

OVERVIEW of the Daf

1) Agency

Rava presents the case of an agent who accepts money from three people and only made the purchase for one of them.

2) Purchasing wine

R' Pappi in the name of Rava rules that marking a barrel of wine effects acquisition.

There is a disagreement regarding the intent of Rava and the conclusion of the Gemara is that it makes the parties subject to a **מי שפרע** and it effects acquisition in those places where marking a barrel is a recognized means of acquisition.

3) Futures contracts

Rav asserts that a futures contract can be made if only two processes towards completion are missing whereas Shmuel maintains that the number of processes is not significant, the significant factor is whether those steps are done by man or by nature.

Rav's position is unsuccessfully challenged.

Shmuel's position is unsuccessfully challenged from the same section of the Mishnah.

Another unsuccessful challenge to Rav's position is presented.

Additional unsuccessful challenges to Rav's position are presented.

The last citation is also presented as an unsuccessful challenge to Shmuel.

4) Entering a futures contract for clay pots

A Baraisa is cited that elaborates on the Mishnah's ruling concerning entering a futures contract for clay pots that were not yet manufactured.

A related incident is presented and analyzed.

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REVIEW and Remember

1. What is **סיטומתא**?
2. What is the point of dispute between R' Meir and R' Yosi?
3. What was R' Pappa's ruling related to the future delivery of jewelry?
4. Why is it permitted to loan seeds for planting to one's sharecropper?

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 By Mr. & Mrs. Dennis Ruben in memory of
הילדה רבקה דינה ע"ה בת ר' דוד שיחי'

Distinctive INSIGHT

Putting the final touches on the deal

אמר רב פפי משמיה דרבא האי סיטומתא קניא... והלכתא לקבולי עליה מי שפרע, ובאתרא דנהיגי למקני ממש קני

Rav Pappi teaches that an arrangement called “סיטומתא” is a legally binding condition. The Rishonim each describe what this is, but the consensus is that it is where a buyer and seller do not perform a formal transaction as defined in the halacha, but they instead perform some mutually acceptable gesture to indicate that their deal is final.

Rashi explains that a retailer goes to a supplier and arranges to purchase a quantity of barrels. The retailer marks the barrel with some symbol to identify which barrels he bought, and he leaves them in the possession of the seller until he needs them a few at a time. Simply making a mark on a barrel is not a formal transaction, but in this case the barrels now belong to the buyer.

Rambam (Mechira 7:6) explains that a mark is made by the buyer to identify that a particular group of barrels is his. Ra'aved explains that the buyer did not necessarily pay for the barrels or take possession of them in any way. It seems from Rambam that the mark placed by the buyer was not only a sign that these barrels have been bought, but also that the sign actually represents some unique mark of this particular buyer.

Rosh (#72) cites ר"ח who explains that **סיטומתא** is a handshake which is done to signal that the deal is finished. **פרישה** explains that this does not mean that the handshake is necessarily a form of a promise, but it is simply a customary gesture to show that the parties accept each other's terms and the deal is done. **הגהות מיימינות** explains that the Gemara is referring to the seller's handing over to the buyer the key to the room where the merchandise is located.

According to all opinions, the halacha recognizes the mutually accepted intent of both sides that the agreement cannot be reversed. Rav Chaviva holds that Rav Pappi means that the deal is final, while Rabbanan say that either party may still back out of the deal, but whoever does so is subject to the curse of **מי שפרע**.

In either case, Rashba notes that our Gemara is a source for the rule **מנהג מבטל הלכה**—in areas of financial dealings, the prevalent custom in a place supersedes formal halachic standards. Although halacha normally demands a transaction such as **משיכה** or **כסף**, if the custom is to shake hands or make a mark on something to finalize the deal, this gesture is binding even according to halacha. ■

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 By Mr. and Mrs. Volvie Hollander
 In memory of their grandfather
ר' אברהם עביר בן ר' ישעי', ע"ה

HALACHAH Highlight

The parameters of the kinyan situmta

האי סיטומתא קניא

An identification mark effects acquisition

Later authorities disagree about the status of the *kinyan situmta*. Nesivos Hamishpat¹ asserts that the effectiveness of a *kinyan situmta* is Rabbinic in origin. That said, he writes that *kinyan situmtai* is not effective for those matters that require a Biblical kinyan like kiddushin. Chasam Sofer² disagrees and writes that the meeting of the minds (גמירת דעת) that is achieved with *kinyan situmta* effects a kinyan even for Biblical matters.

