

A בס"ד

Intro

Today we will Be"H begin Perek את הבית המוכר, the fourth Perek in בבא בתרא, מסכת בבא בתרא, and learn דף צ"ב. Some of the topics we will learn about include:

המוכר פירות

Whether a sale of edible seeds is binding if the seeds were not suitable for planting?

הולכין בממון אחר הרוב

The whether we follow a majority to determine monetary matters?

The Gemara relates this מחלוקת to the following cases:

1.

המוכר שור לחבירו

ונמצא נגחן

If someone sold an ox that is inclined to gore, whether the seller can claim that he sold it for slaughter?

A

המוכר פירות

הולכין בממון אחר הרוב

המוכר שור לחבירו
ונמצא נגחן

B

2.

היא אומרת בתולה נישאתי

והוא אומר אלמנה נשאתיך

If a woman was widowed or divorced and now entitled to her כתובה, whether she may claim, without bringing witnesses, to have been a בתולה when they married and therefore entitled to 200 זוז?

3.

המוכר עבד לחברו

ונמצא גנב או קוביוסטוס

לסטים מזויין או מוכתב למלכות

If a person sold a slave who was a thief, kidnapper, armed bandit or sentenced to death, whether the sale is still binding?

B

היא אומרת בתולה נישאתי
והוא אומר אלמנה נשאתיך

המוכר עבד לחברו
ונמצא גנב או קוביוסטוס
לסטים מזויין
או מוכתב למלכות

1 So let's review...

Zugt di Mishnah

המוכר פירות לחברו
וזרען ולא צמחו

If one person sold produce to another; and as the Rashbam explains,

איכא דזבין לזריעה
ואיכא דזבין לאכילה

Produce such as beans or grain, which some purchase for eating and others for planting. ®

In this case, the buyer did not specify his intention, and he planted them, but they did not grow;

ואפילו זרע פשתן

Or even if he purchased and planted flaxseed that didn't grow, although ®

רוב פשתן לזריעה

Most flaxseeds are purchased for planting; ®

אינו חייב באחריותן

The seller is not responsible and does not need to refund the money, because as the Rashbam explains,

מצי למימר

לאכילה מכרתיו לך

The seller can claim that he sold them as food to be eaten.

However,

רבן שמעון בן גמליאל אומר

זרעוני גינה שאינן נאכלין

חייב באחריותן

adds that garden seeds are inedible and clearly

intended for planting. Therefore, if they did not grow, the seller IS responsible and must refund the money, because

®

הוי מקח טעות

The sale was made under mistaken assumptions.

1

המוכר פירות

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2 The Gemara now cites a מחלוקת רב ושמואל, which the Gemara in the next Daf will relate to our Mishnah.
 המוכר שור לחבירו
 ונמצא נגחן
 If someone sold an ox, and the buyer later discovers that it's inclined to gore and therefore not suitable for plowing, but it is suitable to be slaughtered and eaten;
 We must determine whether it is a מוקח טעות.

The Gemara explains the circumstances in which there is this Machlokes because there is no means to determine the intention of the buyer;

By first eliminating various cases in which there would be NO Machlokes, because the intention of the buyer would be clear.

1.

If the buyer is a גברא דזבין לנכסתא
 He is a

טבח שאינו עובד אדמה

If he is a butcher, he clearly bought it for slaughtering, and it certainly is not a מוקח טעות.

And if the buyer is a גברא דזבין לרדיא

He is an

טבח ועובד אדמה הוא ולא טבח

If he is a farmer, he clearly bought the ox for plowing, and it certainly IS a מוקח טעות.

Therefore, the מחלוקת must be in a case of

גברא דזבין להכי ולהכי

He is both a

טבח ועובד אדמה

The buyer is both a butcher and a farmer who buys oxen both for plowing and for slaughtering. Therefore, if he did not specify, his intention is unknown.

2

מחלוקת רב ושמואל

המוכר שור לחבירו ונמצא נגחן

If someone sold an ox,
and the buyer later discovers that it's inclined to gore
and therefore not suitable for plowing,
but it is suitable to be slaughtered and eaten;
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And if the buyer is a

גברא דזבין
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The buyer is both a butcher and a farmer
who buys oxen both for plowing and for slaughtering.
Therefore, if he did not specify, his intention is unknown.

3

2.

The Gemara continues with additional cases where his intention would be clear:

אי דמי נכסתא לנכסתא

אי דמי רדיא לרדיא

If the buyer paid the lower price of an ox for slaughter, he clearly purchased it for slaughter, and it certainly is not a מקח טעות;

And if he paid the much higher price of an ox for plowing, he clearly purchased it for plowing, and it certainly IS a מקח טעות;

And the Rashbam adds

אפילו לשחיטה זבין

מקחו בטל

דנתאנה יתר משתות

Even if he bought it for slaughter, the sale would be void, since the buyer overpaid by more than 1/6 of its worth.

