows him to avoid that trouble. If the seller has no money to refund, Rav agrees that the buyer retains the ox as his refund, but if the seller has money to refund, Rav requires him to pay the buyer a refund for his ox.

The chart below summarizes Rav and Shmuel's position for such a buyer:

Price paid	Seller has money?	Rav	Shmuel
Meat ox	Irrelevant	Valid	
Plowing ox		Void	
Prices equivalent...	No	Buyer keeps ox as refund	Buyer keeps ox from sale
	Yes	Buyer gets refund	Buyer keeps ox

The *Gemora* explains that their dispute is fundamentally about whether we apply the rules of following majority to monetary *halachah*. All agree that in non monetary prohibitions, such as forbidden foods, we follow the majority. Therefore, if one finds meat on a street that has more kosher butchers than non kosher ones, one may assume the meat is kosher. Rav says that we apply the same rules to monetary *halachah*. Therefore, since most buyers buy oxen for plowing, and not for meat, we can assume this



buyer also did so, and the sale is void. Shmuel says that in monetary *halachah*, we cannot rule based on the majority of buyers, and the sale is assumed to be valid.

The *Gemora* attempts to resolve this dispute from a *Mishna*. When a woman is divorced or widowed, her husband (*or his estate*) must pay her the value of her *kesuvah*. A virgin receives 200 *zuz* in her *kesuvah*, while a remarrying woman receives 100 *zuz*. The *Mishna* discusses a woman who is divorced or widowed, but it is unknown whether this was her first marriage or not. The woman claims it was, and she is due 200 *zuz*, while the husband (*or his estate*) claims that it was not, and she is only due 100 *zuz*. The *Mishna* says that if witnesses testify that she wore the special veil worn by a virgin, or if she went to her wedding with her hair uncovered (*as virgin women do*), she can collect 200 *zuz*. Although most marriages are first marriages, she may not collect 200 *zuz*, unless she proves her position. This *Mishna* proves Shmuel's position that majority is not admissible in monetary *halachah*.

Ravina deflects this by saying that although most marriages are first marriages, most first marriages are well known as first marriages. Since people don't remember whether this was a first marriage, this lowers the probability that this marriage was a first marriage, and she cannot collect 200 *zuz*.

The *Gemora* attempts to resolve the dispute from a *braisa* that discusses one who sells a slave. If the slave is found to be a thief or gambler, the buyer cannot void the sale. If the slave is found to be an armed robber or sentenced to death, he is worthless, and the buyer can return the slave for a full refund. The *Gemora* assumes that in the first case the sale is valid, since most slaves are thieves or gamblers. This indicates that we follow high probabilities, even in monetary *halachah*, proving Rav's position.

The *Gemora* deflects this by saying that *all* slaves are thieves and gamblers, and a buyer must therefore assume that a slave has this issue. This therefore does not rely on probabilities alone, but on a reality applicable in all cases.

(92a – 93a)

INSIGHTS TO THE DAF

Bad Seeds

Rabban Shimon ben Gamliel says that if one bought garden seeds, and they failed to grow, the seller is liable, since all buyers buy these seeds for planting.

The Rishonim explain that we must first rule out other reasons for the seeds failing. The Ran says that if the buyer planted them in land that was never shown to be fertile, or if it was a bad year for all crops, we do not assume the seeds were at fault. Tosfos goes as far as to say that the *Mishna* is referring to a case where it was proven that the seeds were faulty, and the only issue being discussed in the *Mishna* is what we assume the purpose of the sale was. The Rosh, however, says that unless we have a clear reason for the seeds to have failed to grow (*e.g., drought, hailstorms*), we assume the seeds were at fault.

The Rishonim explain that the buyer is not required to return the seeds for his refund. The Rashbam explains that the buyer did not do anything to the seeds themselves, but just put them in the ground. He did this on the implicit instruction of the seller, and therefore is not liable for retrieving them. The Nimukei Yosef says that in any case of a mistaken sale, if the buyer did with the item only what he planned to, he is not liable for any loss to the item.

