

## OVERVIEW of the Daf

### 1) Clarifying the dispute (cont.)

Abaye and R' Chanina the sons of R' Avin finish their explanation of the point of dispute in the Mishnah pertaining to the liability of the storeowner who sent oil and a flask home with a child.

This explanation is successfully challenged and Rava submits the final explanation for the point of dispute between R' Yehudah and Chachamim.

### 2) Breaking a utensil while examining it

Shmuel rules that one who breaks a utensil while examining it is liable for the damage.

The Gemara adds that this applies only if the object has a fixed value.

Two related incidents are recorded.

### 3) Purchasing produce

A Baraisa discusses the point at which a buyer is obligated to separate ma'aser and what should be done if the buyer changes his mind.

The applicability of the Baraisa's ruling is spelled out.

**4) MISHNAH:** The Mishnah begins with a discussion of how often weights and measures must be cleaned. The correct methods for weighing or measuring a purchase are described.

### 5) Tilting the scale for the benefit of the customer

Reish Laksh identifies the source for the obligation to tilt the scales to the benefit of the customer.

This explanation is successfully challenged and the Gemara modifies Reish Laksh's statement.

The exact extra amount the seller must give the customer is recorded.

(Continued on page 2)

## REVIEW and Remember

1. What is the halachic classification of a שואל שלא מדעת?
2. How often do weights and measures have to be cleaned?
3. What is the source that the seller has to give extra to his customer?
4. Why is theft from an individual worse than theft from Hashem?

## Distinctive INSIGHT

### Integrity in business

אמר רבי לוי קשה עונשן של מדות יותר מעונשן של עריות, שזה נאמר בהן "אל" וזה נאמר בהן "אלה"

**R**' Levi taught that the punishments described in the Torah for violation of the laws of fair weights and measures is more severe than the punishments listed for illicit relationships. The source for this is that the sin of illicit relationships is described with the word אל in Vayikra 18: 27 (כל התועבות) while the despicable sin of cheating with false measures is referred to with the expanded word אלה in Devarim 25:16 (כל) The addition of the letter ה in reference to dishonest measures indicates a more severe situation.

Ben Yehoyada explains that the letter ה is specifically significant in this context. He found that a certain wise man explained that the scales used by a Jewish businessman represent the name of God. The chains used to suspend the measuring pans are similar to the letter י. The middle frame of the scale which stands up straight represents the letter ו. The two measuring pans themselves are each similar to a letter ה. These letters spell out the name of God (י-ה-ו-ה). Anyone who tampers and distorts the veracity of a scale is interfering with God's very name. The verse establishes this fundamental balance between fairness in trade and our loyalty and trust in Hashem. We find a juxtaposition of these concepts in the verse (Vayikra 19:36) which states: "Scales of righteousness you shall maintain...I am Hashem your God."

This also accounts for the Torah's referring to cheating in business as "an abomination of Hashem—'תועבת ה'". The additional ה which is discussed in our Gemara is the letter ה which symbolizes the scales of the balance which must be accurate and true.

ענף יוסף, in his commentary to Ein Yaakov, writes that the letter ה refers to the five calamities which are caused by the sin of unethical business practices. These are that the land becomes defiled, the name of God is desecrated, the Shechinah is banished from the land, the Jewish people are subject to fall by the sword, and the Jewish people are exiled from their land. He also notes that the numerical value of the word אלה is 36, which is the number of Torah violations which are liable for כרת, banishment.

