



OVERVIEW of the Daf

1) A seller's interest in the property he sold (cont.)

Abaye discusses the halacha of a person who buys property to his friend without a guarantee and whether he can back out of the purchase if protesters claim the land is theirs.

According to a second version the buyer may not back out even if he has not taken possession of the field.

2) Paying damages from the best land (cont.)

R' Huna, in response to the question of whether damages must be paid with superior land, rules that the damager can pay with money or land.

R' Nachman unsuccessfully challenges this ruling.

R' Assi states that money is equivalent to land.

After entertaining a number of possible interpretations of this statement the Gemara concludes that R' Assi intends to express the same ruling as R' Huna.

3) Beautification of a mitzvah

R' Zeira in the name of R' Huna states that for a mitzvah one must spend up to a third.

R' Zeira explains that this ruling refers to the extra amount that one should spend to beautify a mitzvah.

R' Ashi inquires how this calculation is made and the Gemara leaves the matter unresolved.

Another related teaching is presented.

4) MISHNAH: The Mishnah presents the circumstances necessary for one to be obligated to pay for damages inflicted by his property.

5) Responsibility for one's property that damages

A Baraisa is cited that distinguishes between שור ובור on the one hand and אש on the other hand regarding liability for damages caused by one's property.

The Gemara clarifies the exact circumstances when the distinction will apply.

The Gemara identifies another distinction to account for

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Distinctive INSIGHT

A creditor takes from one of the brothers

האחים שחלקו ובה בעל חוב ונטל חלקו של אחד מהן

Rav Assi taught "כסף כקרקע—cash is as good as land." At this point in the Gemara, the statement of Rav Assi is understood to have been said in reference to the case of two brothers who divided the estate of their father. A creditor of the father then came and collected property from one of the brothers. The brother who had to forfeit his portion of the inheritance goes to collect from the brother who still has money. Rav Assi says that as the brothers re-divide the remaining assets of the estate, the one brother may pay off the other with either cash or land.

Certain Rishonim note that when a creditor approaches one of the brothers to collect a debt the father owed, the halacha is that he cannot go to one brother alone to collect the entire amount. The debt is owed by all the brothers, and the creditor may only collect a proportional amount from each in the first place. What, then, are the circumstances for the case of Rav Assi?

Tosafos (ד"ה וטרף) explains that the case is where the father assigned a specific field for collection (אפותיקי). Here, the brother who received this field must forfeit it to the creditor as promised.

Rashba (to Bava Basra 107a) and Magid Mishnah (Malveh 25:10) explain that the case is where one brother took as his portion the only medium-grade land (בינונית) which the father owned. This is precisely the land which is designated for collection by a creditor, and this is why that land was taken exclusively from the one brother. Rashba also explains that although a creditor cannot collect money from one brother more than the proportional amount he owes, when he collects land the creditor may take any and as much land as he wishes from even one brother. All land of the estate is subject to collection for the debt of the father.

Ritva answers that the case is where one of the brothers took all the poor-quality land (זיבורית) which the father had owned. From the Torah law, the main right of a creditor to collect from orphans is from זיבורית (Gittin 48b), so the brother who took this land must forfeit it to the creditor.

פירוש חריפתא explains that if the father was alive, he would not be allowed to give his creditor small pieces of land from several different locations to pay his debt. This would be an inferior and unacceptable payment. Similarly, the sons who each inherit a field do not each pay part of a field, as the creditor does not suffer any disadvantage now that the father has died. This is why one brother must pay the entire amount, and then re-divide with his other brother. ■

REVIEW and Remember

1. According to R' Huna, when is a damager allowed to pay with movable items?

2. What is meant when we declare that brothers are like purchasers?

3. How much more does one spend for הידור מצוה?

4. In what way is שור more stringent than בור?

HALACHAH Highlight

Returning one Sefer Torah to take another that is rolled to the correct place

אלא אמר ר' זירא בהידור מצוה עד שליש במצוה

Rather R' Zeira explained that one has to spend an additional third in order to beautiful a mitzvah

There is a well-known dispute between Shvus Yaakov and Chacham Tzvi. A person who was accustomed to lighting Chanukah lights with oil realized that he did not have any more oil so he began to prepare candles to fulfill the mitzvah. As he was ready to light someone brought him oil and the question was whether he should put aside the candles so he could light with oil? Shvus Yaakov¹ maintained that it would be disrespectful to put aside the candles once they were prepared for the mitzvah and although there is an advantage to fulfilling a mitzvah in a more beautiful fashion (הידור מצוה) nevertheless, beautifying a mitzvah does not allow one to cause disgrace to an object prepared for use in the performance of a mitzvah. Chacham Tzvi² asserted that setting up the candles is not considered as if he began the mitzvah; it is merely a preparation to perform the mitzvah (הזמנה) and thus the candles should be put aside and the man should light with oil since that is a beautification of the mitzvah.