2.

Majority in Monetary Halachah

Shmuel states that we do not follow the majority in monetary *halachah*. We rule in accordance with Shmuel (Tur and Shulchan Aruch C" M 232:23). The Rishonim and Acharonim discuss the rationale and parameters of Shmuel's position, in context of other sources in Shas.

The *Gemora* implies that if the buyer always buys for plowing, we assume this sale was for plowing as well, and the sale is void. Rashbam says that this is true only when the seller knows the buyer, and therefore had to assume that he was buying it for plowing. Rashi (BK 46a) says that even if the



seller does not know the buyer, if we know that he only buys animals for plowing, he may void the sale.

The *Gemora* also implies that if the price of oxen for plowing is different than the price for meat, then the sale price can prove what the purpose of the purchase was. Although the Sages (77b) rule that we cannot use the sale price to prove what was included in an ambiguous sale, they agree that the sale price can resolve the doubt in the sale of an ox. Rashbam explains that in the earlier case, the simple understanding of the sale (*for a plow attachment*) would not support the buyer, and the buyer must therefore prove his position. Simply paying a higher price is not a sufficient proof. However, in the case of Shmuel, since we already know that this buyer does sometimes buy oxen for plowing, the sale price can resolve that this sale followed a normal pattern of purchase.

Tosfos (92a vLechze) says that in this case, either side has a support to their position – the buyer has a majority, and the seller has possession. Therefore, the sale price is enough to tip the case to either one's supported position. In the earlier case, the sale price is not enough to support the buyer against the seller, who is supported by both majority (*of people who mean only to the plow accessory*) and possession (*of the purchase money*).

The Ramah (quoted by the Tur CM 232) states that Shmuel only precludes following the majority when it would remove money from one currently in possession. Therefore, in the case of the goring ox sold, we allow the seller to retain the purchase money, and may not remove the money based on a majority. However, if the buyer has not yet paid, we allow the buyer to retain the money.

Tosfos (B"K 27b Ka mashma lan) asks how Shmuel is consistent with the fact that we follow majority rule in monetary court cases. Tosfos answers that in a court case, the minority is subsumed in the majority, and neither party is considered in possession, since the court has the power to remove money from anyone's possession.

The Terumas Hadeshen (314) quotes Tosfos saying that Shmuel only precludes majorities that are based on general rules (*deductive*), but not observed majorities (*inductive*). This will explain how we can follow a majority in a court case.

The Ketzos in Kuntras hasefeikos (2) quotes the Maharam Chaviv, who explains that the dissenting judges nullify their opinion to the majority opinion, and therefore we are no longer following merely a majority. The Ketzos himself (3) explains that Tosfos is saying that a court has the power to nullify a litigant's possession. Since Shmuel only precludes majorities in monetary *halachah* due to the possession of a litigant, a court's majority is applicable in monetary cases.

Rav Shimon Shkop (Sha'arai Yosher 3:3) explains Tosfos's explanation of court majority. He states that Shmuel's principle is based on the fact that in monetary *halachah*, we follow possession, due to simple logic. To defy the current possession, we need a clear proof, and majority is a Torah rule, not a clear proof. However, the Torah rules for a court mandate that its decisions are decided by majority. Once that is decided, the court has full power to render and impose judgments, even in monetary *halachah*. [See also *Chidushei Rabbi Shimon Shkop BK 27, where he explains that court rulings are an attempt to arrive at an intellectual conclusion, based on a majority of opinions. Once that intellectual conclusion has been reached, it has full force in all areas of halachah*].

Rav Dovid Lifshitz (Chulin Shiur 22:2) explains, based on Rav Shimon Shkop, that Tosfos means that the minority is subsumed in the majority, just as a minority of non kosher meat is subsumed in a majority of kosher meat. Once that occurs, the court is not simply a majority, but a full unit, all ruling the majority's conclusion. To prove this idea, he notes that if a court of three imposed a judgment based on a 2-1 ruling, if the ruling is reversed, all three judges must equally make amends. This indicates that even the dissenting judge is considered to have ruled the majority's opinion.

