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Bava Basra Daf 64

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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

A House – its Depth and Airspace

The Gemora continues to attempt to prove whether a contract to sell a house includes depth and airspace. The Mishna says that one who sells a house does not include the roof if it has a fence ten tefachim high. If the standard sale of a house includes the airspace, it should include the roof, even if it has a fence ten tefachim high.

The Gemora deflects this by saying that a roof with such a fence is significant enough to be excluded, even if airspace is included as part of a house sale.

Ravina finally attempts to prove that airspace and depth is included from Rish Lakish’s earlier statement. Rish Lakish said that since we explain a seller’s qualifying statement in a legally effective manner, if one sold a house, but stipulated that the top level remains his, he keeps the top level. Rav Zevid says that this allows him to extend a ledge from the roof over the land that he sold with the house, while Rav Pappa says that this allows him to build a structure on the roof. Ravina says that this indicates that airspace is included in the sale, because otherwise why would he need this qualification to build a structure on the roof?

The Gemora deflects this by explaining that Rav Pappa meant that such a qualification allows him to rebuild the roof if it fell. Without this qualification, even if he retained the airspace, he would not be permitted to rebuild the roof if it fell. (63b – 64a)

A Pit and its Access

The Mishna says that when one sells a house, he does not include any pits, even if he explicitly included depth and airspace.

Rabbi Akiva says that the seller must purchase a pathway from the buyer, since he did not exclude a pathway to the pit for himself. The Sages say that when he retained the pit, he also retained a pathway to the pit. Rabbi Akiva agrees that if the seller explicitly excluded a pit, he also retained a pathway, and need not purchase it from the buyer.

If one sold just the pit, and kept the house for himself, Rabbi Akiva and the Sages also dispute whether the buyer must buy a pathway. Rabbi Akiva says that he need not buy a pathway, since the seller included a pathway with the pit, while the Sages say he must buy a pathway, since the sale did not include the pathway.



The Gemora explains that the two terms for a pit – a bor and doos – refer to two types of pits. A bor is an earthen pit, while a doos is a pit that is paved. (64a)

Who gets a Pathway, and Why?

The Gemora discusses the dispute between Rabbi Akiva and the Sages. The Gemora suggests that the dispute is based on whether a seller is generous or stingy in his sale. Rabbi Akiva holds that a seller is generous, and therefore when he sells his house, he does not retain a path to his pit, while if he sells a pit, he includes a path to the pit in the sale. The Sages hold that a seller is stingy, and therefore, when he sells his house, he retains a path to his pit, while if he sells a pit, he does not include the path to the pit.

The Gemora objects to this general understanding of the dispute, and suggests that their dispute is limited to the case of the pit that was retained in the house sale. Rabbi Akiva says that a buyer will not buy a house, with an arrangement that allows others to trespass on his property, while the Sages say that a seller will not sell his house in a way that he cannot access his retained pit.

The Gemora challenges this from the second case, where one sells a pit. It is clear from this case that Rabbi Akiva does not absolutely rule that a homeowner will not want people trespassing his land, and the Sages do not absolutely rule that an owner of a pit will not agree to a pit with no access.

The Gemora suggests that the Sages and Rabbi Akiva agree to the legitimacy of each objection (a homeowner to trespassing, and a pit owner to no

access), but Rabbi Akiva always views a transaction from the perspective of the buyer, while the Sages view it from the seller's perspective. However, this dispute is still not necessarily a reflection of the general generosity of a seller.

The Gemora cites a later dispute between Rabbi Akiva and the Sages in the case of one who sells a field. The Mishna says that a pit and dovecote is not included in the sale, and Rabbi Akiva and the Sages again dispute whether the seller must purchase a path to his retained property. The Gemora says that if the dispute was limited to the case of a pit, there would be no need for this case, in addition to our Mishna's case of a home sale.

The Gemora objects, saying that there is a rationale for trespassing in each case to be more objectionable than the other. In a field, trespassing harms the land itself, while in a home sale, trespassing impinges on the homeowner's privacy. In order to illustrate that both types of concerns are valid, the Mishna had to discuss both cases. However, the case of one who sold a pit or dovecote in a field, where Rabbi Akiva says that buyer need not buy a path, and the Sages that the buyer must buy a path, is extraneous, since we already know the rationales for buyer and seller, both in the case of a home sale and field sale. Therefore, this last case proves that the dispute of Rabbi Akiva and the Sages is a general dispute about the generosity of a seller.

