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Bava Metzia Daf 50

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Daf Notes is currently being dedicated to the neshamot of

**Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h**

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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

### **Merchants of Lod**

The *Gemora* inquires: According to the view of the Rabbis (*who hold that ona’ah is a sixth*), is a price fraud of less than a sixth immediately waived, or is it waived only after the buyer has had time to show the item to a merchant or his relative?

The *Gemora* asks: And if you will conclude that it is only after he has had time to show the item to a merchant or his relative, what would be the difference between a sixth (*where the Mishna above rules that one may return such an item until the time it would take to show it to a merchant or his relative*) and less than a sixth?

The *Gemora* answers: There still would be a difference, for in the case of a sixth, he (*the one who was defrauded*) has the upper hand, and can either withdraw or retain the ownership but have the overcharge returned; whereas in the case of less than a sixth, he must retain ownership and have the overcharge refunded. What then is the *halachah*?

The *Gemora* says: Let us resolve this from our *Mishna* [*When the merchants of Lod heard this (that Rabbi Tarfon ruled that a third of the price is regarded as ona’ah), 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 Rabbis opinion. Now, it was thought that less than a third according to Rabbi Tarfon’s view (*the sale would still be valid*) is identical in *halachah* with less than a sixth according to the Rabbis. Now, it is well if you would say that an overcharge of less than a sixth, according to the opinion of the Rabbis, (*it is only*) when the buyer has had enough time to show the item to a merchant or his relative (*where*

*he can demand a refund; afterwards, he forfeits that right*), whereas according to Rabbi Tarfon, (*it is only after*) the whole day (*passes before he forfeits the rights of demanding a refund*). It was on this account that the merchants reverted to the ruling of the Rabbis. [*Assuming that the Rabbis allowed the buyer to demand a refund when he was overcharged by less than a sixth – the original excitement of the merchants can be understood, as well as their ultimate rejection. They were not pleased that a buyer could void the sale if he was overcharged by more than a sixth. When they heard that Rabbi Tarfon ruled that a sale cannot be voided unless there was an overcharge of more than a third, they were excited, for now, if they overcharged a buyer by more than a sixth, but less than a third, the buyer could not void the sale; the buyer would have a short amount of time (the time it took to show it to a merchant or his relatives) to demand a refund of the overcharge. However, when Rabbi Tarfon proclaimed that the time limit would be the entire day (and not within the time it took to show it to a merchant or his relatives), they realized that they would lose out with this method. For in cases where the overcharge was less than a sixth, the buyers would only have a short amount of time to demand a refund according to the Rabbis, whereas Rabbi Tarfon allowed them the entire day. This advantage outweighed the fact that if the overcharge was a sixth or more than a sixth (but less than a third), the sale could be voided according to the Rabbis, but according to Rabbi Tarfon, the buyer could only claim a refund for the overcharged amount.*

### **More than a sixth, but less than a third:**

**Rabbis - Sale could be voided, but only in a short amount of time.**

**Rabbi Tarfon - Sale cannot be voided; buyer has the entire day to demand a return of the overcharge.]** But if you would



say according to the Rabbis that when the buyer is overcharged by less than a sixth, he immediately waives his right to demand a refund, and similarly according to Rabbi Tarfon (when the buyer is overcharged by less than a third), he immediately waives his right to demand a refund, why did the merchants revert to the Rabbis opinion? Rabbi Tarfon's viewpoint would be more advantageous to them! For that which the Rabbis regarded as price fraud (either to void the sale or to demand a refund of the overcharge), Rabbi Tarfon would rule that the buyer waives his right immediately!?

**Less than a third:**

**Rabbis – Buyer could demand a refund or void the sale.**

**Rabbi Tarfon – Buyer waives rights immediately – sale is final!**

[The Gemora demonstrates that the story still makes sense – even if the buyer immediately waives his rights when he was overcharged by less than a sixth.] Do you think that less than a third according to Rabbi Tarfon's view is identical in halachah with less than a sixth according to the Rabbis? No, it is not! From a sixth to a third according to Rabbi Tarfon is the same as exactly a sixth according to the Rabbis. [The halachah of exactly a sixth according to the Rabbis is this: The buyer can either void the entire sale or he can demand a refund of the overcharge. (If the price fraud was more than a sixth, both the buyer and the seller can void the sale.) The following will explain why the merchants reverted to the opinion of the Rabbis:

