

OVERVIEW of the Daf

1) Clarifying the Mishnah (cont.)

R' Pappa explains which Mishnayos apply to tenant farming and sharecropping and which apply to one or the other.

The Gemara challenges the Mishnah's ruling that when the farmer asked that the landowner lease him a particular field the farmer may deduct from his rent if the stream dries up.

A Beraisa is cited to support the contention of the question.

Shmuel offers a resolution to the question.

Ravina offers a second resolution.

2) **MISHNAH:** The obligation of a farmer who chooses to leave the rented field fallow is presented.

3) The simple meaning of the language of a contract

A Beraisa is cited that relates that R' Meir would expound the simple meaning of the language of a contract.

The Gemara relates that other Tannaim would also expound the simple meaning of the language found in contracts.

Tangentially, the Gemara discusses the necessity of a line found in loan documents.

The last example relates to language found in a kesubah.

It is reported that in some locations they would collect a fraction of the number contained in the kesubah whereas in different locations they would collect the full amount recorded in the kesubah.

The practice of collecting the full amount is unsuccessfully challenged.

A related incident is recorded.

Another related incident is presented.

4) A farmer who leaves the rented field fallow

Nehardei ruled that a farmer who leaves part of the field fallow must pay the corresponding percentage to the landowner.

Rava argued that committing to pay if the field is left fallow is an **אסמכתא** and he does not have to pay anything.

Rava's ruling is unsuccessfully challenged.

The Gemara presents two incidents of farmers who rented a field to plant sesame and instead planted wheat.

5) Iska partnerships

Nehardei explains the character of a iska partnership.

Rava disagrees about the character of an iska partnership.

R' Idi bar Avin discusses what happens if the managing partner dies.

Distinctive INSIGHT

Selling an area that is "called" a בית כור

האומר לחבירו בית כור עפר אני מוכר לך, אף על פי שאין בו אלא לתך הגיעו, שלא מכר לו אלא שמא והוא דמתקרי בית כור

The Mishnah (103b) teaches that if Reuven arranges for Shimon to be a sharecropper in his naturally-irrigated field (שדה בית השלחין), and the spring in the field dries up, the deal must be adjusted accordingly. The receiver has the legal right to claim that he expected that the spring would be available for him. The Gemara (104a) challenges the Mishnah from a Beraisa in Bava Basra (7a) where, if Reuven present a piece of land the size of a בית כור for sale to Shimon, the sale is valid even if the land is not a full בית כור. In fact, even if the land is only the size of a לתך (half of a כור), the sale is still valid, as long as that particular field is referred to by people as being "a בית כור". The reason is that the seller can claim "I sold you a field which is called (שמא) a בית כור." The question is, therefore, why do we not say in our Mishnah as well that no adjustment need be made when the spring dries up, and the owner could say **שלא מכר לו אלא שמא**?

Shmuel and Ravina each offer an answer to this question. Shmuel says that it depends who is speaking. If the owner tells the sharecropper, "I am providing you with a בית כור," it can be approximate. If the sharecropper requested to work a בית כור, it must be with the spring. Ravina explains that the owner is the one speaking in both cases. If they are standing in the field when the deal is made and the owner says that he is providing a בית כור, it may be approximate. If they are not standing in the field, it must be a full בית כור, and the field must contain a spring.

Rambam (Hilchos Mechira 28:14) rules according to our Mishnah, and says that the sale is valid even if the spring dries up, or if the field is smaller than a full בית כור.

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REVIEW and Remember

1. When is the sale of a "vineyard" valid even when there are no grapevines?

2. What is לשון הדיוט?

3. How does Rava define the principle of אסמכתא?

4. What is the role of the two partners in a עסקא agreement?

HALACHAH Highlight

Paying for rented shoes that were not used

ההוא גברא דקביל ארעא לשומשמי וכי

A certain fellow leased a field to plant sesame etc.

