

21.3.7

40a (משנה ז') → 40b (הא דיהיב ליה זוזי בניסן וקא שקיל מיניה בניסן כי מדה דניסן)

Note: our references several volume measures; here is a chart to help: 1 סאה=6 קבין, 1 סאה=30 כור

- I 'משנה ז': expected losses that the שומר may remove from פקדון before returning
- a Note: this only holds true:
    - i If: the fruit was mixed in with his own; if he kept them separate, he just gives the owner his goods as is;
    - ii Even if: he kept them together, he can just deduct the amount of his own; but if he drew from both, it applies
    - iii And even if: he drew from both, it only applies if he doesn't know how much of his own he took
  - b For wheat and rice: 4.5 קב per כור (2.5%) (must be peeled rice; else the loss is much greater)
  - c For barley and millet: 9 קב per כור (5%)
  - d For spelt and flax – 3 סאה per כור (10%) – (only if the flax is in its shoots; else the loss isn't as much)
    - i All of these: for any quantity and per year
  - e Dissent: ריב"ז – the mice don't care how big the pile is; he may only deduct from 1 כור
    - i Response: there is also some amount that deteriorate and some that gets scattered
  - f Dissent: ר' יהודה – if it is a large amount (10 כור) he cannot deduct at all, since it increases
  - g Limitation (taught in presence of ר"ג): only applies if he entrusts at granary and returns there (same size כלים)
    - i However: if he returns from home (smaller vessels), no depreciation (differential in size makes up for it)
    - ii Comment (ר"ג): we aren't dealing with fools; rather, read limitation as “during time of granary vs. rainy season”
    - iii Challenge: if it is then, the container should burst (from smaller vessels)
      - 1 Answer: indeed, it did burst once; usually it doesn't burst due to tightness of crops
- II 'משנה ח': continued list of expected loss of פקדון which is foodstuffs
- a Wine: expect 1/6 to be lost (absorbed into barrels)
    - i Dissent: ר' יהודה – 1/5
    - ii Explanation: no real dispute, each reflects the food-preservation norms of his locale
      - 1 Possibly: they sealed with wax (less loss) or tar (more loss)
      - 2 Or: they used different kind of dirt to make casks; more or less absorbent material
        - (a) Story of ר' יהודה: ג. bought barrel of 48 cups for 6 זוז; sold each mini-barrel of 6 cups for 1 זוז
          - (i) Was left with: 12 cups; 8 cups loss (as per 1/6 in our משנה) – left with 4 cups; profit of 1/8
            - 1. But: שמואל advised to make a profit of 1/6 in food sales
            - 2. Answer: he also gained the barrel and dregs
            - 3. If so: his profit is too much
            - 4. Answer: he had to pay for the tap and his time and effort – 1/6 profit
  - b (olive) oil: 3 לוג per 100 (3%) – 1.5 dregs and 1.5 absorption
    - i If: it was strained, don't deduct dregs; if the barrel is old, don't deduct absorption
      - 1 Challenge: something must be absorbed;
        - (a) Answer1 (ר"ג): if they were tarred → no absorption
        - (b) Answer2 (אב"י): once they're old and have absorbed, they won't absorb more
      - ii (possible) dissent: ר' יהודה: oil sold should be understood to have 1.5% dregs – even if it is strained
        - 1 Suggestion (אב"י): ר' יהודה must hold that an oil-seller may mix dregs with oil, חכמים must forbid
          - (a) ר' יהודה: ג. since he may mix, and didn't, the buyer accepts that amount less
            - (i) Counter: buyer can say that that since he didn't mix it, he now has less
            - (ii) Answer: buyer is end-user who gains from perfectly clear oil, and it's worth it
              - 1. Counter: why doesn't buyer claim that seller has forgiven that amount
              - 2. Answer: ר' יהודה follows his own approach that we don't assume מחילה
                - a. Proof: ruling about price determining meaning of terms of sale (ב"ב ה:א)
          - (b) חכמים: since he may not mix, the buyer doesn't accept any loss and the full amount is expected
        - 2 Counter (ר"פ): opposite stands to reason
          - (a) חכמים: allow mixing; since seller didn't mix, he was מוחל that amount and full amount must be given
          - (b) ר' יהודה: ג. doesn't allow mixing; since he can't mix, he will have no profit, so he must deduct 1.5%
    - iii ברייתא: buyer:: שומר: for “floating seeds”
      - 1 Meaning: cannot be that just as buyer doesn't accept פקטים, so too מפקיד
      - 2 Rather: just as שומר accepts פקטים, so too, buyer accepts that there will be some seeds in the oil
        - (a) Counter: but we see that buyers do not accept seeds, as he accepts 1.5% of dregs (that have been distilled)
        - (b) Rather: if he buys during תשרי (less expensive) and takes delivery in ניסן, he accepts floating seeds