**Exactly a sixth:**

**Rabbis - Buyer can either void the sale or demand a refund of the overcharge, but only in a short amount of time.**

**Rabbi Tarfon - Buyer can either void the sale or demand a refund of the overcharge, but he has the entire day to do so.**

**More than a sixth, but less than a third:**

**Rabbis - Sale could be voided by either party (there is a question if there is a deadline for this).**

**Rabbi Tarfon – The buyer (but not the seller) has the entire day to either void the sale or demand a refund of the overcharge.]**

The Gemora asks: If so (that the only argument by more than a sixth is if the seller can also void the sale), why were they pleased in the beginning (the buyer anyway can void the sale if he pleases)?

[In order to answer this question...] We should prove from this fact (that they initially were pleased with Rabbi Tarfon's opinion) that according to the view of the Rabbis, in a case where the sale is voided, one can always retract. They thus rejoiced when Rabbi Tarfon told them that an overcharge (from a sixth to a third) constitutes price fraud (for they thought that the buyers would have a very short time limit to make such a claim). But then when he told them that the time for withdrawing is the entire day, they reverted back to the Rabbis.

**More than a sixth, but less than a third:**

**Rabbis - Sale could be voided by either party forever.**

**Rabbi Tarfon – The buyer (but not the seller) has the entire day to either void the sale or demand a refund of the overcharge.**

(The fact that Rabbi Tarfon imposed a limit of one day was not so advantageous for them, for once the buyer has one day to void the sale, he will probably find time to do so. Furthermore, price fraud more than a sixth was not such a common occurrence.)

**Exactly a sixth:**

**Rabbis - Buyer can either void the sale or demand a refund of the overcharge, but only in a short amount of time.**

**Rabbi Tarfon - Buyer can either void the sale or demand a refund of the overcharge, but he has the entire day to do so.**

(Here, it would be a big loss for them if they would follow Rabbi Tarfon's opinion, for in the common case of precisely a sixth, the buyers would have the entire day to void the purchase; whereas according to the Rabbis, they would only have a short amount of time.)]

For if you should think, continues the Gemora, that according to the view of the Rabbis, in a case where the sale is voided, it is only within the time that the buyer can show



it to a merchant or to his relative, why did they rejoice in the first place?

**[More than a sixth, but less than a third:**

***Rabbis - Sale could be voided by either party, but only in a short amount of time.***

***Rabbi Tarfon – The buyer (but not the seller) has a short amount of time to either void the sale or demand a refund of the overcharge.]***

The Gemora answers: They rejoiced in respect of a sixth itself. For according to Rabbi Tarfon, there would be no claim at all, whereas according to the Rabbis, it would be a case of price fraud.

[In conclusion:

**Rabbi Tarfon**

***Less than a sixth or a sixth – Sale is valid; no claims whatsoever.***

***More than a sixth, but less than a third - The buyer (but not the seller) can either void the sale or demand a refund of the overcharge. (Originally, this ruling was thought to be limited until the buyer had enough time to show it to a merchant or to his relatives; afterwards he ruled that he has the entire day.)***

***A third or more - Sale could be voided by either party.***

**Rabbis**

***Less than a sixth – Sale is valid; no claims whatsoever.***

***Exactly a sixth - The buyer (but not the seller) can either void the sale or demand a refund of the overcharge.***

***More than a sixth - Sale could be voided by either party, but only within a short amount of time.***

*Initially, the case of exactly a sixth was more advantageous according to Rabbi Tarfon, for the sale was valid immediately. However, when Rabbi Tarfon ruled that the buyer had the entire day to submit his claim, the merchants reverted back to the opinion of the Rabbis.]*

The Gemora inquired: In cases where the sale is void according to the Rabbis, can the buyer retract forever, or can he retract only within the time it takes for him to show the

purchase to a merchant or to his relatives? And if you will conclude that (*it must be that there is no limit, for if*) he can only retract within the time it takes for him to show the purchase to a merchant or to his relatives, then what difference would there be between a price fraud of a sixth and one of more than a sixth? This, the Gemora says, is not a proof, for if the price fraud was exactly a sixth, only the one who was defrauded can retract, but where the price fraud was more than a sixth, both the buyer and the seller can retract. So, what is the *halachah* (regarding our inquiry)?

