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Bava Metzia Daf 49

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o"h

Tzvi Gershon ben Yoel (Harvey Felsen) o"h

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

Change your Mind?

Rav Kahana was selling linen. Buyers agreed to pay some linen, and made partial payment on their purchase. Before the buyers took possession of their linen, the price increased. Rav told Rav Kahana that the amount of linen which was worth the partial payment he must deliver at the original price, but the rest is simply a verbal agreement. Rav Kahana may back out of such an agreement, without being considered untrustworthy. The *Gemora* says this follows Rav's general opinion that backing out of a verbal agreement is not a lack of trust. Rabbi Yochanan says that backing out of a verbal agreement is a lack of trust.

The *Gemora* cites a *braisa* to prove Rabbi Yochanan's position. Rabbi Yosi bar Rabbi Yehudah says that when the Torah specifies the weights that one must keep just, the Torah explicitly lists a *hin*, to hint that when one must keep his word, thereby keeping his "*hen*" (*yes*) just. This *braisa* seems to indicate that one may not retract a verbal agreement.

Abaye deflects this proof by saying that the *braisa* is only excluding a case where one said something that he didn't mean *at the time*, while Rav is saying that one may change his mind later, and is not bound by what he said. The *Gemora* brings a *braisa* which cites Rabbi Shimon that says that although one may back out of a sale until the sale item is transferred, Hashem, who punished the generation of the flood, will punish one who does not keep his word. This includes even a case where one changes his mind, disproving Rav.

The *Gemora* explains that this issue is a dispute of *Tannaim*. While Rabbi Shimon is in line with Rabbi Yochanan, Rav cites the opinion of Rabbi Yochanan ben Masya, who allows one to change his mind.

The *Mishna* tells the story of Rabbi Yochanan ben Masya's son, who hired workers for his father. When Rabbi Yochanan ben Masya heard this, he told his son that if the workers have not started their work (*in which case there was only a verbal agreement*), he should stipulate that they will only be fed basic food. Since he told his son to modify the conditions of employment - after a verbal agreement - he allows one to change his mind.

Rabbi Yochanan deflects this proof by saying that he only considers a verbal agreement to be at all binding only once the parties rely on it being fulfilled. When a son hires workers, the workers do not rely on the verbal agreement until they begin work, since they realize the father may modify the terms, but in a general case, where both parties relied on the verbal agreement, one may not change his mind. However, once the workers began working, they assume that the father was apprised and agreed, and the verbal agreement cannot then be changed. (49a)

When do they Rely?

The *Gemora* cites another statement of Rabbi Yochanan that seems to contradict his position. Rabbi Yochanan says that if someone told his friend that he will give him a gift, he is allowed to back out of the obligation, indicating that one may change his mind after making a verbal commitment.

Rav Pappa explains that Rabbi Yochanan only said one may back out if he said he will give a large gift, since the recipient does not rely on a verbal commitment for a large gift. If it was a small gift, he must keep his word, since one does rely on a mere verbal commitment for a small gift. Therefore, Rabbi Yochanan says that if one says to a *Levi* that he plans to give a measure of *ma'aser* to him, the *Levi* may already use that *ma'aser* as *terumas ma'aser* on his existing *ma'aser*. Since the gift being given by the owner of the grain is small (*just the right of*



choosing which Levi to give it to), the Levi may rely on the verbal commitment made to him. (49a)

It's your Money

A man paid money for sesame seeds, but before taking the merchandise, the price went up, and the sellers sold it to someone else. When the buyer asked for the seeds, the sellers told the buyer that they had no more seeds, so he should retrieve his money. Before he retrieved it, the money was stolen.

Rava said that since the sellers told the buyer to take his money, they are not custodians – not paid nor unpaid – and are not liable for the theft. They do have to accept the *mi shepara* curse (allowing them to back out of the sale), or else they must give the buyer the merchandise.

Ravina said that he heard a different version of the story from the seller himself (*Rav Tevus* or *Rav Shmuel bar Zutra*), who was a Torah scholar. The seller said he would never have backed out of a sale. Rather, the buyer came to the seller late Friday afternoon, and asked if the seller had sesame to sell. When the seller said he didn't, the buyer deposited the purchase money with the seller, since *Shabbos* was approaching. The seller told him the house was available for him to leave the money, and then the money was stolen.

Rava said that by saying the house was available, the seller was not accepting custodianship, neither paid nor unpaid, and he is not liable. There was no discussion of *mi shepara*, because there was no sale. (49a – 49b)

Who can Retract, and Why?

