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בבא מציעא נ״ז
CHICAGO CENTER FOR Torah & Chesed
בס״ד

OVERVIEW of the Daf

1) Seeds (cont.)

The Gemara completes presenting the issues involved in the inquiry of whether seeds that did not take root are permitted upon the offering of the Korban Omer.

The three inquires are left unresolved.

2) Overpayment more than a sixth

R' Ami inquires whether the items mentioned in the Mishnah that are not subject to אונאה are still subject to the law of voiding the sale when the overpayment was more than a sixth.

R' Nachman quotes R' Chasa who states that one could void a sale if the overpayment was more than a sixth.

The Gemara presents a disagreement whether R' Yochanan issued a similar ruling related to hekdesh or real estate.

The practical difference between these two versions is presented. R' Yona's opinion that R' Yochanan referred to hekdesh is unsuccessfully challenged.

3) Deconsecrating a blemished animal

Earlier the Gemara cited a dispute between R' Yochanan and Reish Lakish whether it is a Biblical obligation, r only a Rabbinic obligation, to make up the difference in value between a less expensive animal and a more expensize, blemished, animal that the less expensive animal was used to deconsecrate.

Two practical differences between their explanations are presented.

4) Overpayment more than a sixth (cont.)

The Gemara returns to its earlier discussion of this dispute between R' Yochanan and Reish Lakish and suggests that they dispute R' Chisda's ruling that when the Mishnah states that hekdesh is not subject to אונאה it means that even if the overpayment is less than a sixth the discrepancy must be returned. This ruling is unsuccessfully challenged.

5) Interest involving hekdesh

(Continued on page 2)

REVIEW and Remember

1. What is the point of dispute between R' Yonah and R' Yirmiyah?

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2. What is Shmuel's ruling concerning deconsecrating hekdesh property?

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3. How is it possible for there to be a case of interest involving property of the Beis HaMikdash?

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4. What is the Biblical source that teaches that a paid watchman does not pay if a contract deposited by him is stolen?

_____

Distinctive INSIGHT

Interest that is permitted when given to the Beis HaMikdash

כגון שקבל עליו לספק סלתות מארבע ועמדו משלש

The Baraisa taught that interest and overcharging are issues only in regard to private exchanges, but not in regard to financial interactions with הקדש. The Gemara analyzes this statement and identifies the circumstances where this rule applies. Rav Hoshia explains that the case is where a supplier agreed to supply the Beis HaMikdash with flour for an entire season at the rate of four se'ah of flour for a sela, and the supplier received the money for the entire season's shipment up front. Soon, the price of flour rose, and only three se'ah of flour could be bought for a sela. The halacha is that among private individuals it is prohibited to arrange such a deal, because in precisely a case such as this it would be prohibited to continue to supply flour at the rate of four se'ah for each sela, as this is tantamount to paying interest in consideration of having received the money up front. Nevertheless, this is permitted in dealing with the Beis HaMikdash, as the verse (Vayikra 23:20) "Do not cause your brother to take interest" only prohibits this when dealing with one's fellow individual.

The Rishonim note that a case is deemed Torah-level interest only when a loan is offered on the condition that interest be given, but our case of advancing payment for a sale over time is only rabbinic-interest. It would seem that the illustration of the case of the Baraisa, which is based upon the verse, should be one of Torah-level interest that is prohibited among private individuals, but permitted when dealing with the Beis HaMikdash. Why is the example of Rav Hoshaya one of rabbinic-level interest?

Ramban explains that the case of the earlier Baraisa which is based upon the verse is, in fact, one of Torah-level interest. For example, a person promised to donate a se'ah of flour to the Beis HaMikdash, and to deliver it immediately. The treasurer offered to delay collection, on the condition that the donor later give two se'ah instead. This is indeed a case of Torah-level interest, and it is permitted when the receiver is the Beis HaMikdash. Nevertheless, Rav Hoshia preferred to illustrate a case which is featured in the Baraisa which deals with one who supplies flour, although it is one of rabbinic-level interest.

Tosafos explains the case is where a person offered to donate 100 sela to the Beis HaMikdash, but he did not give it yet. The money, which was still owned by the donor, was given to a baker, with instructions to supply flour to the Beis HaMikdash at the rate of four se'ah per sela. This is prohibited among private individuals, as the price of flour may rise. This is permitted in this case, a Torah-level illustration, as the Beis HaMikdash is the receiver. ■

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לע״נ מרת רבקה בת ר׳ שרגא פאטעל ע״ה
By her children Mr. and Mrs. David Friedman

HALACHAH Highlight

Exploiting an employee

אלו דברים שאין להם אונאה הקרקעות והעבדים וכו'

The following are items that are not subject to אונאה: Land, slaves, etc.

