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Real Estate Transactions

Field vs. House

The *Mishna* records a dispute between Rabbi Meir and Rabbi Yossi about what real estate transactions with idolaters are prohibited in *Eretz Yisroel*, *Suria*, and *Chutz La’aretz* – outside of *Eretz Yisroel*:

The *Gemora* explains that Rabbi Meir prohibits renting houses and, “of course,” fields, since selling a fields involves an additional problem – in addition to the prohibition of granting idolater’s ownership in *Eretz Yisroel* (which applies to houses), selling a field also removes the obligation of tithes from the produce. Although selling a house to an idolater removes the obligation to affix a *mezuzah*, Rav Mesharshia teaches that affixing a *mezuzah* is an obligation on the dweller, not the house. Thus, the sale of the house per se does not remove the obligation, as even if it was owned by the Jew but occupied by a non Jew, it would be exempt. (21a)

Eretz Yisroel vs. Suria vs. Chutz La’aretz

Suria is considered land that was conquered by an individual (King David), and not the nation. Tannaim dispute whether or not this was a bona fide conquest, and therefore part of *Eretz Yisroel*.

The *Gemora* explains that if Rabbi Meir does not consider the conquest to be bona fide, then we understand that he prohibits selling houses, as a Rabbinic extension of the prohibition of selling houses in *Eretz Yisroel*. However, this would not explain why one may not rent fields, as even in *Eretz Yisroel*, this prohibition is an extension of the prohibition of selling, and this would thus be a Rabbinic prohibition extending another Rabbinic prohibition.

Instead, the *Gemora* explain that Rabbi Meir says that it is a bona fide conquest. In *Suria*, the Sages prohibited renting a field, as an extension of the prohibition on selling, since it

Where	Item	Rabbi Meir		Rabbi Yossi	
		Rent ?	Sell?	Rent?	Sell?
<i>Eretz Yisroel</i>	House	No		Yes	No
	Field			No	
<i>Suria</i>	House	Yes	No	Yes	
	Field	No		Yes	No
<i>Chutz La’aretz</i>	House	Yes		Yes	
	Field	Yes	No		

The *Mishna* continues to say that even in a place where one may rent a house, it is forbidden to rent a house to an idolater for dwelling, as the verse prohibits one from bringing idolatry into his domain. Finally, one is prohibited from renting his bathhouse to a non Jew, as it is known to belong to the Jewish owner, and people will therefore assume that the non Jew renter who runs it on *Shabbos* is the Jewish owner’s employee. (20b – 21a)



involves two issues, but they did not prohibit renting a house, since selling it only involves one issue. Finally, in *Chutz La'aretz*, the prohibitions are all Rabbinic. The Sages only prohibited selling a field there, since selling a field in *Eretz Yisroel* involves two issues. (21a)

Rabbi Yosi

Rabbi Yosi says that, in *Eretz Yisroel*, one may rent a house but not a field. The *Gemora* explains that he says that the Sages only extended the prohibition of selling to renting in the case of a field, which involves two issues. Rabbi Yosi says that, in Suria, one may sell a house and rent a field, since he says that individual conquest is not a bona fide conquest. Therefore, the prohibitions in Suria are all Rabbinic, and the Sages only extended the prohibition of selling a field, since it involves two issues. Finally, Rabbi Yosi permits all real estate transactions in *Chutz La'aretz*, since he says that Sages did not extend any prohibition there, as it is so far away from *Eretz Yisroel* that it would not lead to real estate sales in *Eretz Yisroel*. (21a)

Halachah

Rav Yehudah quotes Shmuel who rules like Rabbi Yosi. Rav Yosef added that one must still ensure that he does not create a neighborhood of idolaters, which the *braisa* defines as three occupants. Although an idolater who buys one house may in turn split the house and bring in two more idolaters, we can only account for the direct affect of our actions. (21a)

Anonymous Mishna

The *Gemora* infers that the anonymous section of the *Mishna*, which says that "even in a place where one may rent a house", implying that there are places where one may *not* rent a house, follows the opinion of Rabbi Meir, since Rabbi Yosi does not prohibit renting a house anywhere. (21a)

Appearance of Rentals

The *Mishna* says that one may not rent out his bathhouse to a non Jew anywhere, since it is known as his.

