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Mishnah

If someone deposits produce with his friend, his friend can give him back the same amount of produce and subtract the amount of mass that they usually would lose over the time of the deposit (*see cause below*). For wheat and rice, this is nine half *kav* for every *kur*. For barley and millet, this is nine *kav* for every *kur*. For spelt and flaxseed, it is three *se’ah* per *kur*. Everything subtracted is based upon the amount deposited, and the amount of time for which it was deposited. Rabbi Yochanan ben Nuri says: Why do the mice care (*whether a large amount or a small amount was deposited*)? They eat the same amount in any event, whether it is from a large deposit or a small deposit! Rather, the guardian can subtract only the amount deposited as stated above for one *kur* (*not per kur, even if he deposited multiple kurs*). Rabbi Yehudah says: If he deposited a large amount (*the Gemara explains that this means ten kur*), he cannot subtract anything, as it gets bigger. [*For example, wheat that was deposited when it was dry expands when it gets wet. This expansion equalizes the loss in mass that comes from the mice.*] (40a1 – 40a2)

Explaining the Mishnah

The *Gemara* asks: Rice loses more of its mass than the amount listed in the *Mishnah*!?

Rabbah bar bar Chanah answers in the name of Rabbi Yochanan: The *Mishnah* is discussing shelled rice.

The *Mishnah* said that for spelt and flaxseed, it is three *se’ah* per *kur*.

Rabbi Yochanan says in the name of Rabbi Chiya: This is referring to flaxseed when it is still in its stalks.

The *Baraisa* indeed supports these opinions. The *Baraisa* states: For spelt, flaxseed in its stalks, and unshelled rice, the amount is three *se’ah* per *kur*.

The *Mishnah* says that everything subtracted is based on the amount deposited etc.

The *Baraisa* states: This is so (*the amount subtracted is based on*) for every *kur*, and for every year.

The *Mishnah* says that Rabbi Yochanan ben Nuri says etc.

The *Baraisa* states that the Chachamim told Rabbi Yochanan: Lots of grain get lost and lots get scattered.

The *Baraisa* states: This (*Mishnah*) is discussing a case where he put the amount deposited together with his own produce. However, if he put his produce in a separate place, he tells him, “This is what you have.”

The *Gemara* asks: Why should it make a difference if he mixes the deposit with his produce? Let us see how much produce he has (*and figure out how much he should give back*)!

The *Gemara* answers: The case is where he takes (*and eats*) from his stockpile.

The *Gemara* asks: Why don’t we just find out how much he ate?



The *Gemara* answers: The case is where he does not know how much he ate.

The *Mishnah* says that Rabbi Yehudah says if it was etc.

The *Gemara* asks: How much is a large amount?

Rabbah bar bar Chanah said in the name of Rabbi Yochanan: It is ten *kur*.

The *Baraisa* also supports this position. The *Baraisa* states: How much is a large amount? It is ten *kur*.

Someone taught a *Baraisa* before Rav Nachman. The *Baraisa* states: When does the *Mishnah* apply? It applies when he measured from his silo and returned from his silo. However, if he measured from his silo and returned produce from his house, he does not take away an amount that was lessened, as it expands (*and equalize that amount*).

Rav Nachman asks: Are we dealing with fools who give with large measurements and take with small measurements? Perhaps you mean (not measurements of silos, but rather) the season of the silo. [*The Baraisa should read as follows.*] When does the *Mishnah* apply? It applies when he measured out the deposit when it was the silo season (*and the grain was almost dry*), and received it back during the same season. However, if he measured out the deposit during the silo season and received it back during the rainy season, he does not subtract any amount, as it expands.

