

OVERVIEW of the Daf

1) Clarifying R' Eliezer's opinion

Rabbah suggests an explanation for R' Eliezer's position.

Abaye rejects this explanation and offers an alternative explanation.

הדרן עלך שור שנגח ארבעה וחמשה

2) **MISHNAH:** The Mishnah discusses two cases of uncertainty regarding a damager's liability.

3) Clarifying the Mishnah

R' Yehudah in the name of Shmuel notes that the Mishnah follows Sumchus who maintains that money that is in doubt is split between the two litigants but Chachamim would say that the one who seeks to collect bears the burden of proof.

The Gemara explains why Chachamim introduce their principle with the words, "זה כלל גדול בדין"—This is a major principle concerning judgment."

An alternative explanation of this phrase is presented that relates to a dispute between Rav and Shmuel whether someone who bought an ox that turned out to be one which gores can demand a refund - מקח טעות.

The case that is under dispute is clarified.

Once the Gemara identifies the case under dispute it proceeds to clarify the rationale behind each position.

A Baraisa is cited that supports R' Yehudah's assertion that the ruling of the Mishnah is subject to a dispute between Sumchus and Chachamim.

4) המוציא מחבירו עליו הראיה

R' Shmuel bar Nachmani cites a source for the principle of המוציא מחבירו עליו הראיה.

R' Ashi rejects this interpretation and offers another exposition to make from this verse.

Nehardai notes an exception to this rule.

5) Clarifying the Mishnah

The Gemara challenges the Mishnah's implication that when there is an uncertainty whether the calf was in the mother at the time of the goring the damaged party will collect three-quarters damage.

Abaye explains the true intent of the Mishnah.

Abaye further elaborates on the circumstances of the Mishnah's case.

An alternative version of Abaye's last qualification is presented.

Rava rejects this qualification and offers his own explanation. ■

Distinctive INSIGHT

The purchasing patterns of the buyer, and the level of the purchase price

אמאי? ונחזי אי גברא דזבין לרדיא אי גברא דזבין לנכסתא ... וניחזי אי דמי רדיא לרדיא, אי דמי נכסתא לנכסתא

The Mishnah introduced the case of a person who bought an ox which turned out to be a wild, goring animal. The buyer claims that he bought the animal for plowing, and, as the animal was unsuited for labor, he claims that the sale should be cancelled. The seller claims that he sold the animal for slaughter, and that the sale of the animal was valid. The halacha is that it is incumbent upon the buyer to prove his contention (המוציא מחבירו עליו הראיה), as it is he who is trying to extract money from the seller. The Gemara clarifies that there are several factors which can mitigate this ruling. "Let us see if this buyer purchases animals for plowing." Rashbam explains that if the seller knows that the buyer is a farmer and buys animals only for farm work, it is clear that the purpose of the sale was to acquire a tame animal that was fit for work. According to Rashbam, if the seller did not know the buyer and his buying patterns, he can claim that he was unaware of this intent, and the sale would be valid. In any case, our Gemara notes that the law in the Mishnah involves a case where the buyer purchases some animals for work and some for slaughter, so his buying patterns are not a determining factor.

Furthermore, the Gemara suggests that the purchase price be analyzed to determine the true intent of the sale. If the price was low, it is obvious that the sale was for an animal to be slaughtered. If the price was higher, the sale was obviously for an animal capable of farm work. The fact that the Gemara pursues this factor after having determined that we are dealing with a buyer who purchases animals for work and for slaughter leads the Tur (C.M. 232:41) to say that, in fact, if this buyer only buys animals for plowing, and the seller knew it, the sale is not valid even if the price was a lower one, which otherwise would have indicated that the sale was for an animal for slaughter. If the price was the most critical factor, the Gemara would have answered its earlier query about the buying patterns of buyer by saying that the sale in the Mishnah is valid even if we are dealing with a person who buys exclusively for plowing, if he paid a lower price. Yet the Gemara does not offer this answer. We see that the only way to avoid the issue of the purchasing patterns of the buyer is if we are dealing with a buyer who buys for both purposes.

