

## OVERVIEW of the Daf

### 1) Purchasing three trees (cont.)

R' Yosef concludes his explanation why he disagrees with R' Nachman concerning the amount of space needed between trees for the purchaser to be granted the area between the three purchased trees.

A Mishnah is cited that supports R' Yosef's position but Abaye rejects it nonetheless since an incident in the Mishnah supports his position.

R' Nachman's position in this dispute is unsuccessfully challenged.

Rava rules that the space between the trees must be between four and sixteen amos.

A Baraisa is cited that supports this position.

### 2) Measuring the distance between the trees

R' Yirmiyah inquires where on the tree the requisite distance should be measured.

R' Gaviha resolved the inquiry by citing a related Mishnah.

R' Yirmiyah asks whether one tree that appears like separate trees, is counted as one or three trees.

R' Gaviha resolves this inquiry as well.

R' Pappa presents two inquiries that remain unresolved.

R' Ashi presents an unresolved inquiry.

Hillel asked Rebbi whether a cedar that is in the midst of the three trees prevents the purchaser from receiving the land in between the three purchased trees.

Rebbi answered that he receives the land.

Rav and Shmuel disagree about the position of the three trees for the purchaser to be granted the land in between the three trees.

Shmuel's position is unsuccessfully challenged.

### 3) MISHNAH: The Mishnah begins with a discussion relat-

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## REVIEW and Remember

1. Why did Abaye disagree with R' Yosef even though R' Yosef had proof for his position from a Mishnah?

2. How is the distance between trees measured?

3. How must three trees be configured for the buyer to receive the land between the trees?

4. What are the four rules of sales?

## Distinctive INSIGHT

### *Poor quality or superior quality wheat*

מכר לו חטים יפות ונמצאו רעות הלוקח יכול לחזור בו, רעות ונמצאו יפות מוכר יכול לחזור בו

The Mishnah teaches that if a seller sold fine quality wheat, and the product turned out to be of inferior quality, the buyer can reverse the deal. If the agreement, however, was for poor quality wheat, and it turned out that the product sold was of superior quality, the seller can reverse the deal.

Rashbam and Tosafos (84a) write that this law that the seller or buyer can back out of the deal applies even where the intended product and the one delivered had the same price. An example of this is where the quantity of poor-quality wheat delivered was greater than the amount of fine-quality wheat agreed upon. Ritva explains that there are two reasons for cancelling a sale. One is that one of the parties was cheated regarding the price. If the buyer paid too much or the seller was misled and charged too little (אונאה), the wronged party may rescind the deal. Another factor which can undermine the transaction is where the item bought or sold was not that which was agreed upon. This is called מקח טעות, a misinformed or mistaken sale. Our Mishnah is an example of this second flaw, and the sale is cancelled even if the price for both commodities is the same.

Ritva asks that if the reason the sale is reversed is due to מקח טעות, we should expect that either the seller or the buyer would be able to protest and back away from the sale. Why is it that when the wheat delivered is of poor quality that only the buyer can complain, and only the buyer can quash the deal when the product sold was of superior quality than originally agreed upon?

Ritva explains that better or worse quality wheat are basically the same type of commodity. This is therefore not a total מקח טעות which undermines the deal completely, but rather a situation of preference. In fact, there are people who sometimes do not pay attention to the particular quality of the wheat they receive, and they will eat it either way. It is only the later case of the Mishnah, the case of wine and vinegar, where the factor of מקח טעות is more pronounced. There, people are careful to buy wine or to buy vinegar, depending on what their needs are, and if the wrong item is delivered the sale is completely null, and either party can cancel the deal.

ספר ברכת שמואל clarifies and identifies three categories of questionable sales. One is where the price was significantly over or understated (אונאה). A second is where the wrong item was delivered, similar to the case of wine and vinegar,

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# HALACHAH Highlight

## Purchasing unrefined silver

מכר לו חטין יפות ונמצאו רעות

If he sold him superior quality wheat and it turned out to be inferior quality

Rema<sup>1</sup> rules that if someone purchases silver assuming that it is refined (בחזקת כסף צרוף) and it turns out to be unrefined the sale is valid and the seller must refund the difference in cost between refined and unrefined silver. Shach<sup>2</sup> questions why this case is different than the case of one who sells fruit that is supposed to be high quality that turns out to be inferior quality where the buyer has the right to cancel the sale. Vilna Gaon<sup>3</sup> suggests that Rema would rule, based on an alternative reading of our Mishnah that one who sells fruit that is supposed to be superior quality and it turns out to be inferior quality cannot cancel the sale.