Rav Huna quotes Rav who rules like the Sages, while Rav Yirmiyah bar Abba quotes Shmuel, who rules like Rabbi Akiva. Rav Yirmiyah bar Abba says to Rav Huna that many times he stated in front of Rav that we rule



like Rabbi Akiva, and Rav never objected. Rav Huna explained that Rav Yirmiyah was always quoting an inverted dispute, wherein Rabbi Akiva ruled that the seller is stingy, and the Sages ruled that the seller is generous. Rav therefore never objected, since Rav rules that the seller is stingy – the opinion of the Sages, according to our text. (64a – 65a)

INSIGHTS TO THE DAF

A Roof

The Gemora attempts to prove that a standard house sale does not include airspace from the statement in the Mishna that a roof with a fence ten tefachim high is not included.

The Rashbam (as explained by Tosfos 64a v'hee) says that the Gemora understood the exclusion of such a roof to be in a case where no inclusion of airspace was made. The Gemora concludes that airspace is not included in a standard sale, because it is illogical for one to own the house under the roof, as well as the airspace above the roof, but not the roof. The Gemora's answer is that since the roof is substantial enough to have a fence of ten tefachim, this is the way the sale works.

The R"i challenges this explanation, since the Gemora's answer does not address the assumption of the question. The R"i instead explains that the Gemora was stating that if it is so easy to acquire extensions of the house (such as depth and airspace), that the acquisition takes effect even if not explicitly included, then a roof should be included, even if it has a ten tefachim fence. The Gemora's answer is

that such a roof is so substantial, that it is still not included in a sale, even one that is expansive enough to implicitly include airspace and depth.

A Roof's Dimensions

The Rambam (Mechira 25:2) says that a roof with a ten tefachim fence, and a width of four amos is excluded from a house sale. The Kesef Mishnah quotes the Magid Mishnah who asks what's the Rambam's source for the minimum width of four amos. The Kesef Mishnah points out that the Rambam does not specify any such minimum dimensions for an inner room, which is also excluded from a house sale. The Kesef Mishnah explains that an inner room is excluded, since it serves a different purpose than the house – whereas the house is for living, the room is for storage. Therefore, no matter how small the room is, it is excluded. However, a roof is excluded since it is substantial, and therefore considered a different domain than the house. To be a different domain, it must be a minimum width of four amos.

A Generous Gift

The Gemora explains the dispute of Rabbi Akiva and the Sages to be whether a seller is generous or stingy in his sale. The Rashba (Responsa 3:116) rules that all agree in the case of a gift that the giver is generous. Therefore, if one gave his friend a pit or house on his property, that gift included access rights to the given property as well.

Another Path



The Rama (HM 214:2) rules that although we rule that one who bought a pit or house on someone else's property is assumed to have acquired the access rights to it, if he already owns a path to it, we do not give him a new access route.

Types of Pits

The Mishna lists two types of pits that are excluded from a home sale – an earthen pit, and a paved pit. The Rashbam explains that both types of pits have to be explicitly listed. If only an earthen pit was listed, we may have thought that a paved pit, which is similar to the house, which is not land, but built on land, would be included. If only a paved pit was listed, we may have thought that such a pit is significant, and is therefore not ancillary to the house. However, an earthen pit would be considered ancillary to the house, and included in its sale.

No Path?

The Sages say that if one sells a house, he retains his pit, and a pathway, while if he sells his pit, the buyer must buy access rights. Rabbi Akiva says that if one sells a house, he retains his pit, but not access rights, while if he sells his pit, the buyer gets access rights. The Reshash says that even when one does not get access rights, this simply means that he does not own a path four amos wide to his pit. However, he does have a narrow path to his pit.

The Yad Ramah asks what the buyer of a pit bought according to the Sages, if he does not have access rights. The Yad Ramah says that all the buyer bought

was the right to be a bar matzra – a neighbor, with first rights to purchase adjoining land.

The Reshash is inconsistent with this Yad Ramah, since according to the Reshash, the buyer does have access to his pit, albeit in a less comfortable manner.

DAILY MASHAL

Tasks on Friday

HaGaon Rav I. Z. Meltzer told his pupils that Bilam, wanting to curse the Jews, sought a transgression that all of them failed to resist in order to mention it in his curse. He therefore looked for something wrong with their doors, as the Torah says, "Sin crouches at the door" (Bereishis 4:7). When, though, he saw their tents facing away from each other, he understood the hint that there was no one sin that ensnared them all.

Rav Isser Zalman wanted to strengthen Friday attendance at his yeshivah in Slutzk and remarked to his pupils that putting off all their tasks and private affairs till Friday harmed the learning schedule. Rather, they should spread the care for their personal matters over the whole week. Their "openings" would then not face each other and Friday's schedule would greatly benefit (Derech 'Etz HaChayim).