Therefore, the מחלוקת must be in a case of

דאייקר בישרא

וקם בדמי רדיא

The cost of meat rose and the prices for both oxen are now equal. Nevertheless, the buyer wishes to renege on the deal, because

נפקא מינה לטרחא

He does not want the bother of slaughtering and selling the meat to regain his money, since he only required an ox for plowing.

3

2

אי דמי רדיא
לרדיא

And if he paid the much higher price of an ox for plowing, he clearly purchased it for plowing,

it is a מקח טעות;

אי דמי נכסתא
לנכסתא

If the buyer paid the lower price of an ox for slaughter, he clearly purchased it for slaughter,

it is not a מקח טעות;

אפילו לשחיטה זבין – מקחו בטל
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Even if he bought it for slaughter, the sale would be void, since the buyer overpaid by more than 1/6 of its worth.

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Nevertheless, the buyer wishes to renege on the deal, because

נפקא מינה לטרחא

He does not want the bother of slaughtering and selling the meat to regain his money, since he only required an ox for plowing.

4

3.
The Gemara continues to elaborate;
אי דליכא לאישתלומי מיניה
ליעכב תורא בזויה
If the seller does not have the money to reimburse him, the
buyer simply keeps the ox as payment.
Therefore we must say
דאיכא לאישתלומי מיניה
We are discussing a case where he has money available,
and in such a case
לא יכול לדחויי
לאפרועי משאר נכסים
He cannot repay him with other assets.

Since there is no way to determine the intention of the
buyer, the מחלוקת is as follows:
רב אמר

הרי זה מקח טעות
The sale is void, because

בתר רובא אזלינן
רובא לרדיא זבני

We follow the majority of cases, and most oxen are
purchased for plowing, for which this ox is not suitable.

ושמואל אמר
יכול לומר לו

לשחיטה מכרתיו לך

The sale is binding, because the seller can claim he sold
him the ox for slaughter, because

כי אזלינן בתר רובא

באיסורא

בממונא לא

We only follow the majority regarding prohibitions, such
as determining whether an unknown piece of meat
originated from a kosher or non-kosher store. However,
we do not follow the majority regarding monetary
matters. Rather, ®

כי פלגא ופלגא

והמוציא מחבירו עליו הראיה

אם יש לו שום טענה

We regard it as an equal probability, and the litigant who
currently possesses the item - in this case the seller who
has the disputed money - keeps it if he can present a
reasonable claim.

The Rashbam adds

אפילו לסומכוס

דאמר ממונא המוטל בספק חולקין

Although we rule like סומכוס and litigants usually divide
any disputed sum, this case is different:

התם

אינו ידוע היאך היה המעשה

rules to divide it only when our doubt pertains to
the circumstances of the case. However,

הכא

אנו יודעין היאך היה המעשה

In this case, we know exactly what occurred. Therefore,

לא היה לו למוכר לפרש

אלא הלוקח

The buyer bears the loss if he did not express his
intentions, because it was incumbent upon him to specify.

4

3

אי דליכא לאישתלומי מיניה
ליעכב תורא בזויה

If the seller does not have the money to reimburse him,
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We are discussing a case where he has money available,
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He cannot repay him with other assets.

וטמאן אמר

יכול לומר לו
לשחיטה מכרתיו לך

The sale is binding,
because the seller can claim
he sold him the ox
for slaughter, because

כי אזלינן בתר רובא
באיסורא

בממונא לא

We only follow the majority regarding prohibitions,
such as determining whether an unknown piece of meat
originated from a kosher or non-kosher store.
However, not regarding monetary matters.

Rather,

כי פלגא ופלגא – והמוציא מחבירו עליו הראיה
אם יש לו שום טענה

We regard it as an equal probability,
and the litigant who currently possesses the item
- in this case the seller who has the disputed money -
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In this case, we know exactly what occurred.

Therefore,

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The buyer bears the loss if he did not express his
intentions, because it was incumbent upon him to specify.