This teaches us that as severe as it is, the sin of fraudulent measures is not one of the thirty six cases liable for כרת. The הפלאה (to Yevamos 21a) emphasizes that the lack of כרת for deceptive measures is not to be interpreted as an indication of this sin's being less severe than illicit relationships. In fact, because teshuva in this area is nearly impossible, even כרת is not enough to procure forgiveness. Atonement for this sin cannot be achieved even with this extreme measure of punishment. ■

## HALACHAH Highlight

*Is one obligated to pay for an item that breaks before he purchased it?*

אמר שמואל הנוטל כלי מן האומן וכו'

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

**R**av Menashe Klein<sup>1</sup>, author of Teshuvos Mishnah Halachos, was asked whether a customer who entered a store to purchase an item is liable to pay for it if an unavoidable mishap occurred and the item broke before the transaction was completed. Mishnah Halachos cites Shmuel's ruling that one who takes an object from a craftsman to inspect the item and an accidental mishap occurs must pay for the object. The Gemara adds an important qualification to this ruling and that is that the item has a fixed value. This ruling is cited in Shulchan Aruch<sup>2</sup> and he explains that once the item is in the hands of the customer it is considered to have entered his domain (נעשה ברשות) and thus he is liable.

Mishnah Halachos further explains the parameters of this halacha. If the customer enters the store and takes hold of an item that does not have a fixed value and has not even inquired about the value of the item because he is looking at the same item in different stores to compare quality and workmanship, he is not liable if it breaks. On the other hand, if the store has a fixed price for this object, as do most stores nowadays, when the customer takes the item and decides that it

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

The Gemara inquires about the meaning of the Mishnah's ruling pertaining to measuring dry goods and the inquiry is left unresolved.

### 6) False weights and measures

R' Levi asserts that the punishment for false weights and measures is more severe than the punishment for illicit relations.

This statement is unsuccessfully challenged.

R' Levi also teaches that stealing from people is worse than stealing from Hashem.

R' Levi contrasts the blessings and curses of Hashem and Moshe Rabbeinu. ■

meets his standards it is considered to already be in his possession and thus as mentioned above, for example, the seller cannot cancel the transaction. In the case at hand, concludes Mishnah Halachos, where the customer had already decided to purchase the item and it just happened to fall out of his hands before he could pay for it all opinions would agree that the customer should pay for the broken item. This is a common occurrence in the grocery store. The prices of the groceries are marked and when a person picks up the item to put in his cart it is considered to be in his domain. As such if the jar were to then fall and break the customer should pay for that item. ■

1. שו"ת משנה הלכות חי"ד סי' רט"ז

2. שו"ע חו"מ סי' ר' סע' י"א ■

## STORIES Off the Daf

### Buyer beware

אין אדם מקדיש דבר שאינו שלו

**I**n a certain vegetable store in Bnei Brak, a woman placed her bag of expensive tomatoes on the scale for weighing and the shopkeeper promptly calibrated the total price of the produce. As the woman opened her bag and counted out the amount she owed, she noticed that her tomatoes had seemingly vanished. Of course they could not vanish into thin air, but they were certainly not on the scale and the shopkeeper assured her that he had not noticed who had taken them since his attention had been otherwise occupied while she counted out her change. "But I did notice a certain regu-

lar customer in the store and I guess he took the tomatoes," concluded the confused proprietor.

When they confronted this man about the missing produce he denied any knowledge of it, and the woman wondered aloud whether she was obligated to pay for the missing vegetables anyway. The two agreed to send someone to consult with Rav Yitzchak Silberstein, shlit"א, regarding this puzzling question.

The rav promptly replied, "This is not the first time such a question has come to me, although the last time was a bit less mysterious since the person merely dropped a large number of eggs while in the supermarket. The key to both questions is in Bava Basra 88. There we find that a certain person picked up a joint of meat to see if it was fatty or thin but a thief on horseback thundered by

and snatched it from his hands. In that case, Rav Yeimar ruled that if the price of the thigh was set, the hapless man must pay for it, since he acquired it the moment he picked it up.

"Another case discussed there tells of a salesman who laid out his wares and so many buyers converged on his merchandise that he declared it all hekdesch. There again we find that if the price is set, those who grabbed acquired what they took even though they had not yet paid. The reason why is simply because a person cannot consecrate that which is no longer his property.

"The same is true in our cases as well. Since the woman had decided to buy the tomatoes and so had the unfortunate man who dropped the tray of eggs, they must pay for the store's loss."<sup>1</sup> ■

1. עלינו לשבח ח"א ע' תקפ"ח