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**How Lenient is Demai?**

Shmuel stated that Rabbi Meir is the author of our *Mishnah*, who is as strict even with the Rabbinic prohibition of *demai* as with untithed produce. Rav Sheishes challenged this by citing a *Baraisa* where Rabbi Meir stated that one may redeem *ma’aser sheini* of *demai* from silver to silver, copper to copper, copper to silver, and copper to fruit, whereas true *ma’aser sheini* can be redeemed only from silver to copper, and even that can only be done under extenuating circumstances. Rav Yosef answers that although Rabbi Meir is lenient with regard to the redemption of *demai*, he is strict with regard to eating it, which is the issue in the *Mishnah* (55b).

Rav Yosef proves this from a *Baraisa* where Rabbi Meir and the Sages debate about the circumstance one is allowed to sell *demai*. Only the wholesaler was permitted to sell *demai*, but a retailer must tithe it in all cases; these are the words of Rabbi Meir. But the Sages say: Both a wholesaler and a retailer may sell or send [produce] to his fellow or give it to him as a gift without fear.<sup>1</sup>

Ravina challenges this from a *Baraisa* where Rabbi Meir says that one who buys bread from an *am haaretz* baker (*suspected of not taking tithes*), he may tithe from the hot

(freshly baked) for the cold, and the cold for the hot, and even if they are of many molds; these are the words of Rabbi Meir. - Now, as for [giving tithe] from the cold [loaves] for the hot, that is well, being in accordance with Rabbi Ilai. For Rabbi Ilai said: From where do we know that if one separates [terumah] from inferior for better [produce] the terumah is terumah? — Because it is written: And you shall bear no sin by reason of it, when you have set aside from it the best of it. Now, if it is not sanctified, why should one bear sin? Hence it follows that if one separates [terumah] from inferior [produce] for better, the terumah is terumah. But [when you say,] even if they are of many molds, let us fear lest he come to separate from what is liable for what is [now] exempt, and from what is exempt for what is liable?<sup>2</sup>

Abaye said: Rabbi Elazar was right in his objection,<sup>3</sup> but Shmuel did not answer it correctly. For Rabbi Elazar's difficulty referred to [a law involving] death at the hands of Heaven; while Shmuel answered him [from a case involving] death by the court: the latter may be different, since it is a more severe prohibition.<sup>4</sup> And Rav Sheishes' refutation was not well grounded, for he [Shmuel] referred to a law involving death, while Rav Sheishes raised an objection from

<sup>1</sup> The Sages say that one may sell *demai* if it is a bulk sale, since the buyer will assume the produce is from several sources, and *demai* must be separated. Rabbi Meir says this is allowed only if the seller is a wholesale produce seller, but a retail seller may not sell *demai*, even when selling wholesale. This *Baraisa* indicates that as far as eating *demai*, Rabbi Meir is stricter.

<sup>2</sup> Ravina explains that although taking from older bread on fresher bread is effective, even though it is not optimal, taking tithes from differently shaped breads leaves open the possibility that the bread came from different sources of produce, and he may be taking tithes

from tithed produce on untithed produce, which would not take effect. Even so, Rabbi Meir is lenient, contradicting Shmuel.

<sup>3</sup> Abaye reviews the 'give and take' on this issue, endeavoring to answer Ravina's question. Firstly, Rabbi Elazar had a valid question on the *Mishnah*, since it was strict about *demai*, which is based on a prohibition that is punishable by death at the hand of Heaven.

<sup>4</sup> Shmuel gave an invalid answer, citing Rabbi Meir's strict position on Rabbinic aspects of *gittin*, which are areas that are subject to capital punishment by court, which is more severe. Therefore, Rabbi Meir's position in *gittin* does not have bearing on *demai*.

what is merely a negative commandment,<sup>5</sup> for it is written: You may not eat within your gates [the tithe of your grain etc.]. - Yet the objection Rav Sheishes does raise is well answered by Rav Yosef.<sup>6</sup> - But as for Ravina, instead of raising an objection from a baker, let him support him from the case of a wholesale bread merchant. For we learned in a Mishnah: If one buys [bread] from a bread distributor, he must give tithes on [the loaves of] each mold separately; these are the words of Rabbi Meir.<sup>7</sup> What then must you answer? A bread distributor buys from two or three. Hence in the case of a baker too, [you must say that] he buys from one man [only].<sup>8</sup>

Rava said: Shmuel answered well: The designation of death exists.<sup>9</sup> (55b3 – 56a4)

### Exceptions

The *Mishnah* lists items that are not subject to the rules of *ona'ah*:

1. Slaves
2. Contracts
3. Real estate
4. *Hekdesh* (consecrated property)

These items are also not subject to:

1. *Keifel* – double payment in the case of theft
2. *Daled v'hei* – four or five times payment in the case of theft and slaughter or sale of cattle or sheep
3. Unpaid custodian's swearing in the case of loss or theft
4. Paid custodian responsibility for loss or theft

<sup>5</sup> Rav Sheishes's challenge was not valid, since he cited a case of *ma'aser sheini* outside of Yerushalayim, which is a simple prohibition, with no capital punishment, heavenly or otherwise.