Reuven had very old shoes and needed to take a long journey. He arranged to rent new shoes from Shimon for the journey. They agreed upon a price Reuven would pay for the use of Shimon's shoes. Reuven wore Shimon's shoes to his destination but on the return journey he was able to get a ride home by wagon and did not wear out Shimon's shoes. Reuven felt that since he only walked in the shoes on the way to his destination he should only have to pay half of the agreed-upon price. Shimon argued that the agreement was that Reuven would pay for use of the shoes for the journey. Since Reuven had taken the shoes on the trip, he should have to pay the full amount. Unable to resolve their disagreement they turned to the author of Teshuvos Mikor Chaim for a ruling.

Teshuvos Mikor Chaim¹ cited our Gemara as precedent for this question. The Gemara discusses the case of a person who contracted to plant sesame in a field, which is more profitable than wheat, but also depletes the ground of more nutrients. The contractor decided to plant wheat instead and it turned out that wheat increased in value and the landowner did not suffer financially from the contractor's change of crop. Furthermore, he benefited in the sense that his land did not become depleted as he initially expected. Nevertheless, the con-

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Rambam adds that the halacha of שמא מוכר לו only applies when the seller identifies the specific field and says that he is selling "בית כור פלוני". Beis Yosef explains that when the seller says "This כור" or "This vineyard," he can claim that that particular field is called a כור בית or כרם. But if he sold a כור, or a vineyard, without reference to any particular field, the seller must furnish a complete area of a כור בית, etc. Ketzos HaChoshen (218:#15) explains that Rambam actually had a text in the Gemara with the words "בית כור עפר זה". Ritva, in the name of Ra'aved also has the word "זה" in his text of our Mishnah. ■

tractor cannot expect a refund or a discount for that fact that he caused less depletion of the land because the landowner was willing to allow that depletion to occur in order to earn more money. Accordingly, in our case as well since Shimon was willing to allow wear and tear on his shoes in order to make some money he has the right to expect that agreed-upon amount even if for some reason Reuven did not cause the expected degree of wear and tear.

He then suggested that the cases may not be parallel since in the Gemara's case the land owner leased his land as a means of earning a living, as opposed to our case where Shimon did not earn his living from renting out his shoes. Ultimately, though, he ruled in favor of Shimon and obligated Reuven to pay the original agreed-upon price. ■

¹ שו"ת מקור חיים (סאגאלוביץ) סי' ל'. ■

STORIES Off the Daf

Out of pocket expenses

ולא למשתי ביה שכרא

On today's daf we find that a person who received merchandise as a loan in order to sell it may not use it for any other purpose.

Two partners in business were at a crossroads. They were trying to get a deal that would make them huge profits but it didn't seem as though they were likely to succeed. One partner was a great believer in the efficacy of the prayers of tzaddikim and decided that it was worthwhile to give a large sum of money to tzedakah so that various rebbes should daven for them and ensure that they were successful.

The man gave the charity and the

deal did go through but when the partner who had given of his own money to the tzaddikim tried to deduct from his partner's share of the profits half the expenses for the exorbitant amount of money he had donated, there was trouble.

His partner argued, "I am glad that you felt more comfortable that the tzaddikim davened for our success and have no objection to this. But I would never have agreed to pay out money for this service. It is true that you claim that it was only in the merit of their prayers that we succeeded, but you still had no right to spend my money without my permission."

The two went to the Maharsham, ז"ל, for a psak. He answered, "I am sorry, but it is certainly not universal for people to send money to tzaddikim to daven. While I sympathize with you since you thought your partner would also have to contrib-

ute, I am afraid that your partner is not obligated to pay. This is similar to the case that came before the Rama MiPano, ז"ל, regarding a certain woman who took ill and her father gave charity so that she would recover from her illness and she actually did. But when the father asked if he could deduct the money he had donated from what he owed his son-in-law for a dowry, the Rama prohibited this.

"Although the halachah is that money spent on doctors' bills may be deducted, tzedakah may not. The same is true in this case."¹ ■

¹ משפט שלום, קע"ו, סי' י'. ■

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Rava disagrees with R' Idi bar Avin's assertion.

Rava discusses an iska partnership that includes two contracts. ■