

Today's Daf Digest is dedicated
 L'ilui Nishmas Rivka Yenta bas Asher Anshel (14 Elul) and Yosef ben Chaim haKohen Weiss (8 Elul)
 Family Weiss, London

OVERVIEW of the Daf

1) Selling an ox that turns out to be a gorer (cont.)

The Gemara rejects the proof to Rav's position that one who purchases an ox that turns out to be a gorer can cancel the sale.

Another unsuccessful challenge to Rav's position is presented.

It is suggested that the dispute between Rav and Shmuel parallels a dispute between Tannaim in a Baraisa.

Rav and Shmuel each explain how both Tannaim could be consistent with their respective positions.

A Mishnah is cited to refute Rav's position.

Rav is forced to recognize that his position is not universally held by all Tannaim.

The Gemara identifies which Tannaim disagree about this matter.

2) A seller's liability for selling defective seeds

A Baraisa presents a dispute whether the seller of defective seeds is liable to pay the buyer for his expenses that resulted from planting the defective seeds.

R' Chisda identifies the **יש אומרים** as R' Shimon ben Gamliel.

The Gemara searches for R' Shimon ben Gamliel's ruling that indicates that he maintains that the seller must reimburse the buyer for his expenses and finds two sources that indicate that this is R' Shimon ben Gamliel's position.

3) **MISHNAH:** The Mishnah discusses that percentage of
(Continued on page 2)

REVIEW and Remember

1. Why does an ox that gores a pregnant cow pay only a quarter the value of the fetus?

2. What is the point of dispute between Tanna Kamma and R' Acha?

3. How much does a seller reimburse a buyer if he sold him defective seeds?

4. What was the liability of caterers in Yerushalayim who did not prepare the meal properly?

Distinctive INSIGHT

Should the seller of bad seeds pay for the costs of planting?

תנו רבנן מהו נותן לו דמי זרע ולא הוצאה, ויש אומרים אף הוצאה

Rabban Shimon ben Gamliel taught in the Mishnah (92a) that a seller is responsible to reimburse a buyer if he sells him seeds for planting if the seeds turn out to be incapable of growing. Although, in certain cases, the seller may claim that he sold the seeds for eating and not for planting, if the seeds were not edible as is, it was understood that they were expected to be used for planting.

The Baraisa on our daf discusses the degree of responsibility of the seller to reimburse the buyer for his losses. It is understood that the buyer invested resources to plant these seeds which did not grow, and the cost of planting those seeds is also lost. Tanna Kamma rules that the seller only has to pay for the seeds themselves. Rashbam explains that Tanna Kamma holds that the associated expenses of planting the bad seeds is only a **גרמא**, an incidental loss, for which the seller need not pay. Others (**יש אומרים**) rule that the seller must reimburse the buyer for the seeds and for the expenses of planting which he paid. This opinion admits that the expenses of sowing the seeds is only a **גרמא**, but the Sages penalized the seller in this case and require him to pay for this damage.

Rashba explains that this is not just a case of a penalty to pay for an indirect damage, but it is rather a case of **גרמי**—a more direct outcome of the seller's marketing bad seeds. Rashba then wonders why Ri"ף does not rule in accordance with the **יש אומרים**, as the halacha generally requires payment for damages done by **גרמי**.

Ritva notes that if paying for the expenses of planting the seeds would be **גרמי**, our Gemara would not search to prove that the **יש אומרים** is the opinion of Rabban Shimon ben Gamliel, because Rabbi Meir is the one who says that one must pay for damage of **גרמי**. Rather, Ritva explains that the Gemara felt that this damage is only **גרמא**, and the Gemara itself is not sure whether the opinion of **יש אומרים** is that **גרמא** is generally **חיוב** or whether this is a special situation where we penalize the seller.

Ramban explains that Tanna Kamma exempts the seller from paying for the costs of planting because the seller had nothing to do with this action on the part of the buyer. It is not even **גרמא**, and the worst we can say about the seller's providing bad seeds is that he misled the buyer to think that the seeds should be planted. Rabban Shimon ben Gamliel obligates the seller to pay either as a **קנס**, or because once he benefitted by selling the seeds he should make sure that his buyer not suffer a loss. ■

HALACHAH Highlight

Firing a slave that is a thief

לא כולחו הכי איתנהו

No, all of them (slaves) are so (thieves and kidnappers)

There was once a Jewish homeowner who hired a Jewish woman as a maidservant. A short time later the homeowner found out that this woman had stolen from her previous employers and he now wanted to terminate their employment agreement. Before doing so he decided to consult with the author of Teshuvos Shvus Yaakov¹ to decide whether it is permitted to terminate the employment agreement.