<sup>6</sup> Rav Yosef's answer was sufficient to address Rav Sheishes's question.

<sup>7</sup> However, instead of Ravina challenging from the *Baraisa* he cited, concerning a private baker, he could have supported Rav Yosef from a *Baraisa* that discusses a wholesale baker, and where Rabbi Meir states that one must take tithes from each differently shaped bread on its own.

<sup>8</sup> Abaye says that the *Baraisos* regarding bakers are not based on leniencies of *demai*. Rather, the distinction is that a retail baker may

Rabbi Shimon says that *hekdesh*, for which the owner is responsible, is considered his money, and therefore *ona'ah* applies. Consecrated things for which one does not bear responsibility are not subject to the laws of price fraud. Rabbi Yehudah says that *ona'ah* does not apply in cases of selling a *sefer torah*, an animal, or a pearl. They said to him: They stated only these (slaves, contracts, real estate and *hekdesh*; those are the only items not subject to price fraud). (56a4 – 56b1)

The *Gemara* cites a *Baraisa* which is the source for these exclusions to *ona'ah*. The verse that introduces the prohibition of *ona'ah* says "v'ki simkeru mimkar... o kano miyad amisecha" - when you sell a sale item... or buy from the hand of your friend. From this verse, the *Baraisa* excludes:

1. Land and slaves - the phrase "miyad" - from the hand – something which is transferred by hand – this excludes land, which is not movable. Slaves are equivalent to land in their rules of acquisition, and are therefore also excluded.
2. Contracts - since the verse says "mimkar" - a sale item, this implies things whose very self is being sold and whose very self is being bought – this excludes contracts, which have no inherent value, and are not merchandise, and they exist only for the proof contained in them. From here they said: One who sold a contract to a perfume maker, as material to seal his perfume flasks (it is regarded as merchandise) is subject to *ona'ah*. – Is this not obvious? – It comes to exclude that which Rav Kahana said, for he said: Small sales, on the order of perutos, have no *ona'ah* prohibition, the

buy his flour from several suppliers, so one must account for that by taking separate tithes from loaves that seem different, while a private baker buys from one supplier, so one tithe is sufficient for all the loaves, even if they differ.

<sup>9</sup> I.e., in both cases there is a death penalty, and the fact that one is at the hand of Heaven only while the other is imposed by court does not negate the argument. Rava says that Shmuel's answer was valid, since capital punishable prohibitions are of equivalent stringency, and since Rabbi Meir is strict by divorce, he will also be strict with *demai*.

Baraisa is teaching us that there is price fraud by perutos.<sup>10</sup>

3. *Hekdesh* – since the verse says “*ol tonu ish es achiv*” - do not be unfair to your brother, this excludes *hekdesch*, which is not your “brother” (a peer).

The *Baraisa*’s first statement indicates that the phrase “*yad*” is taken literally, excluding land. Rabbah bar Mamal challenges this from the verse that states that Sichon the king of Emori took all the land from the king of Moav – *miyado* – from his hand. Even though the verse is referring to land, the word “*yad*” is used, indicating that it may be taken to figuratively mean “possession”.

The *Gemara* then brings various instances where we do take the word “*yad*” literally: It has been taught in a *Baraisa*: If the theft be certainly found in his hand [ . . . he shall restore double]. From this I know [the law] only [if it is found] in his hand; from where do I know it of his roof, courtyard, or enclosure? From the phrase: If it certainly be found, implying in all circumstances. Hence this is only because the Merciful One wrote: If it certainly be found; but otherwise I would have said that wherever ‘his hand’ is written, ‘hand’ is meant literally.

And furthermore, it has been taught in a *Baraisa*: [Then let him write her a bill of divorcement] and he shall give it in her hand. Thus I know only [that he can place it in] her hand; from where do I know it of her roof, courtyard, or enclosure? Because it is written: and he shall give it, implying, in any manner. Hence this is only because Scripture wrote ‘and he shall give it’; but otherwise I would have said that wherever Scripture writes ‘hand’ it is meant literally! — But [in truth] ‘his hand’ is always meant literally; there, however, it is different, because it cannot possibly be translated thus, but [must mean] ‘his possession.’ (56b1 – 56b2)

<sup>10</sup> Contract material is a small sale, and is subject to *ona’ah*.

