

OVERVIEW of the Daf

1) אונאה less than a sixth

The Gemara wonders whether אונאה less than a sixth is immediately discounted or only after the time transpires for one to show the merchandise to an expert or relative.

The importance of this inquiry is explained.

An unsuccessful attempt is made to demonstrate that the buyer is given the amount of time necessary to show the merchandise to an expert or relative.

The refutation of this proof is unsuccessfully challenged.

2) אונאה more than a sixth

The Gemara inquires whether the customer who is overcharged more than a sixth can void the sale forever or only within the time it takes to show the merchandise to an expert or relative.

An unsuccessful attempt is made to demonstrate that the customer must void the sale within the amount of time necessary to show the merchandise to an expert or a relative.

Rava makes a concise presentation of the laws of אונאה.

A Baraisa is cited that supports Rava's rulings.

3) Voiding a sale

R' Nachman asserts that the customer is limited in how long he has to void the sale but the merchant can always void the sale.

An attempt to support this assertion from the Mishnah is made. ■

REVIEW and Remember

1. What is the right of someone who was defrauded exactly a sixth?

2. What is the right of someone who was defrauded less than a sixth?

3. How long does one have the right to void a sale if he was defrauded more than a sixth?

4. What is the timeframe in which a seller can retract the sale due to fraud?

Distinctive INSIGHT

When does the מחילה of less than one-sixth occur?

איבעיא להו פחות משתות לרבנן לאלתר הוי מחילה או כדי שיראה לתגר או לקרובו

The rule of אונאה, overcharging, is that if the purchase price is within one-sixth of the fair market price of an item, the sale is valid, and any misrepresentation of the actual price is considered waived—מחילה. If the price charged is precisely off by one-sixth of what it should have been, the sale is valid, but the difference of one-sixth must be returned. If the price is more than one-sixth higher than it should have been, the sale is cancelled.

The Mishnah (49b) taught that when a sale is made and the buyer has been charged one-sixth too much, the buyer has a window of opportunity to show the item he bought to his advisors or relatives in order to have them confirm whether the price paid was fair. When this time limit has expired, he must decide either to void the sale or receive a refund of his overpayment. If he makes no choice, he waives his right to his claim.

Our Gemara inquires regarding where the price was less than one-sixth off, where the sale is valid and the overpayment is considered מחילה. Is this amount considered מחילה immediately, or is there a grace period allowed to show the item to one's advisors or relatives before the sale is valid?

שו"ת רדב"ז (cited in Shitta Mikubetzes) notes that the question regarding whether the מחילה of less than one-sixth occurs immediately or only after the buyer has a chance to show the item to his relatives is not resolved in the Gemara. However, the halacha is that the waiver of this amount occurs immediately with the sale. Furthermore, this question does not only affect the buyer, it also is relevant to the seller, if he sold the item for too little, but within a one-sixth range of the actual price.

רדב"ז asks why the Gemara only presents this inquiry in terms of less than one-sixth, which is the limit set by the Rabbanan, while the same question could be posed according to R' Tarfon, who allowed the merchants in Lod to charge up to one-third over the price, rather than one-sixth. He answers that R' Tarfon holds like R' Nosson (50b), that when the overcharge is one-third, the one who overpaid does not have the option to cancel the sale, but only to ask for a refund of the excess payment. When the overcharge is less than one-third it would be obvious that

HALACHAH Highlight

אונאה less than a sixth

אמר רבא הלכתא פחות משתות נקנה מקח

Rava said: The halacha is that [if the אונאה] is less than a sixth the transaction is valid

Rava rules that when one exploits (אונאה) someone for less than a sixth, the transaction is binding and the one who was exploited cannot demand a refund. There is a disagreement, however, whether it is permitted to knowingly exploit someone for less than a sixth. Ramban¹ writes that the Biblical prohibition against exploiting others applies in all circumstances. Nevertheless, the obligation to refund money when the exploitation was a sixth or to nullify a sale when it is more than a sixth is only a Rabbinic enactment. This enactment was based on the assumption that most people would not seek to void a sale if they were exploited a sixth and they are willing to waive the right to seek a refund if they were exploited less than a sixth.

Sefer Hachinuch² disagrees and maintains that it is permitted for a broker, for example, to inflate the price of an item as long as it does not reach a sixth. The rationale behind this approach is the assumption that people do not mind paying extra since it gives incentive for people to become salesmen which in turn makes more merchandise available to the public.

Rosh³ writes that he is uncertain about this matter. It is possible that the prohibition applies even when it is less

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R' Tarfon holds that the מחילה is immediate, because if he would have a grace period, the laws of less than one-third or a full one-third would be identical. In both, the sale would be valid and the buyer would have a grace period to seek advice. It must be that the level of מחילה for R' Tarfon is immediate. ■

than a sixth in the circumstance of a buyer or seller who is an expert regarding the value of an item and knows that the other party is ignorant of its value; it would be prohibited for him to exploit the other parties ignorance. The reason halacha allows for אונאה less than a sixth is based on the assumption that people do not know the exact value of an object and therefore Chazal ruled that when the difference is less than a sixth the exploited party has no recourse. On the other hand, one could argue that charging or paying less than a sixth is the way in which business is performed and it is permitted since sometimes a buyer or a seller may have a particular interest in buying or selling a particular object and is willing to pay a slightly higher price. In conclusion Rosh advises that one who is God fearing should fulfill both approaches. S"ma⁴ explains that one who is exploited less than a sixth should not file for collection and one who realizes that he exploited another should return the money. ■

1. רמב"ן בפירושו לתורה ויקרא כ"ה ט"ו.
2. ספר החינוך מצוה של"ז.
3. רא"ש פ"ד סי' כ'.
4. סמ"ע סי' רכ"ז ס"ק י"ד. ■

STORIES Off the Daf

Avoiding overcharging

"מי נתאנה..."

Today's daf discusses the halachos of ona'ah in money matters.

The Menoras Hameor, zt"l, once explained the insidiousness of אונאה and why people fall into this prohibition so readily. "People fall into אונאה as a result of their lust for the pleasures of this world. A person naturally figures that there is nothing wrong with overcharging since he is not stealing or robbing his customer, who willingly

overpays for the merchandise. It is to avoid such a mistake that the Torah specifically forbids overcharging. We see from this that one is obligated to do business faithfully and should never hope to "make a killing" through overcharging for his merchandise.

"Although the purpose of every person in business is to profit, the Torah absolutely forbids one from overcharging more than a sixth. And even regarding less than a sixth, which chazal tell us is such a small amount that the one who overpays forgives this slight amount, nevertheless, it is midas chassidus to sell merchandise for no more than its value.

"Yet there are times when one is permitted to charge more. If one says clearly that the going price for an item is such-and-such but he will not sell unless paid double on condition that this should not violate the prohibition of אונאה, he has not violated the prohibition. Similarly, if a buyer tells the seller that he knows that the going price for an item is such-and-such but he will not buy it unless it is sold for half, and on condition that there is no ona'ah, he does not violate the prohibition."¹ ■

1. מנורת המאור, פרק ה', אות ט"ו