Shvus Yaakov began by reviewing the standard guidelines of an employer who terminates his worker's employment. Shulchan Aruch² rules that an employee who was let go from his job has no financial recourse against his employer. The employer can simply tell him to find a job elsewhere. If, however, circumstances are such that at this point it is no longer possible for the employee to find employment the employer is obligated to pay him unemployment שכרו כפועל בטל. Accordingly, if the homeowner wants to release his maidservant his liability is subject to these guidelines.

Upon further review Shvus Yaakov decided that when the homeowner discovers that his employee is a thief he has the right to terminate her employment without providing her

(Overview...Continued from page 1)
inferior quality produce a buyer should expect in his purchase.

4) Adulterated grain

R' Ketina cited a Baraisa that implies that the buyer does not have to expect dirt in his purchase of grain.

This implication is challenged. ■

with any compensation. Although the Gemara relates that when one purchases a slave who turns out to be a thief the buyer cannot cancel the sale claiming fraud since one must always assume that slaves are thieves, nevertheless, this principle has no bearing in our case. This principle is limited to gentile slaves, but when it comes to Jewish slaves there is no presumption that they are thieves; therefore, in our case the homeowner can assert that she misrepresented herself when she took the job and may terminate her employment without recourse. Pischei Teshuvah³ expresses astonishment over the fact that Shvus Yaakov didn't mention that his conclusion is found in a ruling of Rema. Rema⁴ rules that someone who suspects that his domestic help is stealing has the right to terminate their employment in the middle of the contract and if they refuse to leave the employer has the right to use force to get them to leave. ■

1. שו"ת שבות יעקב ח"א סי' קע"ד
2. שו"ת חו"מ סי' של"ג סע' א' וב'
3. פת"ש חו"מ סי' רל"ב סק"ה
4. רמ"א חו"מ סי' תכ"א סע' ו' ■

STORIES Off the Daf

A catered affair

המוסר סעודתו לחבירו וקלקלה

A certain caterer accidentally served chicken that caused whoever ate it to be violently ill. The baalei simcha were terribly embarrassed by the entire affair. Instead of exchanging goodwill with pleased guests and relatives, the simcha was a terrible memory—especially for all those afflicted with food poisoning.

When the affair was finally over and they realized precisely which food was the culprit, the caterer apologized for the hosts' distress and offered to grant a discount for their inconvenience. But the baal simcha was unsatisfied with this. "I refuse to pay a penny!"

When this question was presented

before Rav Yisrael Grossman, zt"l, he ruled in favor of the unfortunate caterer. "Obviously, the ba'al simcha need not pay for the bad chicken. As far as its ruinous effect on the affair, this is certainly very regrettable, yet halachically it is still not more than an indirect damage (גרמא) for which we do not obligate one to pay.

"Although we find in Bava Basra 93 that the people of Yerushalyim would pay for the embarrassment of a host and his guests if they were hired to prepare a meal and they ruined it, the halachah does not follow this custom."¹

But the Shaarei Yosher disputed this ruling. "A גרמא only helps regarding damages, but in our case the question was not if the caterer has to pay damages. The inquiry was whether this is a מקח טעות, a mistaken sale, and it seems eminently clear that it was. Now, if the

chicken was the main course, it is surely a מקח טעות since if he had told the ba'al hasimcha that there would be no main course served he would certainly have cancelled and found another caterer. But even if it the chicken was only a ruined side dish over which people would not cancel if the caterer informed them that he cannot procure it, if the caterer was incapable of immediately isolating which dish is poisoned, any normal person would surely cancel anyway to avoid what occurred on that unfortunate night.

"Therefore, the ba'al hasimcha only needs to pay for whatever pleasure he got from the catering. For example, the value of whatever food was eaten, just as with any מקח טעות."² ■

1. תשובה זו מובא בספר דברי משפט ח"ד ע' שצ"ד
2. שו"ת שערי יושר ח"ב ס' י"א