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Bava Basra Daf 96

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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

Rav Yehudah said: Over wine which is sold in a shop, the blessing of ‘the creator of the fruit of the vine’ is to be said. And Rav Chisda said: Of what use is wine that is turning sour?

An objection was raised: Over bread which has become moldy and over wine that has spoiled, and over cooked food which has become spoiled, one says, ‘*She-hakol.*’ [How, then, can Rav Yehudah say that over sour wine the blessing for proper wine is to be said]?

Rav Zevid replied: Rav Yehudah admits in [the case of] wine made of kernels, which is sold at [street] corners.

Abaye said to Rav Yosef: Here [is the opinion of] Rav Yehudah; here [that of] Rav Chisda; whose does [my] master adopt?

He replied to him: I know a Braisa where it has been taught: If one where someone wanted to drink wine, and to separate the *terumah* from a different barrel. When he later went over to that barrel to do the actual separation, he found that the wine has turned to vinegar, rendering it unusable for *terumah*. During the first three days after thinking about the *terumah*, we can assume that the wine remained wine.

Afterwards though, it is questionable whether it was wine or vinegar.

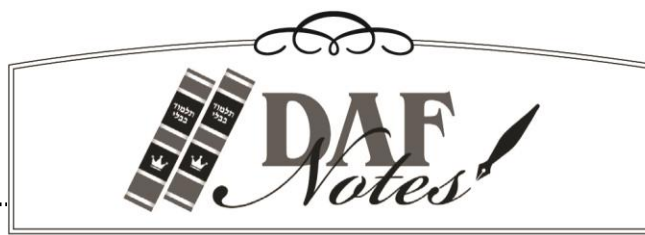
The Gemora asks: What does this mean?

Rabbi Yochanan said: It means as follows: during the first three days after it was found to be wine, the contents of the jug are regarded as being wine; after three days, the contents are regarded as doubtful wine.

The Gemora explains his reasoning: [Because] wine [begins to] deteriorate from above, and this [man] had tasted it [and ascertained that] it had not deteriorated; [and] if it be assumed that it had deteriorated [immediately] after it had been tasted, [even then during the first three days], it had the odor of vinegar and the taste of wine, and whenever the odor is of vinegar and the taste is of wine, it is regarded as wine.

Rabbi Yehoshua ben Levi explains that during the last three days prior to the discovery that it had turned into vinegar; it is regarded as certain vinegar; prior to the three days, it is regarded as doubtful because in less than three days wine cannot turn into vinegar.

The Gemora explains his reasoning: Wine [begins to] deteriorate from below, and it is possible [that it had



already] deteriorated [during the test] but he did not know. [Moreover, even] if it is assumed that deterioration [begins] from the top, [and it will be argued that it must have been wine] since [this man] had tasted it and [ascertained that] it had not [then] deteriorated, [it may be retorted that] it is possible that it deteriorated [immediately] after he tasted it, [and it had] the odor of vinegar and the taste of wine, and [the law is that wherever] the odor is vinegar and the taste wine, [it is regarded as] vinegar.

The scholars of the South taught the following [explanation] in the name of Rabbi Yehoshua ben Levi: [During the] first [three days it is regarded as] certainly wine. [During the] last [three days, as] certainly vinegar. [During the] intervening [days as] doubtful.

The Gemora asks: Is not this self-contradictory? [Since] you said that [during the] first [three days it is regarded as] certainly wine, it is obvious that [if the] odor is vinegar and the taste wine, [it is regarded as] wine; and then you say [that during the] last [three days it is regarded as] certainly vinegar, [which] proves clearly [that if the] odor is vinegar and the taste, wine, [it is regarded as] vinegar?

The Gemora answers: [The second clause deals with the case] when it was found [to be] very strong vinegar [in which case it is known] that had it not lost its taste three days [previously], it could not have been found [to be such] very strong vinegar.

The Gemora asks: According to whom did [Rav Yosef] answer him?

Rav Mari and Rav Zevid [are in dispute on this]. One says: According to Rabbi Yochanan, and the other says: According to Rabbi Yehoshua ben Levi. (95b – 96a)

It has been stated: [In the case] when one sold a jug of wine to another and it became sour, Rav said: During the first three days [of the sale] it is [regarded as still] in the possession of the seller; after that, [it is regarded as] in the possession of the buyer. And Shmuel says: Wine leaps upon the shoulder of its owner.

Rav Yosef decided a case in accordance [with the opinion] of Rav, in [respect of the sale of] beer; and in accordance with that of Shmuel in [respect of] wine. And the law is in agreement with [the opinion] of Shmuel. (96a – 96b)

INSIGHTS TO THE DAF

Requesting a refund for sour cheese

If you buy an item and later find it defective, the transaction is a *mikach ta'us* retroactively invalid and you may demand your money back or refuse to pay if you bought on credit. You must, though, prove the item was defective before you bought it and, failing to do so, the seller may claim the defect came about while the article was in your possession. Our *sugya* therefore explains that a person who buys *sheichar* – “beer” or “liquor” (the Gemara uses barley beer and date liquor for examples) – may return it and demand his money back if it sours within three days of the purchase.

The Gemara assumes that an alcoholic beverage cannot sour in three days; it started to go bad, then, before being bought and the halachah was ruled accordingly (*Shulchan 'Aruch, C.M. 230:7*).

A cow that did not live up to its reputation: A person bought a cow, the seller promising it would produce a generous amount of milk each day. Disappointed at the cow's poor performance, the purchaser complained to HaGaon Rav N.Z. Berlin zt"l, known as the Netziv, and asked him to define the transaction as a *mikach ta'us*. The gaon, though, explained to the purchaser (*Responsa Meishiv Davar, III, 19*) that he had no evidence that the cow hadn't been as plentiful as promised while at the seller's. Animals are extremely affected by their environment and the move to new pastures could have had a bad influence. The Gemara in Bechoros 39a, for example, asserts that a cow's digestion is affected by the number of other cows eating with it: the more cows together, the better their digestion. As long as the purchaser fails to prove, then, that the cow stopped yielding the promised amount of milk while still in the seller's possession, the deal cannot be considered a *mikach ta'us*. Even if the purchased cow has not yet been paid for, he must pay up, as ruled in *Shulchan 'Aruch (C.M. 232:11)*.

Cheese found to be sour: Now that we have clarified this important rule, though, we should try to understand an apparently contradictory decision in *Shulchan 'Aruch (ibid 232:15)*: If a person buys cheese and finds it has soured before a reasonable time has elapsed, we apply the rule that "anyone making a claim must present proof", as in any usual

financial or property-related case. If, then, the purchaser has not yet paid for the cheese, he may return it without paying ("You sold it to me sour!"): The seller is the claimant and must prove the cheese was good when sold. If he's been paid, however, then the purchaser is the claimant, demanding his money back, and must **prove** the cheese was sour when sold ("Maybe", the grocer can retort, "You forgot to put it in the fridge?"). Now, why is a cow different from cheese? Why must the cow's new owner prove it stopped giving milk **before** being sold and, otherwise, must pay up whereas the purchaser of the cheese gets the benefit of the doubt?

DAILY MASHAL

A distinction between cows and dairy products: The *Sema* explains (*ibid, S.K. 35*) that we must consider the average nature of each commodity. Dairy products don't last long even in the best conditions. An average cow, however, stays healthy and produces milk into old age. If a cow is unhealthy, then, we assume it has become so **recently** and the purchaser must prove it became infirm while still at the seller's. The nature of cheese, though, is eventually to go sour and that may occur anytime (see *Responsa Radbaz, I, 147*).