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בבא בתרא פ״ז
CHICAGO CENTER FOR Torah & Chesed
בס״ד

OVERVIEW of the Daf

1) Acquiring a large quantity (cont.)

The Gemara concludes its unsuccessful challenge to the ruling of Rav and Shmuel related to the acquisition of a large quantity of merchandise.

The Beraisa that was cited is explained in light of Rava's explanation.

2) Uprooting a small amount of flax

R' Sheishes explains the exact circumstance such that uprooting a small amount of flax will allow the buyer to acquire a large amount of attached flax.

3) MISHNAH: The Mishnah discusses the moment when a sale of wine or oil is finalized. The Mishnah also discusses the requirement of the seller to continue pouring after the flow has stopped until three drips pour out.

4) Clarifying the Mishnah

R' Illa suggests that the Mishnah's discussion of when a sale of wine or oil is finalized refers to where the measure being used belongs to the middleman.

This explanation is unsuccessfully challenged.

R' Elazar challenged the Mishnah's ruling concerning ownership of the residue that remains after the three drops were poured out.

R' Yitzchok bar Avdimi explains the rationale of the Mishnah's ruling.

The Gemara wonders which of the Mishnah's ruling was R' Yehudah commenting.

A Beraisa is cited that clarifies R' Yehudah's position.

5) MISHNAH: R' Yehudah and Chachamim discuss whether a shopkeeper is liable for sending money and oil home with a child.

6) Clarifying the dispute

The Gemara inquires about the point of dispute pertaining to the flask that the father sent with his son.

R' Hoshaya suggests that the Mishnah refers to a specific circumstance and the dispute relates to Shmuel's ruling that if one inspects a craftsman's utensil and it breaks, he is liable.

This explanation is successfully challenged and Rabbah and R' Yosef offer an alternative explanation of the dispute.

This explanation is successfully challenged and Abaye and R' Chanina the sons of R' Avin begin to present a third explanation of the point of dispute. ■

Distinctive INSIGHT

The status of one who handles an item offered for sale

דאמר שמואל הנוטל כלי מן האומן על מנת לבקרו ונאנס בידו חייב

Shmuel rules that when one takes an item that is for sale into his hands to inspect, and it breaks in his hands, he must pay its owner for the damage. The Rishonim discuss the reason for the obligation to pay for an item which the prospective buyer did not yet own. Rashbam and Ritva (to Nedarim 31a) explain that when one handles an item which is for sale to inspect it, he assumes the role of a שואל (borrower) and not that of a לוקח, a buyer.

Tosafos and Rosh (here), as well as Ramban and Rashi all hold that the buyer is already considered to have purchased the item as he inspects it. גרנ״ט explains the reasoning for this opinion. The seller has consented to sell the object, and he is convinced that the buyer will be amenable because it has no flaws. The buyer already knows the price, and he has proceeded to look it over, so it seems inevitable that the sale will become final. The only condition outstanding is the buyer's inspection, but this seems to be just a formality, and not a contingency which prevents the sale from becoming final.

Kehillas Yaakov explains that although ר״ן says that a prospective buyer is a borrower, he means that this buyer is a borrower in addition to being a buyer. He is a buyer to the extent that the seller cannot back out of the deal, and in this regard the item is already considered as sold. Yet, we would not consider him liable for אונסין as long as he is not yet its owner and until he decides to actually buy the item. Nevertheless, because he has all the advantages (כל הנאה שלו), this factor advances his status to being that of a שואל.

Sefer דבר יעקב points out several practical differences between whether this prospective buyer is a borrower or a buyer. A famous distinction is the determination who is technically the owner of the object as it is being inspected. If the buyer is a borrower, the original owner remains the owner, but if the buyer is officially a buyer already at this point, then the object is his. The answer to this question will determine who has the ability to use the object at that moment to betroth a woman as his wife, something that only a true owner of an object can do.

Another difference would be if the object is מתה מחמת מלאכה while it is being examined. If the buyer is a borrower, he is exempt from paying for it, but if he is a buyer, he is liable to pay for the object. ■

HALACHAH Highlight

Returning merchandise

אמר שמואל הנוטל כלי מן האומן וכו'

Shmuel said: One who takes an item from a craftsman for inspection etc.