The *braisa* cites Rabban Shimon ben Gamliel saying that one may not rent out his bathhouse to a non Jew, since people associate it with the Jewish owner, and the non Jew will perform work there on *Shabbos* and *Yom Tov*.

The *Gemora* infers that one is permitted to rent it to a Cuthean, who keeps *Shabbos* and *Yom Tov*. Although the Cuthean will run the bathhouse on *Chol Hamoed* (since the Cuthean people do not accept the teachings of the Sages prohibiting work on *Chol Hamoed*), this is not an issue, as we also do so.

The *Gemora* instead infers that one may rent his field to a non Jew, since people will assume that the non Jew is not an employee, but a sharecropper of the Jewish owner, who may work the field on *Shabbos*, since it is for his own share of the profit. The *Gemora* explains that we do not say the same in the case of a bathhouse, since people do not similarly profit by sharing a bathhouse.

The *braisa* cites Rabbi Shimon ben Elpzar who forbids one from renting his field to a Cuthean, as people associate the field with Jewish owner, and the Cuthean will work the field on *Chol Hamoed*.

The *Gemora* infers that one may rent his field to a non Jew, presumably because people will assume he is a sharecropper, working for his share of the profit.

The *Gemora* rejects this, since the same reasoning should permit renting to a Cuthean.

Rather, Rabbi Shimon ben Elazor does not accept this reasoning, but permits renting to a non Jew, since the Jewish owner will command him to not work on *Shabbos*, and he will listen. However, a Cuthean feels that he knows *halachah* just as well as the Jewish landlord, and will not listen to his command not to work the field on *Chol Hamoed*.

The *Gemora* explains that if the Cuthean works the field on *Chol Hamoed*, this is a violation of *lifnei iver* – not causing a blind person to stumble, as the Jewish owner is enabling a fellow Jew to sin. Rabbi Shimon ben Elozar is introducing the issue of the appearance that the Jew has hired an employee to do work on *Chol Hamoed*, in addition to the issue of *lifnei iver*. (21a – 22a)

INSIGHTS TO THE DAF

Ma'aser on a non Jew's Field

The *Gemora* states that a field sold to a non Jew has a special issue, since the sale has removed the obligation of *ma'aser* from the produce in it. Although selling a house to non Jew removes the obligation of *mezuzah*, this is not a function of the house, but of the inhabitant.

Tosfos (21a Ha) explains that the *Gemora* is following the opinion that says that a non Jew who purchases land in *Eretz Yisroel* truly removes the obligation of *ma'aser* from field, to the extent that even if a Jew would work the land, the produce grown would be exempt. In this way, a field sold is different than a house, since the obligation of a *mezuzah* has nothing to do with the actual ownership of the house, but simply is a function of who actually dwells in it, while the actual sale of the land changes the field's status regarding *ma'aser*.

Individual Conquest

The *Gemora* refers to the dispute of tanaim about the status of Suria, as it was *kibush yachid* – *individual conquest*.

Rashi explains that it is considered individual conquest since not all of the Jews fought, and the battles were not mandated by the *urim v'tumim*.

Tosfos (21a kibush) says that until all of *Eretz Yisroel* proper was conquered, King David had no right to conquer other areas. Any areas that were conquered before the full

conquest of *Eretz Yisroel* are thus categorized as *kibush yachid* – *conquest based on an individual initiative*.

Renting Houses for Dwelling

The *Mishna* (20b) says that even in a place where one may rent a house to an idolater, he may not rent a house for dwelling, since the idolater will bring in his idolatry, and the verse forbids us from bringing the abomination (of idolatry) into our house.

The Rishonim discuss why the prevalent custom is to rent houses for dwelling to idolaters, when the simple reading of the *Mishna* forbids that everywhere.