Rabbi Shimon said in the *Mishna* that whoever has the money has the upper hand, and can decide whether to retract the sale or not.

The *braisa* explains that if the seller has the money and merchandise, the seller may retract the sale. However, if the merchandise is already in the possession of the buyer, no one may retract the sale.

The *Gemora* explains that the *braisa* means that even if the seller rented an attic in the buyer's house, and the merchandise is there, the seller may not retract the sale.

Rabbi Shimon says the only reason money does not effect a transfer of ownership is to ensure the seller will not be negligent with the merchandise, and not save from a fire. In this case, although the merchandise technically has not entered the possession of the buyer (since the attic is rented to the seller), since it is close to the buyer's house, if there were a fire, the buyer could salvage the item, and therefore there is no need to make the sale wait for a transfer of the merchandise.

A man paid for a donkey, and then heard that the duke's deputy wanted to seize it. When he therefore wanted to retract the sale, Rav Chisda said that he may, since both the seller and buyer have the option of retracting a sale before the merchandise is transferred. (49b)

Ona'ah – How Much and How Long?

The *Mishna* discusses the details of *ona'ah* – a sale that is not at a fair price.

The Sages says that unfair selling is defined at a difference of a sixth in the price (e.g., 4 coins out of 24), and one may return an item on such a sale until the time it would take to show it to a merchant or relative. Rabbi Tarfon says the difference is a third (e.g., 8 coins out of 24).

When the merchants of Lod heard this, they were happy, since it allowed them a larger margin above the fair price. However, when Rabbi Tarfon told them that he also allowed a day for the buyer to return the item, they went back to following the Sages' opinion.

Rav and Shmuel debate how the sixth of *ona'ah* is defined. Rav says the sixth is a fraction of the fair value of the item, while Shmuel says it also includes a sixth of the sale price. The *Gemora* explains Rav and Shmuel's position in different scenarios of a sixth:

Fair price	Sale Price	Claimant	Sixth of?	Rav	Shmuel
6	5	seller	fair price	<i>Ona'ah</i>	<i>Ona'ah</i>
6	7	buyer	fair price	<i>Ona'ah</i>	<i>Ona'ah</i>

7	6	seller	sale price	Valid	<i>Ona'ah</i>
5	6	buyer	sale price	Voided	<i>Ona'ah</i>

The *Gemora* tries to prove Shmuel's opinion from the *Mishna*. The *Mishna* said if the price difference was 4 coins out of 24, it is *ona'ah*. The *Gemora* assumes the *Mishna* means a case where the sale price was 24, and the fair price was 4 less (i.e., 20), and it is considered *ona'ah* of the buyer, following Shmuel's position (*the last case in the chart above*).

The *Gemora* attempts to deflect this by saying the *Mishna* means a case where fair price was 24, and the sale was at 4 less (i.e., 20), and it is considered *ona'ah* of the seller (*the first in the chart above*).

The *Gemora* rejects this reading, since the continuation of the *Mishna* lists the time limit for claiming *ona'ah*, which is only applicable to an aggrieved buyer, who has the item available to investigate its price.

Instead, the *Gemora* says the *Mishna* is referring to an item whose fair price is 24, but was sold at 4 more (i.e., 28), and that is considered *ona'ah* of the buyer (*the second case in the chart above*).

The *Gemora* has the same logical discussion with Rabbi Tarfon's opinion, first assuming a case of a sale price of 24 on an item worth 18 (*proving Shmuel*), then deflecting to a case of a sale price of 18 on an item worth 24, but finally settling on a case of a sale price of 32 on an item worth 24.

The *Gemora* brings a *braisa* that follows Shmuel's position. The *braisa* says that the aggrieved party in *ona'ah* can decide whether to void the sale, or ask for the price difference. For example, says the *braisa*, if one bought an item worth 5 for 6, the buyer is aggrieved, so he may choose whether to void the sale or get the price difference (*one coin*) back. If one sold an item worth 6 for 5, the seller is aggrieved, so he may choose whether to void the sale, or get the price difference (*one coin*) back. The first case in the *braisa* is the last case in the chart above, which only Shmuel considers *ona'ah*. (49b – 50a)

DAILY MASHAL

Keeping your Word

Rav and Rabbi Yochanan debate whether backing out of a verbal commitment is considered untrustworthy. The *Halachah* (C" M 204:7-9) follows Rabbi Yochanan, as he has clear support in the opinions of the *Tannaim*.