A common occurrence is for a person to purchase merchandise or clothing from a store and then some time later decide to return it. Is there any sort of prohibition against this practice and does the fact that stores allow customers to return merchandise have an effect on this halacha?

Rav Menashe Klein[1], author of Teshuvas Mishnah Halachos, suggested that the ruling of Shmuel cited in our Gemara is the source to address this question. Shmuel rules that a person who takes a utensil from a craftsman to inspect it and it breaks in his possession due to an accident (אונס) is liable to pay for the object. The Gemara later on (88a) qualifies this ruling and asserts that the customer is liable only if the price was fixed since when the price is fixed it is assumed that the customer will purchase the item if its quality meets his satisfaction. The Gemara in Nedarim (31b) further qualifies this ruling and maintains that it applies only if the item is in high demand. In such a case, according to Tosafos, when the customer takes the item he is considered like a borrower (שואל) who is responsible even for accidental mishaps whereas according to Rashi and R"I it is considered as though the customer has already made a proprietary act on the object (קנין) and thus, Tur writes, the seller cannot decide to void the sale. The buyer, however, retains the right to cancel the sale if he chooses although it is considered an act of piety to not cancel the sale since the buyer came to the decision in his mind to purchase the object.

Based on this discussion it could be suggested that in our case there is more of a reason to follow the pious approach and not return items that were purchased. If in the case of the Gemara where the customer did not even complete the purchase it is considered a pious act to refrain from backing out of the transaction certainly in our case where the transaction was completed and the customer merely changed his mind it is an act of piety for a customer to not return the purchased item. ■

1. שו"ת משנה הלכות ח"ב סי' תי"ט. ■

REVIEW and Remember

1. How does the concept for אגר נטר apply to an employee's wages?
   ____
2. When has a seller finished pouring a liquid for his customer?
   ____
3. What is the point of dispute between Tanna Kamma and R' Yehudah?
   ____
4. Why, according to Shmuel, is a customer liable if a utensil he took to examine breaks?
   ____

STORIES Off the Daf

Breach of contract

"מהשתא לא מחזי כי אגר נטר ליה..."

Today's daf mentions the prohibition against taking unlawful interest.

A certain young couple met and agreed to marry. At that time the prevalent custom in Europe was that during the t'naim each side spelled out their precise financial obligation.

In this case, the father-in-law obligated himself to provide a certain sum of money by a particular time before the marriage, but when the time came, his money was tied up elsewhere and it was clear that paying the sum to the chosson would have to wait. Of course, he didn't wish for there to be any unpleasantness with his future son-in-law, so the wealthy man agreed to pay an extra sum of money for each month the groom waited in order to compensate his inconvenience. The groom happily agreed and the two made a binding kinyan. But later someone mentioned to the father-in-law that this seemed to be a clear case of prohibited interest and he consulted with the Taz, zt"l, for a halachic opinion on this matter.

The Taz replied that this was a problem. "If you had made such a stipulation during the t'naim it would not have been a problem, since this would have been like an extra gift for the groom in the event of a delay. But since you waited until you already owed him the money, any addition is definitely ריבית."[1]

But when the Shut Chessed L'Avraham, zt"l, saw this he was skeptical, but since disagreeing with the Taz on one's own authority is a very serious responsibility, he decided to ask his grandfather, the famed Nesivos, zt"l, what he thought of his problem with the Taz. "It seems clear that the moment the father-in-law fails to fulfill his financial agreements upon which the marriage was predicated, the groom is no longer obligated to marry his daughter, since the shidduch is officially broken. It follows then that our case is the same as when the father-in-law agrees to give extra during the t'naim, since they are now making a new agreement which serves to again bind the groom halachically to the match. So there is no ריבית here at all!"

The Nesivos nodded his acquiescence to his grandson's compelling argument.[2] ■

1. ט"ז יוד, ס' קע"ו, ס"ק ט'
2. שו"ת חסד לאברהם, חחו"מ, באמצע ס' ל"ה

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