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Bava Basra Daf 71

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Daf Notes is currently being dedicated to the neshamot of

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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

Selling a Field – What’s Excluded?

The *Mishna* continues to discuss one who sold a field. The *Mishna* says that a pit, wine press, and dovecote are not included in the sale, whether they are active or dormant. Rabbi Akiva says that the seller did not retain a pathway to these parts of the field, while the Sages say that he did. If he explicitly excluded these parts of the field, even Rabbi Akiva agrees that he did retain a pathway. If he sold these parts of the field, Rabbi Akiva says that he included a pathway to them in the sale, while the Sages say that he didn't. The *Mishna* clarifies that these exclusions are only for a sale. However, if a field is transferred as a gift, or if one acquires an ownerless field from the estate of a convert, or if one consecrated a field, these otherwise excluded elements are included. Rabbi Shimon says that when one consecrates a field, only the grafted carob tree and cut sycamore tree are included. (71a)

1. A Gift

The *Gemora* questions why a gift would include more elements than a sale.

Yehudah ben Nakusa explained in front of Rebbe that one was explicit and one was not. The *Gemora* explains that we assume a gift is given generously. Therefore, if the giver wanted to exclude these items, he should have done so explicitly. However, in a sale, we assume that the seller only gives what is legally required, so his exclusion need not be explicit.

Someone on his deathbed commanded the people around him to give an individual his house, which can hold one hundred barrels. Upon inspection, the house was found to be big enough to hold one hundred and twenty barrels. Mar Zutra said that only 5/6 of the house should be given, since only the area that holds one hundred barrels was specified. Rav Ashi said that the house should be given, since our *Mishna* taught that when one gives a gift, he does so generously. Therefore, we assume the giver meant the whole house, but underestimated its area. (71a)

2. Trees and their Land

Rav Huna says that although the Sages say that if one buys two trees on someone’s land, he does not acquire the land between them, if one sells his land except for two trees, he does retain the land between and around them.

The *Gemora* clarifies that even Rabbi Akiva, who says that one who sells is generous, and doesn’t retain a pathway to his retained pit, agrees to Rav Huna’s statement. The pit itself does not harm the land sold, and the new owner cannot demand that it be removed, so the seller had no need to retain a pathway. However, if the seller does not retain the land necessary for the trees, the new owner of the land can demand that the trees be removed, since they impinge on the land itself. The seller therefore retains the land, to ensure his use of the retained trees.

The *Gemora* challenges Rav Huna’s statement from Rabbi Shimon’s opinion in our *Mishna*. Rabbi Shimon says that



only graft carob and cut sycamore trees are included in a consecrated field. The *braisa* explains that Rabbi Shimon's rationale is that these trees are nourished from the consecrated land, and therefore they are also consecrated. If Rav Huna is correct, and one who retains trees also retains the land necessary for them, Rabbi Shimon should say that the one consecrating the field retained the trees, and the land necessary for them, and the trees would therefore not be consecrated.

The *Gemora* deflects this by saying that Rav Huna stated his *halachah* only according to the Sages, who say that a seller is stingy. Rabbi Shimon is following the opinion of Rabbi Akiva, who says that even a seller is generous, and all the more so regarding one who consecrates. (71a – 71b)

INSIGHTS TO THE DAF

By: Reb Yechezkel Khayyat

3. Which House?

The *Gemora* tells the story of the person who commanded, on his deathbed, to give someone his house, which holds 100 barrels. The house was found to hold 120 barrels, and the *Gemora* concludes that the whole house was given, as one who gives a gift does so generously.

The Rashbam says that this is only true if he had no house that holds 100 barrels. If he had another such house, we assume that house was given.

The Ritva (*quoted by the Nimukei Yosef 37b*) says that this is true because one who gives a gift is not exact, and meant the house which held 120 barrels. However, if the house held more than 120 barrels, that is above the error a person would reasonably make, and we assume that he did not mean to give the whole house.

The Nimukai Yosef disagrees, and says that there is no limit specified in the *Gemora*. The Nimukei Yosef further explains that we do not purchase a house holding 100 barrels for the recipient, since the giver specified that *his* house should be given.

The Taz (HM 253:14) says that the rationale for giving the large house is that one who gives a house generally gives the whole house, even if the discrepancy is larger than 1/5. See the Bais Yosef HM 253, who cites a variant text of the Tur that says even if the house holds 150 barrels, the house is given. The Bais Yosef reject this variant.

4. Take your Trees!

Rav Huna says that one who sells his land, but retains two trees, also retains the land between and around them, since otherwise the buyer can tell him to remove his trees.

The Rashbam explains that the buyer can only demand this once the original trees wither and die. If the seller would then want to plant new trees, the buyer can object.

Tosfos (71b Laima) quotes the R"i, who says that such a rationale would not suffice, since the seller may not intend to plant new trees in this land. Rather, the R"i says that if the seller does not retain the land of the trees, the buyer can demand that the seller remove his trees *immediately*, since they take nourishment and space from the land. Once the seller retained the land for the immediate needs of the tree, he also retained the land between them and the right to be able to plant new trees after these die.

The Rashbam explains that when one buys two trees, there is no assumption that the buyer plans to plant new trees when these die, since people often buy trees for a temporary period of time. Therefore, one who buys two trees does not automatically get their land.



The R"i explains that even in a case where a buyer bought land adjacent to his trees, he does not necessarily get any more land, since he is at the mercy of the seller.

5. **The Grafted Carob and Cut Sycamore**

Rabbi Shimon says that only the grafted carob and cut sycamore are included in a consecrated field, since they take nourishment from the consecrated field.

The Rashbam explains that since they take nourishment from a consecrated field, they themselves become consecrated, similar to the rule that something that grows from consecrated seeds is itself consecrated.

The Rashba and Ran, however, explain that since these trees take nourishment from the consecrated land, we assume the owner included them in the consecration. The difference between these explanations would be a case where the owner chopped down these trees right after consecrating the field. According to the Rashbam, the trees would not be consecrated, since they did not take nourishment from the consecrated field. According to the Rashba and Ran, the trees would still be consecrated, since the estimation of the owner's intent is the same.

HALACHOS OF THE DAF

(Choshen Mishpat Siman 215)

In the previous few *dafim*, the *Gemora* discussed which items are included when selling a house, courtyard, olive press, bathhouse, city and field. The reason why everything is not included in the sale is because when someone is for example selling a house, he's only selling it because he's strapped for cash. So although we assume that a seller sells *b'ayin yufeh* - generously, this doesn't include items which are not part of the house. We

therefore can say that the seller had no intention of selling any items, if not for the fact that he needed the money.

According to the above logic, there would be instances where everything that belongs in that particular place is included in the sale.

1. **A person giving a house, field etc. as a gift.** Since he wasn't forced into giving it, then he must have given it wholeheartedly, and he is not withholding anything.
2. **Brothers that divided an inheritance.** Since each brother took their own field, for example, then obviously they completely divided the inheritance, and everything in each brother's field is exclusively his.
3. **If someone made a *kinyan chazakah* (*propriety act*) on the property of a deceased convert.**
4. **One who consecrates a house, field etc.,** the *halachah* is that everything is *hekdesh*. Since he wasn't forced into consecrating it, then he must have given it wholeheartedly, and he is not withholding anything.