The Gemora says: Let us resolve this from our Mishna [*When the merchants of Lod heard this (that Rabbi Tarfon ruled that a third of the price is regarded as on'ah), 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 Rabbis opinion. Now, it is well if you say that annulment of the sale according to the view of the Rabbis, is only within the time it takes to show the purchase to a merchant or a relative, whereas according to Rabbi Tarfon's view he has the entire day, for it is on that account that they reverted to the Rabbis opinion. But if you say that in the case of annulment of sale, according to the view of the Rabbis, one can always retract, why did they revert to the opinion of the Rabbis? Surely Rabbi Tarfon's ruling was more advantageous to them, since the buyer could only demand a refund during that day, but no more!?

**[More than a sixth, but less than a third:**

***Rabbis – Buyer can always void the sale.***

***Rabbi Tarfon – The buyer (but not the seller) has the entire day to either void the sale or demand a refund of the overcharge.***

*(Rabbi Tarfon's ruling is more advantageous to the merchants, for the buyers are limited to one day.)*

**Exactly a sixth**

***Rabbis - Sale could be voided, but only in a short amount of time.***

***Rabbi Tarfon – The buyer has the entire day to either void the sale or demand a refund of the overcharge.***



(Although the Rabbis ruling seems to be more advantageous for the merchants, it is easily avoidable by selling it for slightly less than a sixth, where the buyer waives his right to demand a refund.)]

The Gemora answers: Annulment of a sale is rare.

[It is therefore not considered advantageous to the merchants, and even if it does occur, there is no advantage to Rabbi Tarfon's ruling, for once the buyer has one day to void the sale, he will probably find time to do so. It emerges that they reverted to the opinion of the Chachamim on account of a case where the price fraud was exactly a sixth, for according to the Chachamim, the buyers only had a short amount of time in which to demand a refund, but according to Rabbi Tarfon, they had the entire day to submit their claim.]

Rava said Raba said: The *halachah* is: In the case of less than a sixth, the sale is valid. If the fraud was more than a sixth, the sale can be voided (by both of them). If it was exactly a sixth, it is valid, but the overcharge must be returned. And in both of those cases, it is only if the claim was made within the time it takes to show the purchase to a merchant or his relative.

The Gemora cites a supporting *braisa*: In the case of price fraud less than a sixth, the sale is valid. If the fraud was more than a sixth, the sale is void. If it was exactly a sixth, it is valid, but the overcharge must be returned. These are the words of Rabbi Nassan. Rabbi Yehudah haNasi said: The seller (when he was the one defrauded) has the upper hand: if he wishes, he can say, "Return me the merchandise," or he can say, "Pay up the amount that you defrauded me." And in both of those cases, it is only if the claim was made within the time it takes to show the purchase to a merchant or his relative. (50a – 50b)

## DAILY MASHAL

### Torah is for Jews

The *ב"ב* used to say over the following story. In Russia, there was a certain Education Minister who became friendly with a *משכיל* named Dr. Lilinthe. In their conversations, this *משכיל* used to quote to the Minister from *משניות* and *גמ'*. The Minister developed a desire to learn *גמ'* and asked Lilinthe to teach some *גמ'* to him. Lilinthe and two other *משכילים* chose a *גמ'* in *בבא מציעא דף נ' גמ'* to learn with him. This was the *סוגיא* called *תגרי לוד* which they figured since it was a *גמ'* with only *סברא* and one didn't need too much background information, the Minister would be able to understand it. They prepared it extremely well and began to teach it to him. After they finished the *גמ'* one time, the Minister appeared exhausted and extremely tired. He asked them to repeat the *גמ'* to him. They learned it with him again. After the second time, he closed the *גמ'* in exasperation and proclaimed that he didn't understand one word that they taught him. When they told this over to the *ב"ב*, everyone was amazed that this brilliant Minister couldn't understand a simple *גמ'*. The *ב"ב* said that there is a clear *גמ' סנהדרין* that says *תורה* "צוה לנו משה מורשה קהלות יעקב - לנו מורשה ולא להם מורשה". *גוי* is only for Israel and not for the *תורה*.

## QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: How is one obligated to sustain his workers?

A: Like a feast from Shlomo Hamelech.

Q: When does R' Yochanan allow a person to retract from his words?

A: By a large gift.