The Rishonim debate the parameters of their opinions.

Rashi indicates that Rav only allows one to back out of a verbal commitment when conditions changed, as in the case of Rav Kahana.

Many Rishonim, including the Rif, Ramban, Tosfos (49a Modeh) and Rashba hold that Rav and Rabbi Yochanan hold their positions regardless of whether conditions changed. In all cases, Rav says it is considered trustworthy, while Rabbi Yochanan says it is considered untrustworthy.

The Baal Hamaor and the Rosh say that both Rav and Rabbi Yochanan allow one to back out of a verbal commitment if conditions changed.

The table below summarizes these opinions:

Conditions changed?		Rashi	Ramban, Rif, Rashba, Tosfos	Rosh, Baal Hamaor
Yes	Rav	Yes	Yes	Yes
	Rabbi Yochanan	No	No	Yes
No	Rav	No	Yes	Yes
	Rabbi Yochanan	No	No	No

According to the Baal Hamaor, even Rabbi Yochanan would agree to the ruling Rav gave Rav Kahana, and the *Gemora* only used the story as a springboard for the more general debate.

In the course of the discussion, the *Gemora* quoted the statement that we learn that one must keep his “*hin*” (*yes*) just, by keeping his word. Abaye deflected this as a proof to Rabbi Yochanan by limiting this requirement to one meaning what he says at the time he says it. According to the Baal Hamaor, Abaye’s statement is also relevant to Rabbi Yochanan, since he allows one to violate his verbal commitment if conditions changed.

The Nimukei Yosef explains that in any case Abaye’s statement is relevant to Rabbi Yochanan, since Rabbi Yochanan agrees that one may violate a verbal commitment on which the recipient did not rely (e.g., a large gift). Therefore, the Rif quotes Abaye, although he rules like Rabbi Yochanan. Once someone is called untrustworthy, the community is allowed to employ social sanction, by calling him wicked, and announcing in public what he did.

INSIGHTS TO THE DAF *Promising an Honor*

The Rishonim discuss a case where a father committed to honor someone with part of the *bris* ceremony, either as a sandak or a *mohel*, and then changed his mind. (See Beis Yosef YD 264)

The Maharam says that since these commitments are routinely made and kept, the commitment is enforceable in court.

Rabbeinu Yechiyel limits this to a commitment made after the baby was born.

The Rosh disagrees, and says that only a standard *kinyan* is enforceable.

Rabbeinu Tam says that if one committed to a *mohel* to do his son’s *bris*, this has the status of a verbal commitment, and one who does not keep it is considered untrustworthy.

The Pri Yitzchak says that committing to a *mohel* has the status of a small gift, since the father typically cannot perform the *bris*, and he is simply giving the right to choose the *mohel*. However, committing to a *sandak* is a large gift, since the father himself can do that, and he is giving that right to the *sandak*. Since it is a large gift, a verbal commitment would not be binding.

What is a Sixth?

Shmuel states that *ona’ah* includes a case of a sixth of the sale price, even if it is not a sixth of the fair price. Shmuel also agrees that a sixth of the fair price is considered *ona’ah*. Therefore, according to Shmuel, all the cases below are *ona’ah*:

1. Item worth 70, sold for 60
2. Item worth 60, sold for 50
3. Item worth 60, sold for 70
4. Item worth 50, sold for 60

The Rambam (Mechira 12:3) says that anything less than a sixth is considered forgiven. The Rambam gives two examples:

1. Item worth 60, sold for 51
2. Item worth 60, sold for 69

The Magid Mishnah challenges the first case of the Rambam. In this case, a sixth of the fair price is 10, while a sixth of the sale price is 8.5. The difference in the sale is less than a sixth of the fair price, but is more than a sixth of the sale price (8.5), and should be *ona’ah* according to Shmuel!?

The Shulchan Aruch (HM 227:3) only discusses the second case, while the Rama (227:4) cites the first case.

The Sma (227:5,11) rules like the Magid Mishnah.

The Taz explains that the Rambam holds that Shmuel accepts either form of sixth, but only at a sixth. Any other deviation is evaluated based on the fair price only. See Drisha C”M 227:4 for more details.

QUESTIONS AND ANSWERS FROM YESTERDAY’S DAF to refresh your memory

Q: What is said about someone who retracts his words?

A: The *Chachamim* are not pleased with him.

Q: How does a gentile acquire merchandise according to Rish Lakish?

A: Money.