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Bava Basra Daf 93

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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***Following the Majority by Monetary Cases***

The *Gemora* had explained that the dispute between Rav and Shmuel 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* asks on Rav from the following *Mishna*: If an ox gored a cow and its newly born was found (*dead*) beside her, and it is not known whether she gave birth before it gored her (*and its death was not caused by the ox*) or whether she gave birth after it gored her (*and the goring was the cause of its death*), he pays half-damages for the cow (*as the law is for any animal that gores for the first time*) and one-fourth damages for the young (*since it is uncertain, they split the payment*). Now, according to Rav that in monetary matters, one follows the majority, why does the owner of the ox only pay a quarter of the damages? Let us follow the majority of cows, and most cows become pregnant and give birth (*to live calves*), and the miscarriage was certainly due to the goring!?

The *Gemora* answers: There (*even if we would follow the*

*majority, the ox owner would not be liable*) it is different because it is possible that the ox approached from the front and the cow miscarried was due to fright (*in which case the ox owner would be exempt, for it is regarded as an indirect damage*), and it is possible that the ox came from behind, and the miscarriage was due to goring. It is therefore regarded as money of doubtful ownership, and all money where the ownership is in doubt must be divided between them.

The *Gemora* suggests that their argument is actually identical to the following *Tannaic* dispute: If an ox was grazing and a killed ox was found at its side, even though it was definitely gored and the other ox (*the grazing one*) is wont to gore, or it was bitten and the other ox is wont to bite, we do not say, “It is definite that it gored or bit the other” (*for there are many oxen in the vicinity and we do not presume that it was this ox that killed it*). Rabbi Acha said: Regarding a case of a camel mating among other camels, and a killed camel was found at its side, it is obvious that the (*mating*) one killed the other (*for this is a normal occurrence by a mating camel; this would certainly be the halachah regarding an animal which was wont to kill*).

Now, if we assume that the principles of majority and *chazakah* (*presumption*) have the same force, can it be said that Rav (*who follows the majority by monetary cases*) is of the same opinion as Rabbi Acha (*who follows the chazakah*) and Shmuel (*who does not follow the majority*) is of the same opinion as the *Tanna Kamma*?



The *Gemora* answers: Rav can tell you that he holds even in accordance with the *Tanna Kamma*, for the *Tanna Kamma* only holds that way there because he does not follow the principle of *chazakah*, but he would follow the principle of majority (*for it is more powerful than a simple presumption*). And Shmuel can tell you that he holds even in accordance with Rabbi Acha, for Rabbi Acha holds that way there because he follows the principle of *chazakah*, since there is a presumption regarding this particular camel (*that it was the killer*), but he would not follow the principle of (*a statistical*) majority.

The *Gemora* asks on Rav from our *Mishna*: If one sells produce, or even flaxseeds, and the buyer planted them but nothing grew, the seller is not responsible. This means that even flax seeds, where most are bought for planting, nevertheless, the *Mishna* rules that (*in monetary cases*) we do not follow the majority!?

The *Gemora* answers that the argument between Rav and Shmuel is indeed a matter of a *Tannaic* dispute, for we learned in a *braisa*: If one sells produce and the buyer planted them but nothing grew, the *halachah* is as follows: If it was garden seeds, which are not edible, the seller is responsible, but if it was flaxseed (*which is sometimes eaten*), the seller is not responsible (*for we do not follow the principle of majority regarding monetary cases*). Rabbi Yosi says: He must refund the buyer with the price of the seed (*for he does follow the majority, and most flaxseed is bought for planting*). They replied to him: Many people buy flaxseed for other purposes. (93a – 93b)

### ***Refunding the Expenses***

The *Gemora* cites a *braisa*: What must the seller refund to the buyer who planted them without success? He must pay the cost of the seeds, but not the expenses (*involved in the planting*). And others say: Even the expenses must be refunded.

Rav Chisda said that these others are the opinion of Rabban Shimon ben Gamliel.

