

Bava Basra – Simanim

דף פד – Daf 84

פרק ה – המוכר את הספינה

1. If a seller overcharges, and the item's value increases, the seller cannot retract

Rav Chisda said that if one sells an item worth five for six (defrauding the buyer), and its value rose to eight, only the buyer, who was originally defrauded, can retract. The seller cannot, because the buyer can say: *אילו לא אוניתן – “Had you not initially defrauded me, לא הוה מצית הדרת בך – you would not have been able to retract. Now that you have defrauded me, should you be able to retract?!”* This ruling is supported by our Mishnah, which taught that *if sold wheat which was purported to be superior was found inferior, only the buyer can retract.* This presumably includes a case where the wheat's value subsequently rose (otherwise, the ruling would be obvious). Rav Chisda said the same about the opposite case: if one sells an item worth six for five, and its value fell to three, only the seller, who was originally defrauded, can retract, but not the buyer, for the same reason as above. This is supported by the next case of the Mishnah, that if sold wheat purported to be inferior was found superior, only the seller may retract (presumably, even where the value subsequently fell).

2. If wine and vinegar are considered one or two species re: *terumah* and sales

The Mishnah on Daf 83b taught that if a buyer and seller agreed on a sale of wine, and it was found to be vinegar, or the reverse, either party can retract. The Gemara suggests this reflects the minority opinion of Rebbe in a Baraisa: *יין וחומץ מין אחד הוא – wine and vinegar are one species*, such that one can be used to take *terumah* and *maaser* for the other (which must be taken from the same species). Rebbe says: *שני מינין – they are considered two species.* The Mishnah, which teaches that one may retract from a sale of one which was found to be the other, seems to consider them different species. The Gemara answers that although the Rabbonon consider them one species (and although vinegar is inferior to wine, the *terumah* is still effective, as the Gemara *darshens*), but regarding sales, all Tannaim can agree they are not the same: *איכא דניחא ליה בחמרא ולא ניחא ליה בחלא – there are those who want wine and not vinegar, and there are those who want vinegar and not wine.*

3. Can one acquire an item placed in a *סימטא* without using a *כלי*?

The next Mishnah states regarding the sale of produce: *משך ולא מדד קנה – if [the buyer] pulled the produce, but did not measure the amount purchased, he acquired it* (since the price was fixed beforehand, and the measuring merely determines the total amount owed). *If he measured it but did not pull it, he did not acquire it.* Rebbe Assi quoted Rebbe Yochanan saying: *מדד קנה והניח על גבי סימטא – if he measured it and placed it on the floor of the “simta”* (the area to the side of *רשות הרבים*), *he acquires it without משיכה*, because it is temporarily considered the domain of the buyer for *kinyan* purposes. Rebbe Zeira asked Rebbe Assi if perhaps he had only heard this ruling *במודד* – *where [the seller] measures and pours the produce into [the buyer's] container*, and he acquires the produce with his container, not that he can acquire with the floor of the *סימטא* itself. Rebbe Assi replied that Rebbe Yochanan's ruling would be unnecessary if he was discussing acquiring with the buyer's container. Still, the Gemara finds support for Rebbe Zeira's interpretation.

Siman – Launch Pad

The customers who paid six million dollars at the launch pad for a space ride worth five, celebrated the fact that when the price jumped to eight the seller could not retract, even though they could, by ordering wine for the trip, double checking to make sure they weren't sold vinegar, which is technically the same מין, which they were קונה by putting the bottles in a סימטא right next to the launch pad.

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3 things to remember

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2. If wine and vinegar are considered one or two species re: *terumah* and sales
3. If one acquire an item placed in a סימטא without using a כלי

