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Tuesday, April 18 2017 ■ כ"ב ניסן תשע"ז
בס"ד

OVERVIEW of the Daf

1) The utensil of the buyer in the domain of the seller (cont.)

Rava completes his attempt to prove from a Baraisa that the buyer's utensils do not acquire objects for him when they are on the seller's property.

R' Nachman bar Yitzchok objects to the proof but Rava rejects his objection.

Mar bar R' Ashi suggests another reason why this Baraisa is not a sufficient proof.

Tangentially, the Gemara explains the latter half of the Baraisa.

Ravina unsuccessfully attempts to resolve the Gemara's inquiry.

2) The use of different kinyanim

A Mishnah is quoted that teaches that one must do meshicha to acquire movable objects.

Some Amoraim assert that this ruling is limited to objects that are not lifted (הגבהה) but items that are lifted are acquired by lifting rather than by meshicha.

R' Ada bar Masna unsuccessfully challenges this qualification.

Three more unsuccessful attempts are made to determine whether this qualification is correct.

3) Acquiring a large quantity

Rav and Shmuel rule that one who agrees to sell a kor of produce for thirty selaim can back out of the purchase until the entire quantity is measured out.

An unsuccessful challenge to this ruling is presented.

The Gemara begins another challenge to this ruling.■

REVIEW and Remember

1. According to Rav and Shmuel, can a person's utensils acquire property for him in all places?

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2. On what type of movable items is meshicha ineffective?

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3. Why is flax packaged in small bundles?

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4. In what way is filling a measuring cup with incremental markings different than filling one with out incremental markings?

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Today's Daf Digest is dedicated
By Rabbi and Mrs. Sam Biber
In memory of their mother
מרת רבקה זלדה בת ר' חיים יחזקאל הכהן, ע"ה

Distinctive INSIGHT

The buyer can back out until the last se'ah

רב ושמואל דאמרי תרוויהו כור בל' אני מוכר לך יכול לחזור בו אפילו בסאה האחרונה. כור בל' סאה בסלע אני מוכר לך ראשון ראשון קנה

A kur is a volume which contains thirty se'ah of grain. If a seller agrees to sell a kur for thirty sela, the entire sale is one deal, and even while the grain is being measured, the buyer or seller can still change his mind and back out of the deal until the entire thirty se'ah is completely measured. If the stipulation was that a kur was being sold, and that each se'ah was for a sela, the sale of each se'ah is final upon its being measured.

Ri"f writes that this halacha can only apply if it was along the side (סימטא) of the public domain or in the property of the buyer when using the utensils of the seller. If, however, the transaction was taking place in the public domain, the buyer would not acquire the grain, even if it was measured into his own utensils. The case also cannot be taking place in the seller's property, because we hold that the buyer cannot acquire items there, even if they are placed into the buyer's own utensils. In addition, the case cannot take place in the buyer's domain, because we hold that with the consent of the seller, the buyer immediately acquires the items offered even before they are measured out.

ר"ן, however, explains that the halacha of Rav and Shmuel could apply in all types of domains. In the public domain and the domain of the seller the transaction can be valid if the buyer lifts the grain (הגבהה), but the buyer can back out of the deal until after he lifts the entire amount. The transaction can take place in the side of the public domain (סימטא) with pulling (משיכה), or where the grain is placed into the utensils of the buyer. The case can also be where a portion of the grain was placed directly into the private domain of the buyer. Here, even if the seller consented to the sale, the buyer does not complete the deal until the entire amount is placed in his property. Accordingly, ר"ן wonders why רי"ף did not illustrate this case in all four domains.

Tur (200) cites Ramah who explains that the ruling of Rav and Shmuel only refers to a transaction which takes place in a סימטא, because if it was in the buyer's property, or where the buyer lifted the grain, he would automatically acquire whatever he is lifting. ב"ח explains that Ramah holds that the utensils of the buyer can effect the transaction, even when the seller stipulated that he was selling the entire kur as one deal, and the acquisition is complete even before the measurement is complete.

(Continued on page 2)

HALACHAH Highlight

Locking in a price with a contractor before his rate increases

השוכר את הפועל לעשות עמו לגורן היום בדינר וכו'

Someone who hires a worker in advance to work for him during the upcoming harvest season at a rate of one dinar per day etc.

