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DAF Notes
Insights into the Daily Daf
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Bava Metzia Daf 56

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

How Lenient is Demai?

Shmuel stated that Rabbi Meir is the author of our *Mishna*, who is as strict even with the Rabbinic prohibition of *demai* as with untithed produce.

Rav Sheishes challenged this by citing a *braisa* 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 *Mishna* (55b).

Rav Yosef proves this from a *braisa* where Rabbi Meir and the Sages debate about the circumstance one is allowed to sell *demai*. 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 *braisa* indicates that as far as eating *demai*, Rabbi Meir is stricter.

Ravina challenges this from a *braisa* where Rabbi Meir allows one who buys bread from an *am haaretz* baker (*suspected of not taking tithes*) to take tithes from any loaf on the others – whether the loaves are different shapes, fresh, or older. 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.

Abaye reviews the 'give and take' on this issue, endeavoring to answer Ravina's question. Firstly, Rabbi Elozar had a valid question on the *Mishna*, since it was strict about *demai*, which is based on a prohibition that is punishable by death at the hand of Heaven. 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*. 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. Rav Yosef's answer was sufficient to address Rav Sheishes's question. However, instead of Ravina challenging from the *braisa* he cited, concerning a private baker, he could have supported Rav Yosef from

L'zecher Nishmas HaRav Raphael Dov ben HaRav Yosef Yechezkel Marcus O"H

a *braisa* that discusses a wholesale baker, and where Rabbi Meir states that one must take tithes from each differently shaped bread on its own.

Abaye says that the *braisos* regarding bakers are not based on leniencies of *demai*. Rather, the distinction is that a retail baker may 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.

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*. (55b – 56a)

Exceptions

The *Mishna* 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

Rabbi Shimon says that *hekdesh,* for which the owner is responsible, is considered his money, and therefore *ona'ah* applies. Rabbi Yehudah says that *ona'ah* does not apply to a *sefer torah*, an animal, or a pearl.

The *Gemora* cites a *braisa* 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 *braisa* excludes:

1. Land and slaves - the phrase *"miyad" - from the hand* excludes land, which is not transferred by hand. 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 excludes contracts, which have no inherent value, and are not merchandise. If, however, one sold a contract to a perfume maker, as material to seal his perfume flasks, it is merchandise, and is subject to *ona'ah*. [*Even though Rav Kahana says that small sales, on the order of prutos, have no ona'ah prohibition, the braisa is teaching us otherwise, since contract material is a small sale, but is subject to ona'ah.*]
3. *Hekdesh – since the verse says "ol tonu ish es achiv" - do not be unfair to your brother*, this excludes *hekdesh*, which is not your "brother" (*a peer*).

The *braisa*'s first statement indicates that the phrase "*yad*" is taken literally, excluding land. The *Gemora* 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 *Gemora* then brings various instances where we do take the word "*yad*" literally:

1. Thief - the *braisa* reads the verse to first include a case where literally in his hand (*b'yado*), and includes cases of the item being in his possession (*e.g., courtyard*) only from extra words.
2. *Gittin* - the *braisa* reads the verse to first include a case of a husband giving his wife a get in her hand (*b'yada*), and includes giving the get to her courtyard only from extra words.

The *Gemora* therefore concludes that the word "*yad*" does mean literally a hand, unless it is clearly figurative, as in the case of Sichon. (56a – 56b)

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.

Abaye answered that 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?

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 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.*]

2. Oaths

If one partially admitted a claim to such kernels of wheat being owed, must he swear? 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*)

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

Rava's questions are left unresolved, with a *taiku*. (56b – 57a)

INSIGHTS TO THE DAF

Slaves and Land

The *Mishna* 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 *Gemora* makes halachic statements about slaves, this applies to any person, even if he is free. Therefore, the *Gemora* (Kiddushin 7a) considers a wife being betrothed to be equivalent to real estate (as far as modes of acquisition), and the *Gemora* (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 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.