

OVERVIEW of the Daf

1) Selling promissory notes (cont.)

Ameimar rules that promissory notes can be acquired by handing them over without any additional kinyan necessary.

When asked for the source for this ruling Ameimar said it is from tradition.

R' Ashi suggested that the ruling is also logical.

The logic suggested by R' Ashi is unsuccessfully challenged.

2) Antiki - אַנְטִיקִי

R' Pappa defines the term Antiki mentioned in the Mishnah.

3) **MISHNAH:** The Mishnah begins with a further discussion of what is included in the sale of different items and concludes with a presentation of the dispute whether the amount of money that was spent indicates what was included in the sale.

4) Selling a wagon

R' Tachlifa cited a Baraisa which teaches that one who sells a wagon sells the mules as well, which contradicts our Mishnah that rules that mules are not included in the sale of a wagon.

R' Avahu explains that the Baraisa refers to where the mules were attached to the wagon at the time of the sale.

5) Does the price indicate what was included in the sale?

The Gemara clarifies the case where the dispute between R' Yehudah and Chachamim applies.

The Gemara begins to formulate a challenge to the position of Chachamim. ■

REVIEW and Remember

1. What is the source that אֹתוֹת נִקְנִית בַּמְסִירָה?
2. What is the point of dispute between Rabbah bar Yitzchok and R' Chiya bar Avin?
3. Can money be acquired with חֲלִיפִין?
4. Explain the phrase דְּמִים מוֹדִיעִין.

Distinctive INSIGHT

Selling a loan document

גמרא או סברה

Earlier (76a), the Gemara cited a Baraisa where we find the argument regarding the method of selling a loan document. Rebbe is of the opinion that it is adequate for the document to be handed from its seller to the buyer (אֹתוֹת נִקְנִית בַּמְסִירָה). Rebbe Nosson holds that in addition to handing the document to the buyer, the seller must also write a sales document to verify the sale.

In our Gemara, we find that Ameimar rules in accordance with Rebbe, that a loan document may be transferred to a buyer simply with being handed to him, without an accompanying document.

Rav Ashi questioned Ameimar to find out whether he had received this ruling as a tradition from his teachers (גמרא) or whether he had arrived at this conclusion using his own understanding (סברה). Ameimar told Rav Ashi that, in fact, he would not have arrived at this conclusion on his own, but he did receive it as a tradition from his teachers. Rav Ashi responded and reassured Ameimar that it is quite logical to say that the halacha should be that מסירה is adequate and that it is not necessary to use a document to affect the acquisition of another document. After all, transfer of a loan document is not the transfer of money itself, but it only represents an agreement on the part of the borrower to pay his debt. It is not logical that an agreement should, in fact, be able to be transferred by means of another agreement (מילי במילי לא מיקנין).

According to Rashbam, the argument of Rav Ashi was that a loan document represents not only a proof that a loan took place, but it also indicates a commitment from the borrower to the lender that he will personally repay the loan and that he commits his property to back up that commitment. Accordingly, we could say that simply handing the document from one person to the next is not adequate to transfer these aspects of the document. However, if handing the document over is inadequate, then we could also argue that an additional written document to accompany the transfer of the document would also not be sufficient, as this new document does not add a new act of commitment. Rather, we say that giving the original loan document does, in fact, carry with it the original commitment the borrower made to the lender, and it is fully transferred when it is handed over. ■

HALACHAH Highlight

Using the price as proof of what was sold

ר' יהודה סבר הדמים מודיעין וכי

R' Yehudah rules that the money is an indicator etc.

Rema¹ ruled that if Reuven rented a house from Shimon and the contract did not specify the duration of the lease we look at the amount of money Reuven agreed to pay Shimon, and we calculate from that the duration of the lease (דמים מודיעים). Shach² disagrees and maintains that even in this circumstance we do not look at the money to determine the parameters of the agreement between the two parties. As proof to his position Shach cites the Gemara in Rosh HaShanah (7b) that teaches that if Reuven rented a house from Shimon for this year – שנה זו – the lease ends when the first of Nissan arrives even if the lease began as late as the beginning of Adar. Tosafos³ explains that we do not look at the money that Reuven paid Shimon to rent the house to determine the length of the lease. One could argue, notes Shach, that perhaps the proof from the Gemara Rosh HaShanah is not definitive since the wording – שנה זו – indicates that the lease is for the remainder of the year, therefore, we don't look at the money when it contradicts his words. Our Gemara, however, indicates that we don't look at the amount of

money that changed hands even when there is no contradiction between his words and the amount of money that was exchanged. The Gemara relates that the amount of money that was exchanged is not a proof that the seller included the ox in the sale of the yoke even though there are people who refer to the yoke and the oxen when they refer to the yoke.

Ketzos HaChoshen⁴ explains that Rema's position is based on a comment of Rashbam. Rashbam⁵ writes that if someone sells an ox to his friend that turns out to be a goring ox the sale could be invalidated if the money paid indicates that the ox was for plowing rather than for slaughter. The reason is that the seller has two types of oxen available for different prices. In such a case we look to the money to instruct us regarding the intent of the buyer. This is different from the sale of the ox and yoke where it is not known whether the people involved are from the group that uses the term yoke to refer also to the oxen. In such a case we cannot use the amount of money that was transferred since that does not prove to us into which category these people fall. In Rema's case of the lease since the language did not in any way indicate the duration of the lease we look to the money that was exchanged for guidance. ■

1. רמ"א חו"מ סי' שייב סעי' א'.
2. ש"ך שם סק"ד.
3. תוס' ד"ה עלתה.
4. קצות החושן שם ריש סק"ב.
5. רשב"ם צ"ב. ד"ה וליחזי. ■

STORIES Off the Daf

Broken agreements

"ע"מ שתכתבו לו את השטר..."

A certain woman went into hiding to avoid paying the expensive poll tax which every Jew was obligated to pay by royal decree, since she could not afford it. Of course, some people knew her secret since she needed to be fed and provided with the basic necessities of life.

One wealthy man in the community who knew about her predicament also wished to marry her. After some careful thought he sent a friend to try to convince her to marry him. Although at first she was uninterested, after the friend gave her a very eloquent testimony of the potential groom's favorable financial position, she finally agreed.

When the two met, the wealthy man explained that he was happy to become engaged to her, but he wanted their agreement to be final. To that end, he proposed a fine of five thousand gold coins if either party wished to change his or her mind. The young woman readily agreed and even made a kinyan to demonstrate her willingness.

The witnesses were ordered to write two documents, each attesting that one party owed the other five thousand gold coins and to give them in trust to one of the witnesses until the wedding. If either party wished to go back on the agreement, this witness was charged to give both documents to the betrayed party.

Shortly afterwards, the young woman changed her mind. Since the documents had not yet been given to the witness to keep, they wondered what the halachah was in this case. They consult-

ed with the Rosh, zt"l, to determine if the woman really owed the wealthy man the five thousand gold coins.

"She owes him nothing at all, since the kinyan was only on condition that the witnesses did what they were told, since surely if they didn't write the document there would be no debt at all. Since she changed her mind before the document reached the witness, it does not obligate her. The clear proof to this is from Bava Basra 77. There we find that if one told witnesses that a certain person should acquire a field on condition that they write a document to this effect and give it to the recipient of the gift, the giver may change his mind until the document reaches the recipient. Our case here is not different—she is free of any obligation."¹ ■

1. שו"ת הרא"ש, כלל ל"ד, סי' ג' ■