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Bava Basra Daf 37

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Daf Notes is currently being dedicated to the neshamot of

Moshe Raphael ben Yehoshua (Morris Stadtmauer) o”h

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May the studying of the Daf Notes be a zechus for their neshamot and may their souls find peace in Gan Eden and be bound up in the Bond of life

[If a man sells a field to two persons, the ground to one and the trees to the other, and] if the one performs a proprietary act on the ground and the other performs a proprietary act on the trees, Rav Zevid says that the one becomes legal owner of the trees and the other becomes the legal owner of the ground.

Rav Pappa strongly objected to this ruling. According to this, [he said,] the owner of the trees has no right whatsoever in the ground, and the owner of the ground can therefore tell him [when the tree withers], “Cut down your tree and take it and be gone.”

No, said Rav Pappa, [the law is that] the one becomes owner of the trees and half the ground, and the other of half the ground.

There is no question that if a man sells a piece of ground and retains the trees on it for himself, he is entitled to a certain amount of ground [around the trees].

The Gemora notes: This ruling would be accepted even by Rabbi Akiva, who said [in regard to a field with a well in it] that the seller interprets the terms of the sale generously (if a man owns a courtyard or a field with a well in it, and sells the courtyard but not

the well, he does not ipso facto retain a right of way through the courtyard or the field to the well, but has to pay for it, if required, to the purchaser), for this only applies to a well and a cistern, which do not impair the soil, but in the case of trees which do impair the soil, he would certainly reserve for himself [some of the soil], since otherwise the purchaser can say to him [when the tree withers], “Pluck up your tree and be gone.” If, however, a man sells the trees [in a field and retains the ground for himself], in this there applies the dispute between Rabbi Akiva and the Rabbis [viz., whether the purchaser is entitled to any ground round the trees]. According to Rabbi Akiva, who holds that the vendor interprets the terms of the sale generously, the purchaser is entitled [to such ground]; according to the Rabbis, he is not.

That Rabbi Akiva would allow the purchaser such ground would not be questioned even by Rabbi Zevid, who said [in the case mentioned above] that he is not so entitled. For this was only where there were two purchasers, the reason being that one can say to the other, “Just as I have no share in the trees, so you have no share in the ground.” Here, however, the seller interprets the terms of the sale generously. That the Rabbis in this case do not allow the purchaser such ground would not be questioned even by Rav Pappa, who said above that he is so



entitled. For this was only where there are two purchasers, the reason being that one [the purchaser of the ground] can say to the other, "Just as the vendor interpreted the terms of sale generously for you, so he did for me." Here, however, the seller interprets the terms of sale grudgingly.

INSIGHTS TO THE DAF

Two people who bought the same aliyah

On Simchas Torah 5643 a certain congregation auctioned the chazakah on the more honored aliyos for the coming year. Reuven bought chazakah on the penultimate aliyos, usually shishi, and Shimon acquired chazakah on each "Chazak", the last aliyah of each Chumash. However, Rosh Chodesh Adar Sheni fell on Shabos and, as the date approached, the gabaim realized a potential dilemma and appealed to HaGaon Rav Meir Simchah HaKohen of Dvinsk, author of Or Sameach (Hilchos Tefilah, 13). On such a Shabos, to recur in 5768, three sifrei Torah are brought out. The weekly portion of Pekudei is read in the first, the Rosh Chodesh portion in the second and that for Shabas Shekalim in the third. The penultimate aliyah (shishi) also serves as Chazak to end chumash Shemos and the gabaim were at a loss as to whom they should call for that aliyah.

