

## OVERVIEW of the Daf

### 1) Voiding a sale (cont.)

The Gemara rejects the suggestion that the Mishnah supports R' Nachman's ruling that the merchant can void a sale forever.

An incident related to R' Nachman's ruling is recorded.

Two additional relevant incidents are presented.

2) **MISHNAH:** The Mishnah teaches that **אונאה** applies to the seller and customer alike but there is a disagreement whether it applies to a merchant. The Mishnah concludes that when **אונאה** was a sixth the defrauded party has the choice of what to do.

### 3) **אונאה** of the seller

A Baraisa is cited that demonstrates that even the seller has rights if he is defrauded.

The reason the Torah has to address the seller and the buyer is explained.

### 4) **אונאה** of a merchant

R' Nachman in the name of Rav explains why, according to R' Yehudah, a merchant cannot claim **אונאה**.

R' Ashi offers a second explanation for R' Yehudah's ruling.

A Baraisa is cited that supports R' Nachman's explanation.

### 5) The rights of the defrauded

It is noted that the Mishnah regarding the rights of the defrauded is inconsistent with the opinions of R' Nosson and R' Yehudah Hanassi cited in an earlier Baraisa.

R' Elazar states that he does not know the author of this ruling.

Rabbah explains that the Mishnah follows R' Nosson.

Rava explains that the Mishnah follows R' Yehudah Hanassi.

### 6) Stipulating that there is no **אונאה**

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## REVIEW and Remember

1. What is the unique right of a private person who sells his property?  
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2. Why is it necessary for the Torah to teach that there is no **אונאה** for a buyer and a seller?  
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3. How does R' Anan explain Shmuel's position in his dispute with Rav?  
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4. Explain **נוסא ונותן באמנה**.  
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## Distinctive INSIGHT

### Arranging a condition that is contrary to the Torah

הרי זו מקודשת ותנאו בטל דברי רבי מאיר

Rav and Shmuel argue regarding a case where a seller offers an object to a buyer and he sets a condition that the sale will not be subject to the laws of overcharge (**אונאה**). Is the condition binding? Rav holds that the laws of **אונאה** apply nonetheless, as no one can set a condition that is contrary to a law in the Torah. Shmuel contends that the condition is binding, as it was agreed upon ahead of time, and the laws of **אונאה** are suspended here.

The Gemara tries to show that this dispute corresponds to an argument we find between R' Meir and R' Yehuda. A man offers kiddushin to a woman on condition that he not be responsible to provide her with food, shelter or marital relations. R' Meir rules that the kiddushin is valid, and his condition is to be disregarded. This seems to correspond to the opinion of Rav. R' Yehuda holds that any area of commitment which is financial by nature can be agreed upon and voided. In other words, the couple is married, but the man no longer owes her food or shelter. This seems to be along the lines of the opinion of Shmuel, that financial arrangements, even contrary to the Torah's guidelines, can be agreed upon between the parties and dismissed.

R' Meir (Kiddushin 61a) learns from the episode of the tribes of Gad, Reuven and Menashe (Bamidbar 36) that in order to be valid, all conditions must be stated in the positive and the negative (**תנאי כפול**). The Rishonim ask why, then, the couple in this case should be married. The positive statement "we are married only if I do not owe you support, etc." is disregarded, but his negative clarification of "we are not married if I have to pay for your support, etc." should be binding.

Some Rishonim explain that R' Meir holds that when someone makes a condition against the Torah, he never meant for it to be taken seriously. It is only a form of exaggeration and emphasis, and it can be fully disregarded as legally meaningless. This is why the condition is null, and the marriage is valid.

Other Rishonim say that without the rules established from the Torah that a condition need be stated in double form we would have thought that no condition can interfere with an agreed-upon action, and that people's intent is that even lack of fulfillment of a condition would not stop the validity of a planned act. We learn from the Chumash that a condition can undermine an act, but still, this is only when the condition does not involve anything which is contrary to the Torah. A condition which is in conflict with the Torah, such as a man's offering to marry but to have no obligation to support his wife, would revert to the pre-Torah understanding that the condition is to be ignored and the action remains valid regardless of the condition. ■

# HALACHAH Highlight

## The laws of אונאה for a private person

אבל בלוקח מן בעל הבית אין לו עליו אונאה

But one who purchases from a private person [the customer] does not have a claim of אונאה

Rashi<sup>1</sup> explains in the name of Sheiltos that the reason there is no אונאה when buying from a private person is that it is treated as if the private person stipulated that he is selling an item for two-hundred even though he knows it is only worth one-hundred. Rosh<sup>2</sup> comments that according to this explanation the buyer must know that the seller is selling his own personal item. In such a case it is considered as if the seller specified that he is overcharging for the item but if the buyer did not know that the seller was a private person or if the private person sold the item through an agent the buyer would have recourse against the seller.