Another debate regarding the *kinyan situmta* is whether it is binding in a place where they customarily complete a transaction verbally. Rosh³ writes that only actions qualify as a *kinyan situmta* but if the transaction involves nothing more than a verbal agreement it should not be considered a binding transaction. Rosh, however, cites a ruling of Maharam of Rottenberg which makes it evident that he maintains that even a verbal agreement qualifies as a *kinyan situmta*. This issue is very important in the diamond industry. Common practice amongst diamond dealers is that upon completion of a deal they pronounce, "Mazal u'veracha." This pronouncement seals the deal but the question is whether halacha recognizes such a declaration as having halachic import. Teshuvos V'hanhagos writes that a declaration of "Mazal u'veracha" amongst diamond dealers is a *kinyan situmta* since it is the customary way that a deal is finalized. He mentions the dispute whether a verbal agreement could be elevated to the status of a *kinyan situmta* and asserts that in this case all opinions could agree that it is binding. Two factors play into this approach. The first factor is that diamond dealers do not carry around the diamonds with them so it is not possible to make a formal kinyan of taking possession of the merchandise. Additionally, the pronounce-

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5) Futures contract for manure

It is noted that Chachamim seem to hold the same position as Tanna Kamma.

Rava identifies the difference between their opinions.

6) A buyer securing the best price

An incident related to a buyer securing the best price is recorded.

R' Pappa's ruling in the incident is unsuccessfully challenged.

Ravina unsuccessfully challenges R' Pappa's position.

Another unsuccessful challenge to R' Pappa's position is presented.

7) **MISHNAH:** The Mishnah discusses the permissibility of a landowner's lending seeds to his sharecropper to be used for planting. The practice of R' Gamliel concerning this matter is recorded.

8) Lending a sharecropper wheat

A Baraisa is cited that elaborates on the subject of lending one's sharecropper wheat.

The Gemara questions why the Baraisa draws a distinction whether the sharecropper already entered the field or not whereas the Mishnah does not make that distinction.

Rava offers a resolution to that challenge. ■

ment, "Mazal u'veracha" is stronger than a simple declaration that the transaction is completed and therefore all opinions may accept that it is binding. In his conclusion he writes that once Rema⁵ ruled that a verbal declaration does qualify as a *kinyan situmta* that becomes recognized halacha, therefore, the declaration of "Mazal u'veracha" between diamond merchants is a halachically recognized kinyan. ■

1. נתיבות המשפט סי' ר"א סק"א.
2. שו"ת חת"ס חו"מ סי' י"ב ווי"ד סי' ש"י"ד.
3. שו"ת הרא"ש כלל י"ב סי' ג'.
4. שו"ת תשובות והנהגות ח"א סי' תת"ג.
5. שו"ת הרמ"א סי' כ"א. ■

STORIES Off the Daf

An honorable obligation

"האי סיטומתא קניא..."

A certain man promised his good friend that he would be the sandek for his son's bris. But when it came time for the simchah, he changed his mind because he decided to give this honor to a different friend. When he broached this topic with the first friend, the man was very upset. He claimed that since he had been promised, it was already his right. According to his way of thinking, giving the honor to

another in his stead was nothing less than stealing.

When the confused father consulted with his rav, the rav was unsure and sent a letter to the Ridvaz, zt"l.

The Ridvaz answered, "First of all, you have not written whether the promise was before the baby was born or after. If it was before, the father has no obligation to fulfill his words since this is a matter which has not yet come into the world. Regarding such a matter, even a kinyan does not truly bind a person. A promise is surely not more binding than a kinyan.

"But if the father promised after the baby was born, it is indeed forbidden to

give this honor to someone else. The reason for this prohibition is that the custom is that when one is promised to hold the baby, the father does not go back on his word.

"I learn this from the Gemara in Bava Metzia 74. There we find that a merchant acquires a barrel of wine from the moment he puts his sign on it. The Gemara explains that although the merchant did not actually make a kinyan, he acquires because that is the custom. The same holds true regarding a promise that one will be a sandek."¹ ■

1. שו"ת רדב"ז, ח"א, ס' רע"ח ■