<sup>11</sup> If one committed to plant land with the appropriate amount of wheat kernels for payment, but then planted less, is the sale subject to *ona’ah*? If the wheat is considered part of the land, it is not, but if it is

### **Price Fraud Inquiries**

Rabbi Zeira asked whether a rental is subject to the rules of *ona’ah*. The verse only included a “*mimkar*” - a sale item, which may exclude a rental. Or perhaps, there is no difference.

Abaye answered: does it say permanent sale in the verse? It says sale, and a rental is simply a temporary sale (and is therefore subject to the rules of *ona’ah*).

Rava asked whether wheat kernels planted in the ground are considered land or movable objects. The ramifications are:

1. Does *ona’ah* apply or not?

Is it just as though he had placed it in a pitcher, hence subject to the law of price fraud, or perhaps he has subordinated them to the soil? - [But] what are the circumstances? Shall we say that he declared, “I cast six [se’ahs of seeds] into a field [and am selling you these]”; and then witnesses came and testified that he cast five only? But Rava said: Anything that is sold according to measure, weight or number, even if less than the standard of overreaching, one can withdraw! - Rather [the question arises] where he declared, “I cast as much into it as was necessary”; while it was subsequently revealed that he had not sown with it as much as was required: is it subject to the law of price fraud or not? Is it as though he had placed it in a pitcher, and hence subject to price fraud; or perhaps he has subordinated them to the soil?<sup>11</sup>

2. Oaths

If one partially admitted a claim to such kernels of wheat being owed, must he swear or not? If the wheat is considered part of the land, he does not swear, but if it is still considered just wheat, he must swear.

3. *Chadash* (new grain, before the omer)

still considered just wheat, it is. [If one committed to a specific number of wheat kernels, and planted less, the sale is void, even if it is considered land, since inaccuracies in measurements applies to any sale, even land.]

[Again,] does the omer permit it [for food] or not? - But how is this meant? If it took root, then we have learned it in a Mishnah; and if not, we have also learned it. For we learned in a Mishnah: If they [the seeds] took root before the [bringing of the] omer, the omer permits them; if not, they are forbidden until the bringing of the next omer! — This arises only if he harvested and planted it before the omer, then the omer came and went, while it did not take root before the [bringing of the] omer. Now, may one take (the kernels out of the ground) and eat them? Is it as though lying in a pitcher, and therefore made permissible by the omer; or perhaps, he subordinated them to the soil?<sup>12</sup> The question stands. (56b2 – 57a1)

## INSIGHTS TO THE DAF

### *Slaves and Land*

The *Mishnah* says that slaves share the status of land regarding the exclusions listed. Therefore, a sale of a slave is not subject to the rules of *ona'ah*. Abaye says that a rental is subject to the rules of *ona'ah*, since it is equivalent to a temporary sale.

The Rishonim explain that Abaye is only referring to rental of items whose regular sale is subject to *ona'ah*, but rental of land is not subject to *ona'ah*, similar to a permanent sale of land.

The Rishonim discuss whether hiring a worker is subject to *ona'ah*. The Ramban and Rashba say that hiring a worker is not subject to *ona'ah*, since the Torah states that *ona'ah* applies when buying or selling a “mimkar” - a sale item. When hiring a worker, there is no sale item per se, and therefore no *ona'ah*.

The Rambam (Mechira 13:15, 17) says that hiring a worker is not subject to *ona'ah*, since it is akin to renting a slave. Since

buying a slave is not subject to *ona'ah*, renting one – which is a temporary sale – is also not subject to *ona'ah*. However, the Rambam says that when hiring a worker for a project, as opposed to hourly work, *ona'ah* does apply, since such a transaction is not considered a temporary sale of a slave, but a proper transaction of merchandise.

The Drisha (227:47) explains that a slave is defined by his time being owned by his owner. Therefore, an hourly worker can be considered temporarily enslaved, since during his employment period, his time is owned by the employer, while a project worker is not even temporarily enslaved, since his time is always only his. Since the Rambam exempted employment as a function of a slave's exclusion, project work, which is not similar to a slave's work, is not exempted. However, the Ramban and Rashba offer a more fundamental reason to exempt employment from *ona'ah*, and therefore apply this to all types of employment, including project work.