Later authorities disagree what Rosh would rule if the private person employed a merchant (סרסור) to sell the object. S"ma<sup>3</sup> asserts that once the object is sold by a merchant the regular laws of אונאה apply even if the buyer knows that the merchant is representing the private person. The reason is that once the private person gave the object to the merchant to sell to whoever he chooses it is likely that the buyer will not know that the merchant is representing a private person and he accepts that the sale will be restricted by the standard laws of אונאה. Therefore, even if the buyer is aware that the merchant is representing a private person there is אונאה since the private person does not expect to use the private person exemption.

Taz<sup>4</sup> disagrees with S"ma and rules that if the buyer knows that the merchant represents a private person the buyer will not

(Insight. Continued from page 1)

Rav and Shmuel disagree whether a stipulation that there will be no claims of אונאה is effective.

It is suggested that the dispute between Rav and Shmuel parallels the dispute between R' Meir and R' Yehudah.

Rav and Shmuel each explain how their position could be held by both Tannaim.

R' Anan offers a clarification of Shmuel's position.

The earlier assertion that Rav could be consistent with R' Yehudah is challenged.

Abaye agrees that Rav follows R' Meir and Shmuel follows R' Yehudah.

Rava explains how the Baraisa does not refute the assertion that Rav could follow the position of R' Yehudah.

### 7) Trading on trust

A Baraisa presents the parameters of an agreement to trade on trust.

R' Pappa clarifies a detail in the Baraisa.

8) MISHNAH: The Mishnah presents differing opinions regarding the point at which the use of an eroded coin constitutes אונאה. ■

be able to invoke the standard rules of אונאה. His reasoning is that the private person may have instructed the merchant to sell the item at a particular price and since the buyer knows that the merchant is representing a private person he waives his rights of אונאה. He proves his assertion true from what otherwise would constitute a contradiction between Rosh's ruling in his commentary to the Gemara and an opposite ruling in his teshuvos. ■

1. רש"י ד"ה מבעל הבית.

2. רא"ש פ"ד סי' ט"ז.

3. סמ"ע סי' רכ"ז ס"ק מ"ב.

4. ט"ז שם לסעי' כ"ג. ■

# STORIES Off the Daf

## The merchant's integrity

"כשם שאונאה להדיוט כך אונאה לתגר..."

On today's daf we find that the halachos of ona'ah also apply to a merchant.

Rabbi Yisrael Salanter, zt"l, waged war on those who were careful regarding mitzvos between man and Hashem while disregarding mitzvos between man and his friend. As a matter of fact, he felt that one should work the most on mitzvos that deal with his fellow man.

Not only did he believe that such mitzvos are paramount, he also held that one who is exceedingly careful in these mitzvos can reach the highest spiritual

levels. He would bring many proofs to this from chazal and the entire expanse of Torah. "As is well known, Chanoch was a shoemaker. While he would sew his shoes he would say, 'Boruch shem k'vod malchuso l'olam v'ed,' over every stitch, since with every act he sanctified himself and the entire world.

"Don't think this ma'amar refers to some kind of kabbalistic meditation," Rav Yisrael would explain. "It means quite simply that Chanoch would carefully check that each strip of hide he used was in good condition and that every single stitch was stitched carefully. Through the very act of taking care to be honest in all of one's dealings in money matters, he declares Hashem's Kingship and sanctifies himself and the entire world!"<sup>1</sup>

Rav Yisrael would warn the rabbanim of various cities to be alert regarding the level of honesty and integrity in business matters in their communities. "One must follow the halachah in money matters just as he must eat kosher food. Everyone understands that it is a rav's responsibility to ensure that the shochet in his city slaughters properly by checking his chlef for blemishes, since the rav's job is to ensure that people follow the halachah. Yet many are unaware that a rav is also obligated to walk from store to store in his jurisdiction to check the scales and measuring devices of those under his authority and ensure that they are not violating the prohibition of ona'ah!"<sup>2</sup> ■

1. ספרי קדמונים מובא במדרש תלפיות, אות ח'

2. תנועת המוסר, ח"א, ע' 322