5 The Gemara now cites several משניות וברייתות to prove this issue, alluded to in the סימן אשה ועבד שור שורין ופירות

1. אשה
The Mishnah in מסכת כתובות states האשה שנתאלמנה או נתגרשה
If a woman was widowed or divorced and now entitled to collect her כתובה, but she lost the document; והיא אומרת בתולה נישאתי
והוא אומר לא כי אלא אלמנה נשאתין
She claims that she was a בתולה when they married and therefore entitled to a כתובה of 200 זוז, while he claims she was a widow at the time and therefore only entitled to a כתובה of 100 זוז;
אם יש עדים שיצאה בהינומא וראשה פרוע כתובתה מאתים
If she can produce witnesses that she wore a veil to her wedding, or had her hair uncovered, both of which were customs practiced by a בתולה, she gets 200 זוז.
The Gemara infers
הא ליכא עדים לא
In the absence of witnesses, she does not receive 200 זוז.
The Gemara asks
לימא הלך אחר רוב הנשים ורוב נשים בתולות נישאות
According to Rav, we should follow the majority, and most women get married as a בתולה, and she should get 200 זוז even without witnesses? Apparently, this Mishnah supports Shmuel that it's a ספק?

5

סימן
אשה ועבד שור שורין ופירות

1

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The Mishnah in מסכת כתובות states
האשה שנתאלמנה או נתגרשה
If a woman was widowed or divorced and now entitled to collect her כתובה, but she lost the document;

והיא אומרת בתולה נישאתי
והוא אומר לא כי
אלא אלמנה נשאתין
She claims that she was a בתולה when they married and therefore entitled to a כתובה of 200 זוז, while he claims she was a widow at the time and therefore only entitled to a כתובה of 100 זוז;

אם יש עדים
שיצאה בהינומא וראשה פרוע
כתובתה מאתים
If she can produce witnesses that she wore a veil to her wedding, or had her hair uncovered, both of which were customs practiced by a בתולה, she gets 200 זוז.

הא ליכא עדים לא
In the absence of witnesses, she does not receive 200 זוז.

לימא הלך אחר רוב הנשים
ורוב נשים בתולות נישאות
According to Rav, we should follow the majority, and most women get married as a בתולה, and she should get 200 זוז even without witnesses? Apparently, this Mishnah supports Shmuel that it's a ספק?

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According to Rav, we should follow the majority, and most women get married as a בתולה, and she should get 200 זוז even without witnesses? Apparently, this Mishnah supports Shmuel that it's a ספק?

6 The Gemara answers
רוב נשים בתולות נישאות
ומיעוט אלמנות
The majority of women indeed get married as בתולות and
the minority as widows. However,
רוב הנישאות בתולות
יש להן קול
וזו הואיל ואין לה קול
איתרע לה רובא
The marriage of a בתולה is usually well-known, as people
remember the extra celebrations. In this case, since she
cannot procure witnesses, the principle of רוב tells us that
she did NOT marry as a בתולה. This majority undermines
the impact of the other majority and makes it an equal
ספק, and so we rule
המוציא מחבירו עליו הראיה
She bears the burden of proof, and must present witnesses
that she is owed 200 זוז.

6

**רוב נשים בתולות נישאות
ומיעוט אלמנות**
*The majority of women indeed get married as בתולות
and the minority as widows. However,*

**רוב הנישאות בתולות
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*The marriage of a בתולה is usually well-known.
In this case, since she cannot procure witnesses,
רוב tells us that she did not marry as a בתולה.*

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majority and makes it an equal ספק, and so we rule*

המוציא מחבירו עליו הראיה
*She bears the burden of proof, and must present
witnesses that she is owed 200 זוז.*

7

2.

עבד

The Braisa states

המוכר עבד לחברו
ונמצא גנב או קוביוסטוס
הגיעו

If one person sold a slave to another and the buyer subsequently discovered that the slave was a thief or kidnapper, the sale is still binding. However, לסטים מזויין או מוכתב למלכות אומר לו הרי שלך לפניך

If he was an armed bandit or sentenced to death by the government, the sale is void.

The Gemara assumes that in the first case the sale is binding because

משום דרובא הכי איתנהו

The majority of slaves are assumed to be thieves, and so unless he specified otherwise, he bought him under these terms.

Therefore, the Gemara asks, as the Rashbam explains,

קשיא לשמואל
דכיון דלא אזיל בתר רובא
כפלגא ופלגא דמי

According to שמואל, we do not follow the majority, and so it was an equal probability whether he is a thief, and so

אמאי היגעו
סתם לוקח
אעבד שפירא יהב זוזי

We should assume that he paid for a trustworthy slave? Apparently, this Braisa supports Rav that we follow the majority?

The Gemara answers that this case is stronger than רוב, because

כולהו הכי איתנהו

All slaves are assumed to be thieves;

And as the Rashbam explains,

וכמאן דאמר ליה מוכר בהדיא דמי

שהרי יודע לוקח שהוא גנב

And therefore it is as if the buyer explicitly accepted him under these terms.

The Gemara in the next Daf continues with additional proofs.

7

2

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And therefore it is as if the buyer explicitly accepted him under these terms.