This dispute among the Rishonim would seem to depend on a general dispute among the Rishonim about exclusions of slaves. Rashi (Kiddushin 7a, 28a) and Tosfos (Megilla 23b Shamin) say that whenever the *Gemara* makes halachic statements about slaves, this applies to any person, even if he is free. Therefore, the *Gemara* (Kiddushin 7a) considers a wife being betrothed to be equivalent to real estate (as far as modes of acquisition), and the *Gemara* (Kiddushin 28a) treats someone's claim that one is his Jewish slave to be equivalent to a dispute over land (*as far as swearing*). Tosfos (Kiddushin 7a, 28a) and the Ritva (Kiddushin 28a), however, say that the categorization of slaves as equivalent to land only applies to Kena'ani slaves, and not to free people, or even to Jewish slaves. The Tur and Shulchan Aruch (HM 227:33,36) rule like the Rambam.

The Shach (HM 95:18) rules that the halachic rules of a slave apply to all people, since the Torah is simply using slaves as

stilled considered just wheat, bringing the *omer* permits them to be eaten.

<sup>12</sup> If the kernels of wheat were harvested before the *omer*, and then planted, may they be eaten once the *omer* is brought? If the wheat is considered part of the land, they may not be eaten, but if they are

a vehicle to explain that human acquisition is equivalent to land acquisition. In general, only Kena'ani slaves are acquired, which is why the Torah used them to teach this rule. This is consistent with the position of the Shulchan Aruch.

The Kovetz Shiurim (Bava Basra 310) suggests that the Rambam may not rule that the laws of slaves apply to all people. However, this is because only a slave can be truly permanently acquired, while other situations (e.g., a wife or Jewish slave), are only temporary, and cannot be compared to land. However, in regard to *ona'ah*, the exclusion of a slave also excludes hourly employment. Abaye explained that *ona'ah* applies to rental, only since it is considered a temporary sale. Therefore, a rental is subject to *ona'ah* where an equivalent permanent sale is subject to *ona'ah*. Although the employee does not have the rules of a slave, and cannot be permanently bought, employment's theoretical permanent counterpart *would be* enslavement, which is not subject to *ona'ah*. Therefore, the temporary sale of employment cannot be subject to *ona'ah*, since *ona'ah* derives from considering a rental as a temporary sale, as Abaye stated.

#### QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF

to refresh your memory

Q: What are *halachos* where a *perutah* is the minimum?

A: An admission (*to take an oath*) is for the value of a *perutah*; a woman may be betrothed by the value of a *perutah*; one who derives benefit from a *perutah's* worth of consecrated property violates the *halachah* of *me'ilah*; one who finds an object worth a *perutah* must announce it; one who steals from his fellow something worth a *perutah* and swears falsely is obligated to bring it to him, even to Media.

Q: When is one required to add a fifth?

A: If a non-Kohen eats *terumah* or *terumas ma'aser*, or *terumas ma'aser* of *demai*, or *chalah*, or *bikkurim*, he must

add one fifth; if one redeems his fruits of the fourth-year or his *ma'aser sheini*, he must add one fifth; if he redeems property which he had consecrated, he must add one fifth; one who derives benefit from a *perutah's* worth of consecrated property must add one fifth; one who steals from his fellow something worth a *perutah* and swears falsely is obligated to add one fifth.

#### DAILY MASHAL

##### When the walls of an old building shook

A resident of Meah She'arim expanded his interpretation of a tenant's non-ownership of rented property and treated a neighbor, renting an adjacent apartment, as a mere guest. He installed a noisy air-conditioner in the wall of the building and the said neighbor demanded its removal, claiming its operation caused the walls to shake, as well as unbearable noise. The air-conditioner, he added, was in an outer wall shared by all the tenants and its owner had no right to install it without everyone's consent. The owner of the air-conditioner claimed that he didn't have to respond as his neighbor was only renting an apartment: his status granted him no ownership empowering him to complain against residents of the building. The beis din, however, clearly explained that though rental is not defined as a sale, one must not deny a tenant the right belonging to the owner to present claims if his residential rights have been harmed (Piskei Din Yerushalayim, Dinei Mamonos, 2, p. 177).

A warning to tenants by the Chafetz Chayim: We emphasize that local practice rules in cases of rented property where conditions of the agreement have remained unclear (Shulchan 'Aruch, C.M. 313:1). The Chafetz Chayim appropriately warns (Ahavas Chesed, end of Part I) that all details of financial transactions should be stipulated in advance to prevent robbery or exploitation as local customs are often hard to verify and one of the parties may suspect the other of foul play.