The *Gemora* asks: Which of Rabban Shimon ben Gamliel's teachings reflect such a view? Perhaps it is the one mentioned in our *Mishna*, where we learned: If one sells produce, or even flaxseeds, and the buyer planted them but nothing grew, the seller is not responsible. Then let us consider the latter part of the *Mishna*: 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. Does the *Tanna Kamma* not say the same thing, for it is only flaxseed where he ruled that he is not responsible, but regarding garden seed, he will be responsible!? We must conclude that the difference between them is the issue of paying for the expenses? The *Tanna Kamma* holds that only the cost of the seeds is to be refunded, and Rabban Shimon ben Gamliel is of the opinion that the expenses also must be refunded!

The *Gemora* asks: How can this be proven? Perhaps the opinions of the two *Tannaim* are to be reversed?

The *Gemora* answers: This is no difficulty, for the *Tanna* mentioned last is always the one who is adding something to the first *Tanna* (*and therefore it must be that Rabban Shimon ben Gamliel is adding that he must refund the expenses as well*).

The *Gemora* asks: But perhaps there is no dispute in the *Mishna* at all, and the entire *Mishna* reflects the opinion of Rabban Shimon ben Gamliel, and it is as if there are words missing in the *Mishna*, and this what the *Mishna* states: If one sells produce, or even flaxseeds, and the buyer planted them but nothing grew, the seller is not responsible; these are the words of Rabban Shimon ben Gamliel, for Rabban Shimon ben Gamliel says: If the seller sold garden seeds that are not eaten, then the seller is responsible if they did not grow (*but if they would have been seeds that were edible, the seller would indeed be*



responsible).

Rather, it is the teaching of Rabban Shimon ben Gamliel from the following *braisa*: If someone accepted wheat to grind and he did not soak them in water or crush them (*in order to take out the outer shell and produce fine flour*) and therefore the flour turned out coarse, or if someone gave flour to a baker and the bread turned out crumbly, or if he gave an animal to a slaughterer who made it into a *neveilah*, he is liable because he is like a person who gets paid to watch an item. Rabban Shimon ben Gamliel says: He is liable to pay for his embarrassment and for the embarrassment of his guests.

The *Gemora* cites another *braisa* demonstrating that Rabban Shimon ben Gamliel holds that the damager is also obligated to pay for expenses: There was a great custom in Yerushalayim that if one entrusted the preparations of a meal to another and he spoiled it, the latter is liable to pay for his embarrassment and for the embarrassment of his guests. And there was another great custom in Yerushalayim that at the beginning of every meal, a cloth was spread over the doorway. As long as the cloth was there, guests entered and ate. When the cloth was removed, no guests entered. (93b)

## HALACHOS OF THE DAF

### *Selling Defective Seeds*

If one sold seeds which are not eaten, rather they are only used for planting, and the buyer after planting them sees that nothing grew out of those seeds, the seller is responsible and must pay back the money to the buyer, even if he didn't know that there was anything wrong with the seeds. The buyer is not reimbursed for his money or efforts to plant the defective seeds. This is true only in a case where it is readily apparent that the seeds were defective. If however the field was flooded or a similar type of outside factor, then the seller is not responsible,

since it may not have grown because of the flooding. On the other hand, if the buyer had not yet paid and he planted them and there was a flood, the seller cannot demand payment, since it could have very well not grown even without the flood, because maybe they were defective. In an instance where the seller can prove that his seeds were not defective, and the buyer's field was flooded, the buyer must pay.

If one sold seeds which are also eaten, and the buyer plants them and it does not grow, the seller is not responsible, and does not have to give back the money to the buyer. If, however, the buyer said that he's buying these seeds to plant them, then the seller is responsible. In an instance where the buyer had not yet paid, and he planted them and they did not grow, he may still claim that he had bought it for planting, and the seller would be responsible.

DAILY MASHAL

### **No Help Needed**

When a person tries to bring impurity upon himself, the doors are opened to allow him. However, when he tries to purify himself, he is assisted by Hashem. The Iyun Yaakov explains that in order to purify ourselves, and resist the constant temptations of the yetzer hora, we truly require Hashem's special assistance. However to fall prey to the yetzer hora, we require no assistance. As soon as the doors are opened, and Hashem's protection is removed from us, we are helpless before it.