There was once a craftsman who charged his customers for the hours he worked in addition to his expenses. One year he gave notice to his regular customers that at the beginning of the following year he was going to raise his rate ten percent. One regular customer gave the craftsman a few thousand dollars to lock in the cheaper price and avoid having to pay for future work at the higher rate. The question is whether this is prohibited as a form of interest – ריבית. Seemingly, the craftsman is charging this customer a lower rate in consideration of the money he gave him before the start of the new year.

The question was presented to the author of Teshuvas Chelkas Yaakov[1] for an answer. In his response he wrote that if the customer had work that began during the old year it is permitted for the craftsman to continue charging the lower rate for the work that continues into the new year. If, however, the customer did not have any work that needed to be done and was merely locking in the lower rate for future business it is prohibited since he is benefitting from the fact that he fronted the craftsman money.

Upon further consideration he ruled that under all circumstances it is permitted. The craftsman is not an employee – פועל – of the customer, he is a contractor – קבלן. Although the craftsman calculates his fee based on the number of hours he works, since he also charges his customers for his expenses and rolls it all into one fee he is a contractor. As a contractor it is permitted for a customer to give him money to lock in at a lower rate even if he will not begin working on the project immediately. Support for this position is found in Magid Mishnah[2] who cites Rashba who writes that paying a worker before the job to lock in a lower price is only prohibited if the employee is paid an hourly wage since it gives the impression that it is interest but if the worker is a contractor it is permitted. ■

1. שו"ת חלקת יעקב חיו"ד סי' ע"ט.
2. מגיד משנה סוף פרק ז' דמלוה. ■

(Insight...continued from page 1)

Rabeinu Yona adds that the right to back out of the deal only applies when the transaction is done by measuring the grain into the utensils of the buyer. If, however, the buyer pulls or lifts the grain he would acquire each se'ah as he takes it. ■

STORIES Off the Daf

Unknown quantities

"פסק סמכא דעתיה..."

A certain rav arranged the sale of a large quantity of chometz for his community. Since he understood that selling chometz only helps if the sale is absolutely binding, he wrote a very careful list of all the chometz which he planned to sell. Unfortunately, when he made the document of sale he forgot to include the most essential items of chometz merchandise which were worth a large sum of money. Although he mentioned these to the non-Jew, and made several different kinyanim to ensure that the sale was technically binding, he was afraid that this was a classic case of אסמכתא. Surely the non-Jew would not rely on a mere description of what he would purchase with no clear price attached?

He was exceedingly distraught at the possibility of this blunder causing him to violate the prohibition of having chometz in his possession during Pesach and could find no peace. Finally he consulted with the Shoel Umeishiv, zt"l, to ascertain whether this sale had included the expensive items.

The Shoel Umeishiv replied that the sale was inclusive. "First of all, there is a dispute as to whether the halachah of אסמכתא applies to a non-Jew at all. Although the Rambam holds it does apply, the Ravad holds that it does not. In any case, we find in Bava Basra 86 that if one did not set a price there is no kinyan, so on the surface it would appear as though according to the Rambam there was no sale to begin with.

"But when we look a bit deeper at this question I believe that there was a sale even according the Rambam. My reasoning is that the law in our country prohibits one from selling the items which you had for more than a certain price. Therefore our case is similar to the halachah that a fisherman can sell what is already caught in his traps that day prior to setting out and seeing what is actually there. The Gidulei Terumah explains that this is considered to be a clearly defined amount since what is sold is clearly defined, it is just that the buyer and seller lack the knowledge of exactly how much was involved in the transaction.

"Similarly, we find that a person who accepts responsibility to feed his wife's daughter for five years is obligated to do so and this is not considered to be an אסמכתא. Even though the husband has no idea how much she will eat, his knowledge that he is obligated for precisely five years is considered to be something with a definite limit and is therefore a definitive item (דבר קצוב)."[1] ■

1. שו"ת שואל ומשיב, מהדורא א', ח"א, ס' צ"ג

Daf Digest is published by the Chicago Center for Torah and Chesed, under the leadership of HaRav Yehoshua Eichenstein, shlit"a
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