

## OVERVIEW of the Daf

1) Does the price indicate what was included in the sale?  
 (cont.)

The Gemara concludes its challenge to Chachamim who maintain that price is not an indication of what was included in the sale.

Two resolutions are presented.

2) **MISHNAH:** The Mishnah discusses whether the sale of a donkey includes the sale of its gear.

3) **Explaining the dispute of the Mishnah**

Ulla qualifies the dispute in the Mishnah.

This qualification is unsuccessfully challenged.

The term כומני is defined.

The Gemara inquires whether the dispute is limited to where the gear is on the animal or not.

Three unsuccessful attempts are made to resolve this question and the question remains unresolved.

Abaye formulates a list of Tannaim who maintain that when a person sells an object he also sells its accessories.

Rava explains, according to R' Yehudah, the difference between חמורך הוא and חמורך זו.

4) **MISHNAH:** The Mishnah continues to discuss what is included in the sale of different items.

5) **Clarifying the Mishnah**

The Gemara questions why the sale of a mother donkey includes her offspring but the sale of a cow does not.

R' Pappa explains the difference.

The etymology of the term סיה is explained.

Tangentially, the Gemara begins to exposit verses from Bamidbar 21. ■

## Distinctive INSIGHT

*Making an accounting*

המושלים - אלו המושלים ביצרם, בואו חשבון- בואו ונחשב חשבוננו של עולם

The Gemara expounds upon the verse in BeMidbar 21:27. Rav Shmuel bar Nachman said in the name of R' Yochanan: The "moshlim" are the ones who rule over their desires. They say: "Come unto Cheshbon" - Let us make an accounting of this world. One must weigh a mitzvah's loss against its gain, and a sin's gain against its loss. If you make this accounting, "you will be built up in this world and you will be well established" in the World-to-Come.

Ben Ish Chai illustrates the lesson of this Gemara with a parable. A wealthy, but lonely and forgotten old man retired and chose to spend the end of his days in a hotel suite in a remote location. His final day arrived, and after he died, the proprietor of the lodge wanted to take all the possessions of the dead man for himself. Yet, he was afraid that the authorities would find out, and it would all be confiscated. He decided to consult with his dear hunchbacked and homely friend, who was known to be wise and clever. He called him and offered him one thousand dinar for his advice, provided he could keep the matter confidential.

The twisted man listened to the dilemma, and as he heard about the sums of money involved, his greed overcame him. He had a plan. "Listen to me and things will be fine!" he said. "Put the dead man in the next room, and I will lie in his hotel room. Cover me as I feign a deathly illness, and call for a lawyer so that I can have a will drawn up in his name. I will arrange for his money to be transferred to you, and by tomorrow we will let out the word that he died, legally leaving his estate to you!"

The plan was put into action. When the lawyer arrived, the faker cried out with convincing groans of pain and insisted that everyone leave the room, other than the lawyer. He then told of his misery. "I have no relative in this world other than an old and hunchbacked man in this city. I never told anyone about him, for I was embarrassed to have such a contorted man as a relative. I leave every penny I own to him, except one thousand dinar to be given to the innkeeper, as a token of appreciation!" The document was written and signed, and within hours the announcement was made of the man's unfortunate passing.

The hotel owner was devastated when he learned that he had been swindled. He was to receive a paltry one thousand dinar, while the fortune was bequeathed to the con-man.

## REVIEW and Remember

1. Why is there no אונאה on the sale of a jewel?  
 \_\_\_\_\_
2. What is a כומני?  
 \_\_\_\_\_
3. What is the difference between חמורך הוא and חמורך זו?  
 \_\_\_\_\_
4. Who are the מושלים and what do they do?  
 \_\_\_\_\_

# HALACHAH Highlight

*Overcharging more than one could mistakenly think is correct*

אבל בכדי שאין הדעת טועה לא אימור מתנה יהב ליה

*But if the overcharge is more than one could mistakenly think is correct, the law of ona'ah does not apply and we assume that the overcharge was given as a gift*

There are numerous explanations to explain the halacha that ona'ah does not apply to a case where the overcharge is beyond what one could reasonably think is correct. Ketzos Hachoshen<sup>1</sup> suggests that it works according to the parameters of a תנאי — a stipulation. When the seller overcharges to such a degree that it is evident that the buyer is aware of the overcharge it is seen as though the seller stipulated that the purchaser would not be able to claim ona'ah and that the buyer accepted those terms for this purchase.