Tosfos (Kesuvos 15b l'hachazir) says that Shmuel only

precludes majority in a case where the buyer willingly gave his money to the seller, in the context of a sale. To remove that money requires more than a majority. However, in the case of a lost object, whose owner never willingly parted with his property, we do apply majority, to decide if it was lost by a Jew or non Jew.

Tosfos (Sanhedrin 3b Dinei Nefashos) asks why Shmuel does not apply majority to monetary cases. The *Gemora* proves that we follow a majority of judges in monetary cases with a *kal vachomer* (*a fortiori*) from capital court cases. Tosfos asks why this *kal vachomer* will not apply to Shmuel's case. Tosfos further explains that we apply even deductive majorities in capital cases, and therefore should do so in monetary *halachah*, as well. Tosfos answers that Shmuel only rejects inferior majorities in monetary *halachah*, but accepts bona fide majorities in all areas of *halachah*.

See Bach (CM 232) who explains that an inferior majority is one where only one aspect of the case is a majority. For example, although most oxen sold are for plowing, most buyers buy oxen for meat. A buyer who buys oxen for plowing buys many more than any individual buyer who buys for meat.

See Shev Shma'atsa (4:8-9), who explains that Tosfos in Sanhedrin and Tosfos in Bava Kamma disagree on whether a bona fide majority can be used in monetary *halachah*.

DAILY HALACHAH

Paying for an engagement party if the shiduch is canceled

The *Rosh* (Responsa, *Kelal* 104:6) and *Shulchan Aruch* (C.M. 333:8) rule that if a person orders a workman to make something for him and, on its completion, refuses to take it, he must pay for it if the workman stands to suffer a loss. Although no *kinyan* was made, the instance is no different from other events of damage and we are, of course, responsible for any damage we cause. However, HaGaon Rabbi Akiva Eiger zt"l asked how the *Rosh* could ignore the

case in our mishnah: If a person bought seeds, plowed and fertilized his land and planted them with no results, he can't demand his expenses from the seller. Since the seeds were no good and the seller caused him the loss of all that work, why shouldn't he pay for it? On the other hand, according to the mishnah, why should that person who ordered something from a workman be demanded to pay? In reply, he contends, the person who sold the seeds ended the transaction right there: He asked the buyer to sow them? The buyer did all that work for **himself!** One who **requests** an object to be made or ordered, though, causes the other to work for him and must therefore compensate him if he changes his mind (Responsa Rabbi A. Eiger, 1st ed., 134).

The Rishonim disagree as to if a *chasan* who cancels a *shiduch* should pay for the engagement party which was laid on by the *Kallah's* family. According to Rambam he must pay, but not according to Raavad (*Hilchos Zechiyah Umatanah*, 6:24). The difference of opinions depends on how we interpret our *sugya* as canceling a *shiduch* resembles, in a sense, the sale of seeds; on the other hand, it is also like ordering an object. A young man who agrees to a *shiduch* naturally expects an engagement party, as such events are *de rigueur*. Still, he didn't **order** it, just as the seller didn't order the buyer to plant the seeds, and we can't make him pay for the party (see *Magid Mishnah*, *ibid*; *Erech Shai*, E.H. 50, S.K. 9; *Machaneh Efrayim* on Rambam, *ibid*; *Chelkas Mechokek*, 50:10; *Tiv Kidushin*, 50:11).

A gala party: Even according to Rambam, though, the Poskim agree that if the *kallah's* parents held a party more extravagant than customary in either the *chasan's* or *kalah's* neighborhood, we can't make him pay more than the price of an ordinary meal (Radbaz, I, 329; *Tashbetz*, II, 166; Responsa Maharash Engel, V, 153).