Machaneh Ephraim<sup>4</sup> suggests that the rationale for Rema's ruling is based on a Teshuva of Rosh<sup>5</sup>. Rosh discusses the case of a sale of a house that turns out to be damaged and rules that the buyer cannot cancel the sale; rather the buyer will be refunded the money needed to repair the damage. Accordingly, when it turns out that the buyer was given unrefined silver the sale is valid, since the silver can be refined, but he can demand a refund of the money needed to refine the silver.

Nesivos Hamishpat<sup>6</sup> proposes that the basis of Shach's approach can be found in the Gemara Pesachim(4b). The Gemara there discusses whether one who rented a house on Erev Pesach assuming that it was checked for chometz and discovers

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ed to what is included in the sale of different parts of an animal and concludes with a presentation of the parameters of the laws when a seller delivers something different than what was supposed to be sold.

### 4) R' Chisda's inferences from our Mishnah

R' Chisda rules that when a seller overcharges a buyer and the value of the object increases the seller cannot retract the sale. ■

that it was not checked may cancel the rental agreement. The reason the owner cannot merely refund the tenant the amount it would cost to hire someone to check the apartment is that an unchecked house is not usable on Pesach. When the house, as is, is not usable it is similar to the case mentioned by Rema<sup>7</sup> that if the house is damaged in some fundamental way, e.g. the wall of the house is about to collapse, the sale of the house is cancelled. Similarly, since an unchecked house is unusable on Pesach it is seen as a fundamental flaw in the item and the sale is cancelled. Following this approach Shach maintains that unrefined silver is not merely an inferior quality of silver; rather it is unusable for purposes for which refined silver is necessary and thus he maintains that the sale of the unrefined silver may be cancelled. ■

1. רמ"א חוי"מ ס"י רל"ג סעי' א'.
2. ש"ך שם סק"א.
3. ביאור הגר"א שם סק"ד.
4. מחנה אפרים הל' הונאה ס"י ו'.
5. שו"ת הרא"ש מובא בטור ס"י רל"ב.
6. נתיבות המשפט ס"י רל"ג סק"ד.
7. רמ"א ס"י רל"ב סעי' ה'. ■

# STORIES Off the Daf

## To have your cake and eat it too

"לוקח יכול לחזור בו..."

A certain businessman sold a large quantity of fine silk to a fellow merchant, who in turn sold it to a non-Jew for a small profit. When it turned out that the silk was not of such fine quality after all, the Jewish businessman who had purchased the silk approached the original seller and demanded that he pay him the amount he had overcharged on the silk. "After all, you overcharged me by quite a lot..."

The original seller was infuriated by

this request, "What audacity! You lost nothing from that silk since you sold it at a profit to a non-Jewish merchant. How can you ask me to replace a loss you never really sustained?"

But his friend would not relent. "It was my mazal to sell it to the non-Jew, but you should have given it to me for a much lower price in the first place. Why should I make an inferior profit just because you tried to take advantage of me?"

When this question was brought before Rabbi Akiva Eiger, zt"l, he ruled that the original seller was correct. "The original seller can say that if the buyer wants the overcharge, then the entire sale is void and the buyer had unknowingly sold the original seller's silk to the non-

Jew. The Rosh in Bava Basra 83 writes clearly that a person can either demand payment for overcharging and nullify the sale or leave the sale as it was and receive no reimbursement for overcharge.<sup>1</sup> He cannot grab the stick at both ends by insisting on payment for overcharge while the sale remains in effect!"<sup>2</sup> ■

1. רא"ש, ס"י י"ד.
2. שו"ת רעק"א, ח"ג, ס"י ל"ג. ■

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where the sale is null, and either the seller or buyer can back out of the deal. The third category is a misunderstanding between poor or superior qualities of one commodity. Here, the sale is valid, but the party shortchanged can reverse the deal. ■