Nesivos Hamishpat<sup>2</sup> disagreed with Ketzos Hachoshen because stipulations must be articulated and when not they are invalid. Nesivos, therefore, suggests that the reason a sale goes through when the overcharge is so obvious is that the buyer was willing to forgo (מוחל) the overcharge. The proof that he was willing to forgo the overcharge is that he went forward with the transaction and if he was not willing to forgo the overcharge he should not have completed the transaction.

Sefer Galya Masseches<sup>3</sup> offers a third explanation. He suggests that whenever the one who was exploited knows that he

*(Insight...continued from page 1)*

Man makes many calculations and arrangements, often concluding “deals” with his yetzer hara. He throws it a bone, figuring that he has gotten the better of the deal. Yet, at the end, man will learn just how unfair the yetzer can be, and how utterly disappointed he himself will be as he walks away with nothing, and the Satan will have completed his mission to cheat and deprive the person of everything. ■

is being exploited the laws of ona'ah do not apply. Therefore, in a circumstance where the overcharge is obvious it is evident that the buyer was aware of the overcharge and the laws of ona'ah do not apply. Other authorities reject the notion that the laws of ona'ah do not apply when the one being exploited is aware that he is being exploited. For example, Machaneh Ephraim<sup>4</sup> proves from the Gemara Bava Metzia (51a) that the laws of ona'ah apply even when the buyer is aware of the ona'ah. The Gemara relates an incident of a buyer who was aware that he was being exploited and would have been able to demand a refund for the exploited amount were it not for the fact that he purchased the merchandise from a non-merchant (בעל הבית) whose sales are exempt from the halachos of ona'ah. ■

1. קצות החושן סי' רכ"ז סק"ה.
2. נתיבות המשפט שם סק"ד.
3. ספר גליא מסכת חו"מ סי' ד' אות ה'.
4. מחנה אפרים הלי' אונאה סי' י"ט. ■

# STORIES Off the Daf

*“Let us make an accounting”*

”באו חשבון...”

The Magid of Dubno, zt”l, tells a beautiful parable that applies to today’s daf.

Once there was a merchant who slowly built himself up until he was doing business with very large sums of money. Strangely, this merchant really didn’t know exactly how much money he had of his own since he was not very adept at making the complicated calculations that would provide the information. In any event, he was very busy and could not make the time to clarify the exact extent of his personal capital investment.

One day, this merchant heard that a fellow businessman who had at one time been very wealthy lost all of his money and even left over many debts which he could not pay. Understandably, this made the merchant anxious about his own standing and he began the laborious process necessary to determine exactly how much money he had. What was his exact status?

The Maggid continued, “The same is true in spiritual terms, as we find in Bava Basra 78. One must make a careful calculation to grasp the vast importance of every mitzvah and the terrible loss incurred by every sin.”<sup>1</sup>

Rav Dessler, zt”l, taught that we find in the Torah that, “The moshlim say: —באו חשבון.” This is in plural form to teach that one

cannot truly succeed in making an honest cheshbon hanefesh unless he is part of a group—even if they are on a lower level than himself. Alone he will almost certainly fail.<sup>2</sup>

One Elul, Rav Leib Chasman, zt”l, the mashgiach of Chevron Yeshiva, delivered a very important lesson regarding cheshbon hanefesh. “In Bava Basra 78 it states that a fire will emerge from those who did a cheshbon hanefesh which will burn those who did not.”

Rav Leib thundered his message with great feeling, “From here we see that a true cheshbon hanefesh must be done with the intensity of a roaring fire!”<sup>3</sup> ■

1. ליקוטי בתו ליקוטי, חט"ו, עי' ר"ל
2. ספר זכרון מכתב מאליהו, ח"ב, עי' פ"ח
3. מרבה חיים, עי' י"ג ■