It happens sometimes that a person takes out a Sefer Torah that is not rolled to the proper place. Is it permitted to return that Sefer Torah to the Aron Hakodesh to avoid burdening the

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R' Yochanan's opinion that one is not responsible when he gives a flame to someone who is mentally incompetent.

6) Contrasting the different categories of damagers

A Baraisa is cited that discusses the relative stringencies and leniencies of the different damagers. ■

tzibbur (טרחה דצבורא) while the Sefer Torah is rolled to the proper place or perhaps it would be a disgrace to return the Sefer Torah to take another one? Rav Moshe Feinstein³ wrote that one should not think that Chacham Tzvi would necessarily permit returning the Sefer Torah in this case since it is possible that he would agree that the Sefer Torah should not be returned. Perhaps the reason Chacham Tzvi allowed putting aside the candles for the oil is that the oil affords an opportunity to enhance the fulfillment of the mitzvah but regarding the Sifrei Torah since neither one is more beautiful than the other it is prohibited to disgrace the first Sefer Torah by returning it to the Aron Kodesh. On the other hand, one could assert that Shvus Yaakov would agree in this case that it is permitted to return the first Sefer Torah and take the second because burdening the tzibbur is a higher value than the concern for the disgrace of a Sefer Torah. His final conclusion is that both approaches are valid but adds that if the tzibbur does not mind waiting for the Torah to be rolled it is preferable to roll the first Torah rather than exchange it with another. ■

1. שו"ת שבות יעקב ח"א סי' ל"ז.

2. שו"ת חכם צבי סי' מ"ה.

3. שו"ת אג"מ אר"ח ח"ב סי' ל"ז. ■

STORIES Off the Daf

Beautifying the Mitzvah

"הידור מצוה עד שליש..."

When the question arose as to whether one should be particular to use an esrog raised in Eretz Yisrael, the Aruch Hashulchan, zt"l, wrote in a letter to the Sadei Chemed, zt"l: "It is correct for every Jew to choose the fruits of our holy land over the fruits of the other nations. How can one fail to do so? Where is the honor of Hashem and the honor of our Torah which praises the land in many verses? Where is the honor to Moshe Rabbeinu who pleaded so mightily with Hashem to enter into the land? Why should our ways be different from the path our ancestors—the sages of the Talmud—trode? Regarding these sages the Gemara tells us that they

kissed the dirt and fruit of the holy land. How can we reject its good fruit as if we are uninterested in it?"¹

But what about if one must choose between a kosher esrog from Eretz Yisrael or a mehudar one from chutz l'aretz?

The Ma'aseh Ish, zt"l, ruled in one case that the prospective buyer should choose a lesser esrog from Eretz Yisrael over the more mehudar one from chutz l'aretz. "This is clear from the halachah that we prefer a fruit of the seven species with which the land is praised over even a fruit which one prefers. Although the Rambam holds that one eats what he likes better regardless, that is only regarding hilchos berachos. But if it is a question of with what one should do the mitzvah, it is clear that an esrog from Eretz Yisrael is preferable to doing a mitzvah with a better one from outside the land..."²

But when the question was put to Rav Yosef Chaim Sonnenfeld, zt"l, he answered differently. "Quite the contrary—if the fruits of Eretz Yisrael are better than chutz l'aaretz fruits, any species of fruit from the land should take precedence over even the seven species grown in chutz l'aretz. But it does not! This is all the more true in the case of doing a mitzvah since the gemara in Bava Kama 9 states that one should spend an extra third of the price of the mitzvah in order to be mehader the mitzvah. And a clear proof to this is that the Rambam writes that all menachos, both from Eretz Yisrael and chutz l'aaretz, are kosher. Clearly, the one that is better takes precedence regardless of where it is from!"³ ■

1. שדי חמד, ח"ד, מערכת למ"ד, כללים, כלל

קמ"א, סעיף ל"ב, ד"ה מצאתי כתוב

2. שו"ת מעשה איש, סימן ד'

3. שלמת חיים, סימן ג'