The Gemara concludes that it is only in the absence of both these criteria (clear pattern of the buyer's purchasing patterns and the amount paid for purchase) that we revert to saying that the buyer must prove his case. ■

HALACHAH Highlight

An employee's obligation to pursue his wages

דכאיב ליה כאיבא אזיל לבי אסינא

The one who experiences pain should go to the doctor

Chofetz Chaim¹ writes about an employer's obligation to pay his employee in a timely fashion so that he should not violate the prohibition against delaying payment of an employee – **בל תלני**–. One case that he discusses is an employer who did not have the funds to pay his employee when he asked for payment but came upon additional funds before the day was over. Although he had previously told the employee that he did not have the funds to pay him, he is now obligated to bring the money to the employee or at least inform him that he could come and get his money.

Chofetz Chaim² explains that in order for the employer to avoid violating the prohibition against late payment of his employee's wages he is not required to do any more than inform the employee that his wages are available. Once he does so he will not violate the prohibition, even if the employee does not come to pick up the money. This ruling is based on the assumption that an employer is not obligated to pursue his employee in order to pay him in a timely fashion; rather the employee has the responsibility to pursue his employer. Moreover, even if he pursued him once and was told that there were no funds available to pay his employee, neverthe-

REVIEW and Remember

1. What is the rationale behind R' Eliezer's position the only means of guarding a מועד animal is by killing it?
2. Why do Chachamim use the phrase **זה כלל גדול בדין**?
3. What is the source for the principle **המוציא מחבירו עליו הראיה**?
4. What is the difference between the two versions of Abaye's statement?

less, once the employer informs him that his wages are now available it is up to the employee to get his money. Proof to this assertion can be found in our Gemara that relates, "The one who experiences pain should go to the doctor." In other words, the employee who is seeking payment has the burden of pursuing his employer in order to receive his wages. The language of the verse also indicates this principle since the verse expresses concern about a case where the employee will detain the money instead of making a timely payment but it does not obligate the employer to pursue the employee in order to pay him his wages. ■

1. ספר אהבת חסד פ" סע' י"א
2. נתיב החסד ס"ק ל"א

STORIES Off the Daf

Selling under false pretenses

המוציא מחבירו עליו הראיה

A certain Jewish seller of household goods purchased some very expensive dishes and other items that he was told had been imported from Europe. Shortly after the purchase the buyer found out that the vessels were locally made and had never even been to Europe. They had been made specially to order for use at the wedding of a certain non-Jewish man in Baghdad. After the wedding, this wealthy non-Jew no longer had any use for such vessels and he sold them to a Jewish merchant who then passed them off for a tremendous profit to the retailer in question. The merchant had known

the entire time that these vessels were not from Europe but he had falsely claimed they were in order to encourage the sale.

The retailer who had purchased the dishes was incensed and demanded his money back. "These vessels are worthless to me since they are treif and cannot be sold to a Jew."

The seller disagreed, "It is true that they cannot be sold to a Jew, but we never talked about if they were kosher when you bought them. In any case they are just as valuable whether they are kosher or not. Although it is true that they are cheres and can never be koshered, all you need to do is sell them to a gentile..."

This case came before the Ben Ish Chai, ז"ל, who ruled that the money

need not be refunded. "In Bava Kamma 46 we find that Rav and Shmuel argue whether one who sells an ox to his friend and it turns out to habitually gore so that it must be shechted immediately, has conducted a valid sale. We hold like Shmuel, that if there is no clear proof that the ox was purchased for plowing the seller can claim that the buyer purchased the ox to shecht, since the burden of proof is on the plaintiff.

"The same holds true in your case," the Ben Ish Chai concluded. "The dishes have a certain value whether they are kosher or treif. If the buyer wishes to annul the sale he must prove that he would not have purchased them if he had known they were treif. The burden of proof is on the plaintiff!"¹ ■

1. שו"ת רב עפעלים חלק ב' חו"מ ס' י"ב