Rav Pappa said to Abaye: If so (*that it expands to such a degree*), the barrel these grains are stored in should burst!? There was indeed an incident where the barrel burst. Alternatively, it is possible the barrels do not normally burst because they are pressed so tightly together (*and therefore the grain does not expand*). (40a2 – 40a3)

Mishnah

He can deduct one sixth of the wine (*as the barrels absorb one sixth*). Rabbi Yehudah says: He can deduct one fifth. He can deduct three *lug* of oil per one hundred *lug*, one and a half due to sediment and one and a half due to absorption. If it was refined oil he cannot subtract the amount for the sediments. If he used old barrels, he cannot subtract the amount for the absorption. Rabbi Yehudah says: Even if someone sells refined oil to his friend for the entire year, the seller can subtract one and a half *lug* for absorption. (40a4)

Wine and Oil

The *Gemara* explains: There is no argument in the *Mishnah*, as each person is stating his opinion based on the conditions of the area where he lived. In the land of the *Tanna Kamma*, they coated the insides of the barrels with wax, so they did not absorb as much oil. In the land of Rabbi Yehudah they coated it with pitch, and it therefore absorbed more.

Alternatively, it could be that they used different types of earth to make their barrels. The earth used in the land of Rabbi Yehudah was more absorbent than that used in the land of the *Tanna Kamma*.

In the land of Rav Yehudah, they would fit forty-eight *kuz* (*a small measurement*) into a barrel. They would sell the barrel for six *zuz*. Rav Yehudah would sell six *kuz* for a dinar. If you deduct thirty-six *kuz* which he would sell for a total of six *zuz*, you have twelve *kuz* left. If you deduct eight *kuz* due to the absorption which is one sixth, you have four *kuz* left.

The *Gemara* asks: Didn't Shmuel say that someone trying to make money should not charge more than one sixth? [*Why didn't Rabbi Yehudah try to make more money? He was well within this law!*]

The *Gemara* answers: He included the barrel and the sediments in his profit margin (*which were included in the price of him buying the barrel for six zuz*).



The *Gemara* asks: If you include this, he indeed was charging more than one sixth! [How could he do so?]

The *Gemara* answers: He included taking wages for his toil and to pay the shopkeeper (*who would sell them*). (40a4 – 40b1)

The *Mishnah* says that if it was refined oil he should not subtract for sediments etc.

The *Gemara* asks: Isn't it impossible that the barrels did not absorb at all?

Rav Nachman answers: The barrels were old and already absorbed a lot (*and would not absorb more*).

Abaye answers: Even new barrels, once a barrel reaches its limit of absorption, it does not absorb any more. (40b1)

Rabbi Yehudah said: Even if someone sells refined oil to his friend for the entire year, the seller can subtract one and a half *lug* for absorption.

Abaye says: According to Rabbi Yehudah it would seem one is allowed to purposely mix in sediments when he sells oil, and according to the *Chachamim* he cannot. According to Rabbi Yehudah the buyer accepts this, as the seller can say that if he wanted to mix the sediments into his barrel he would be allowed to, and therefore he should accept these sediments as part of the sale. [Even when the oil is not mixed with sediments, he can purposely throw in sediments as long as he is not selling refined oil.]

The *Gemara* asks: Let the buyer tell him that if he had sold him everything mixed together, he would have sold it this way in his store. Now that the sediments are being given to him separately, what can he do with them?

The *Gemara* answers: The case is where he is selling it to a private person (*not a storekeeper*), who does not mind taking the sediments separately as food.

[The *Ritva* explains that the argument between Rabbi Yehudah and the *Chachamim* is whether or not the seller can purposely add sediment from the bottom of the barrel, even though the oil is refined. When the *Gemara* asks about giving sediment separately, it means that the merchant should even be able to sell an amount of sediment from a different barrel together with the refined oil. The *Gemara* answers that this would only hold true if the buyer does not mind. Otherwise, sediment from a different barrel does not mix well with oil from a different barrel. Even Rabbi Yehudah would agree that a buyer does not have to accept such sediments.]

The *Gemara* asks: Why can't the buyer say that being that you did not yet mix the oil with sediments, it is a sign that you have relented and indicated you are giving me oil without any sediments?