Shulchan Aruch[1] rules that when one hires an employee, regardless of whether it is agricultural work or working with movable objects, the employee's salary is not subject to the halachos of אונאה. The reason given is that employment is conceptually the same as acquiring a slave for a limited period of time and our Gemara teaches that slaves are not subject to the halachos of אונאה. The rationale behind the ruling that a worker's wages are not subject to אונאה, however is debated by Rishonim.

Rambam[2] writes that an employee's wages are not subject to the halachos of אונאה since, as mentioned, employees are considered slaves for the term of their employment and the Gemara equates the halachos of slaves with the halachos of land. Since the Gemara teaches that only movable objects are subject to the halachos of אונאה it follows that slaves are also precluded from the halachos of אונאה. Rashbam[3] offers another explanation why an employee's wages are not subject to the halachos of אונאה. He writes that a person who has difficulty finding work is willing to accept any form of employment, even if the pay is very low. Since he is desperate for a job any compensation is profitable and thus it is not considered אונאה because he knows that he is not receiving appropriate compensation and is willing, nonetheless, to accept it.

Later authorities note that there are practical differences between these two explanations. One difference will arise if the employer exploits the employee by paying him less than half of what his salary should be, according to prevailing market standards. If we take the approach of Rambam we would say that the employer violated the halachos of אונאה since according to some Rishonim land is subject to אונאה when the seller charges more than double its market value. According to Rashbam, however, it does not matter how little the employer paid his employee since it is the relationship between employee and employer that is not subject to the halachos of אונאה. A second practical difference is whether the exploiter violated a prohibition. Although there is no recourse for one who was exploited in a real estate purchase the exploiter violated a prohibition. Similarly, according to Rambam, although there is no recourse for an employee who was exploited the employer violated a prohibition. On the other hand, according to Rashbam the employer did not violate any prohibition whatsoever. ■

1. שו"ע חו"מ סי' רכ"ז סע' ל"ג.
2. רמב"ם פי"ג מהל' מכירה הט"ו.
3. רשב"ם ב"ב פ"ז. ■

(Overview...continued from page 1)

R' Hoshaya suggests one case of interest involving hekdesh and R' Pappa suggests a second case.

6) Clarifying the Mishnah

A Baraisa is cited that presents the sources that one does not pay kefel for the items mentioned in the Mishnah.

The reason one does not pay ד' וה' for the items mentioned in the Mishnah is explained.

The source that one does not take an oath on the items mentioned in the Mishnah is presented in a Baraisa.

The sources one does not become a paid watchman for the items mentioned in the Mishnah are presented.

7) Taking an oath on Beis HaMikdash property

The Gemara begins to challenge the Mishnah's ruling that an unpaid watchman does not take an oath regarding property belonging to the Beis HaMikdash. ■

STORIES Off the Daf

"Not including land..."

"...יצאו קרקעות שאינן מטלטלין"

A certain man rented a house from a non-Jew and then sublet this house to his Jewish friend. The friend's family moved in but shortly after there was a fire in the house which caused tremendous damage. The house was uninsured and the non-Jewish owner would certainly be awarded full damages in the civil courts of Antwerp. The Jewish man who had rented the house to his Jewish friend demanded that he pay for the damage, especially since his young son had apparently been playing with matches at the time.

When they went to Rav Shlomo Zalman Webber for adjudication, he held that the resident was not obligated to pay for the damage, but he did not wish to take responsibility for this psak . He chose to consult with Rav Yosef Shalom Eliashiv regarding this matter.

He answered, "First of all, in Eretz Yisrael the custom is for the contract to contain a clause obligating the person to whom the apartment has been sublet to return the property as he received it for this very reason. I understand from your inquiry that either there was no contract or that this clause was absent from the contract. Obviously, if there was such a clause the person in residence must pay every penny of damage.

"If there was no such clause, it is clear that your honor is correct in his analysis that the resident need not pay the damages. As you wrote, we find in Bava Metzia 57 that a shomer need not swear regarding land, since the halachos of a guardian do not apply to land... Although there are numerous disputes over the application of this principle, they do not have much relevance to this case since the Rama rules that a shomer is not obligated even if he was negligent. It is especially obvious in this case, since there is no proof that the child was responsible!"[1] ■

1. קובץ תשובות, ח"א, ס' רט"ז

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