At first, the Or Sameach tended to decide that the aliyah belongs to the first congregant of the two who purchased his chazakah at the auction, as his chazakah already "seized" this aliyah. As, though, they both had a long tradition of getting those chazakos and the annual auction just served to confirm such, the gaon had to delve deeper into the

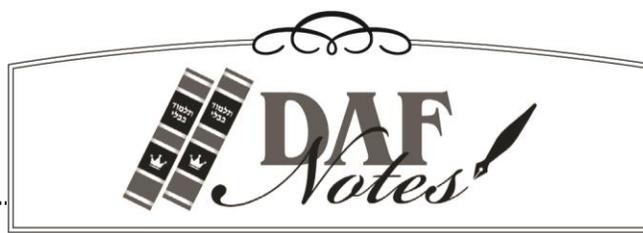
issue. He eventually found a characteristically ingenious solution in our sugya: The Gemara tells of a landowner who sold land to Chayim while selling the trees thereon to Uri. Apparently, then, if Uri's trees wither away, he has no more right to enter the land. According to Rav Pappa, though, we must assume that the original owner never meant to keep Uri from using the land under the trees: growing trees, as we know, requires at least weeding and fertilizing the ground. We should rather understand that he sold Uri the land with the trees as a self-understood fact. (Rav Papa's conclusion – "One bought the trees and half the land and the other the remaining half of the land" is not intended to mean always a half but rather the portion of land under the trees). In this spirit, says the Or Sameach, the gabaim never meant to deprive either congregant. Chayim, who bought the penultimate aliyos, should be called to chamishi, the penultimate aliyah in the first sefer Torah, and Uri, who bought Chazak, should be honored with Chazak in the same sefer!

DAILY MASHAL

Good Eye

Our Gemora states that a seller sells with a "good eye" (generously).

Eliezer established a litmus test to determine whether a potential match was the proper spouse for Yitzchok. The test revolved around her dedication to kindness, which would be evidenced by her willingness to give not only Eliezer but also his camels water to drink. Although a generous nature is certainly an important quality to seek in a



prospective spouse, why was Eliezer willing to rely on this component without additionally testing her belief in Hashem, wisdom, and values?

Rav Meir Rubman answers based on a Mishnah in Avos (2:13), which relates that Rabbi Yochanan ben Zakkai instructed his students to seek out the path in life which a person should choose. Rabbi Eliezer said the possession of a good eye. Rabbi Yehoshua answered to acquire a good friend. Rabbi Yossi suggested finding a good neighbor. Rabbi Shimon opined to see the consequences of one's actions. Rabbi Elozar posited the possession of a good heart. Rabbi Yochanan ben Zakkai responded that the final suggestion (a good heart) is the best one, as it includes all of the other characteristics. The Bartenura explains that this is because the heart is the origin of all of a person's actions.

Eliezer carefully designed his test to measure the potential match's love of assisting others. He understood that the amount of water needed to feed him and his ten thirsty camels was tremendous. A young girl who was asked by a healthy man to draw so much water for him would typically respond by questioning why he couldn't do so himself. If a girl instead jumped at the opportunity, such as Rivkah who ran to bring the water (24:20), it could only be due to her generous heart. Once Rivkah passed this test with flying colors, Eliezer knew with confidence – as the Mishnah teaches – that she possessed all of the other necessary qualities, and there was no need to test them.

The Gemora in Taanis (24a) teaches that if one sees a prospective bride whose eyes are pretty, he

needn't examine her appearance further. The Kli Yakar (24:14) is astonished by this statement. Firstly, he notes that it isn't true. There are many women with pretty eyes who are nevertheless unattractive. Secondly, why does the Gemora advocate the selection of a spouse based on her physical appearance when Shlomo HaMelech writes (Mishlei 31:30) that charm is false and beauty is vain?

The Kli Yakar explains that the Gemora isn't referring to a physical examination of the woman's eyes, but is suggesting that one test to see whether she possesses an "ayin tova" – a giving eye – as the most important feature of a woman is her generous spirit. The Gemora advises that once this has been established, no further checking is necessary, just as we learn from Eliezer.

Understanding

The P'nai Menachem felt that one of the great nisyonos of our generation was that of being a Tov Ayin--looking at everything with a "good eye"--in a positive light. He would cite Chazal who call for extended consideration for a murderer in so many ways in order to avoid the death penalty. If we are to view a murderer in this way...all the more so must we look at the activities of the average man with affirmative and accepting eyes! Don't just look at someone--look a bit more into yourself, and become more understanding of failings, faults, misstatements and misdeeds.