The *Gemara* answers: Rabbi Yehudah holds that we do not assume he relented. This is as the *Mishnah* states: If a person sold his friend the yoke that is placed on oxen, it is not an indication that he has sold him the oxen. If he sold him the oxen, it is not an indication he has included the yoke. Rabbi Yehudah says: One can tell based on the price. What is the case? If someone says, "Sell me your yoke for two hundred *zuz*," it is obvious that a yoke alone does not cost two hundred *zuz*. The *Chachamim* say: The amount of money is not a proof. [The *Chachamim's* position is that we assume the buyer merely wanted to give the seller more money. Rabbi Yehudah argues that unless a buyer or seller explicitly says they are giving a present, the assumption is they are staying within the confines of the sale. According, in our case of selling oil, Rabbi Yehudah does not assume there is any relenting on the part of the seller unless specified.]

According to the *Chachamim*, one may not mix in sediments. The reason the buyer does not have to accept this is that he can say, "If you want to mix sediments from outside the barrel, would you be allowed to do so? Now (*that the*

sediments are on the bottom of the barrel and not mixed in), as well, I will not accept this.”

Rav Pappa asks Abaye: On the contrary, the opposite is understandable. According to the *Chachamim* it should technically be permitted to mix in sediments, but the buyer does not have to accept it as he can say that he assumed that the seller relented (*and wanted to give him without sediments*). According to Rabbi Yehudah it should technically be forbidden, and the only reason he must take it is because the seller can say this is not understandable. If he cannot mix in sediments as the buyer does not have to accept them, how can he make a living by buying something at a price and selling it at that same price? [*His profit clearly comes from selling the sediments at the price of oil!*] (40b1 – 40b2)

The *Baraisa* states: Both a depositor and buyer for the sediments including pits on the top of the oil. What is the case? If the *Baraisa* means that just as a buyer does not have to accept this, so too a person who deposits with a guardian does not have to accept this as part of his oil, let the guardian say: What should I do with this? Rather, it must mean that just as a depositor receives this, so too a buyer can be given this by the seller as part of his oil.

The *Gemara* asks: Does a buyer indeed receive this? The *Baraisa* states: They say that the murkiness of the oil is the seller’s loss, as the buyer only accepts one and a half *lug* of regular sediments (*from the bottom*).

The *Gemara* answers: One case is where he took money in Tishrei and only took the barrel in Nissan. He paid according to the quality of a barrel of oil in Tishrei, which usually is somewhat murky. The other case is where he paid and took the barrel in Nissan, meaning that he paid for quality oil that is usually found in Nissan. (40b2 – 40b3)

Mishnah

If someone deposits something with his friend, and the owner did not set aside a place for the item deposited (*in the*

guardian’s house), and the guardian carried it and broke it, if it broke when it was in his hand, he is liable if he was carrying it for his own reasons. If he was carrying it for the good of the item when it broke, he is not liable. If it broke only after he put it down, he is not liable whether he was carrying it for its sake or for his sake. If the owner set aside a place where the object was supposed to be and the guardian carried it and broke it, whether it happened when he was holding it or after he put it down, he is liable if it was for his own purposes, but not if it was for the object’s sake. (40b3)

DAILY MASHAL

Rashi says that the stork is called Chasida from the word “Chosid”, pious. Rashi explains that the stork does Chesed with its friends and it shares its food source rather than hoard it for itself. When it comes to the mouse, however, Tosfos citing a Yerushalmi, describes it as a “Rasha” because it not only eats the homeowner’s food, it also calls its friends to eat.

Why the unbalanced treatment between the two of these generous creatures? Rav Chaim Kanievisky answers that the Chasida’s food comes from Hefker, it is not taking from anyone else. However, the mouse steals his food from people’s homes. Reb Chaim says that from here we learn an important lesson. If you do Chesed on someone else’s expense you aren’t a chossid of a man; you’re like a wicked mouse.

The Imrei Emes answers: A mouse may invite its friends only when there is an abundance of food, but not when there is a meager amount; a stork, however, will always share with others.