Tosfos (21a Af) offers the following explanations:

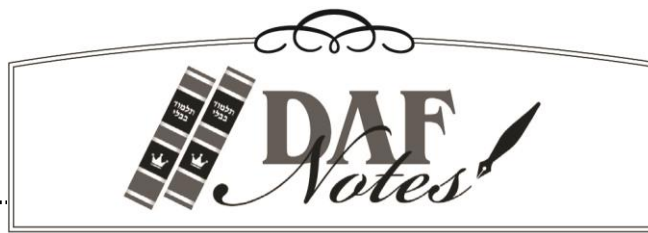
It is only forbidden to rent them a house when we assume they will permanently place their idolatry in it. Therefore, the Tosefta permits one to rent a storage area, even if they bring in idolatry, as it is not permanently placed there. Tosfos rejects this option, since storage houses may be permitted simply because the verse is referring to a dwelling house, but in a dwelling house any entry of idolatry is forbidden, even on occasion.

The prohibition of bringing idolatry into a house is only in *Eretz Yisroel* and Suria, but not in *Chutz La'aretz*. The Yerushalmi seems to support this, as it states that renting a dwelling house is forbidden in places where you may rent, but not in places where you may sell, i.e., *Chutz La'aretz*.

Tosfos offers two explanations for this exemption of *Chutz La'aretz*

1. Rabbenu Chaim Kohen says that a house outside of *Eretz Yisroel* is not considered *your* house. Tosfos rejects this, since we do not find other instances where a house outside of *Eretz Yisroel* is not considered yours (e.g., *mezuzah*)
2. Rabbenu Elchanan says that in principle one is only forbidden from bringing idolatry into a house that *he* dwells in. Therefore, the prohibition of renting a dwelling house to an idolater is simply Rabbinic, based on the prohibition of bringing idolatry into your dwelling place. The Sages enacted this only in *Eretz Yisroel* and Suria.

The Rosh (22) says that in our society, where renting a house is tantamount to buying it, a house that a Jew rents out is not



considered his anymore. The Shach (YD 151:17) follows the Rosh's explanation.

What will People Think?

The *Mishna* forbids a Jew from renting his bathhouse to a non Jew, since people know it to be owned by the Jew, and will assume that the non Jew running it on *Shabbos* is acting as his employer. Citing a *braisa* of Rabban Shimon ben Gamliel, the *Gemora* explains that one may rent his field to a non Jew, since people will assume that he is a sharecropper, who is working on *Shabbos* for his own portion of the produce, and not as an agent of the Jewish owner. The *Gemora* says that no one will assume that the non Jewish bathhouse renter is sharing profits, because people do not generally do that. While Rabbi Shimon ben Elozar disagrees with this rationale, we rule like Rabban Shimon ben Gamliel.

The Rishonim discuss what items are similar to a field, where people will assume a profit sharing arrangement, and what items are similar to a bathhouse, where people will not assume it.

The Rambam (*Shabbos* 6:15) simply states that if people will know that an item is owned by a Jew, it is only permitted if it is more common to profit share such an item in that region. The Shulchan Aruch (OH 243:1) rules like the Rambam.

Tosfos (21a) discusses whether a non Jew who is performing a public task for a Jew as a contracted assignment (e.g., building a house for a fixed payment) may work on *Shabbos*.

Fundamentally, all agree the non Jew is not working on *Shabbos* per se for the Jew, but rather in his own interest, to finish the defined job quicker.

Rabbeinu Tam suggested that this is permitted, since even when people observe the work, they will assume it is being done as a contracted assignment, since such an arrangement is common.

The Ri objects, saying that people will more likely assume that

the workers are being paid by the day, and are therefore working for the Jew on *Shabbos*.

Rabbeinu Meir says that the *Gemora's* statement that bathhouses are not profit-shared is not a statement of what is most common, and therefore what people will assume. Rather, the *Gemora* was saying that people will only assume some sort of partnership when the non Jew keeps something of the actual product of the item. Since the non Jewish renter only keeps the *money* collected, and nothing directly produced by the bathhouse, it will appear like an employee. Similarly, workers building a house do not receive anything from the house, and they will appear like employees. However, if one rents out a mill, and the renter retains some of the flour, this is similar to a field and is permitted.

Tosfos notes that Rabbeinu Tam himself did not rely on his leniency, and mandated that the workers building his house refrain from working on *Shabbos*.

Work on Chol Hamoed

The *Gemora* applies the prohibition of *lifnei iver* – of enabling a transgression to the case of a Cuthean who will work on *Chol Hamoed* on a Jew's field.

Rabbeinu Tam (22a Taipuk lai) proves from here that *lifnei iver* applies to enabling one to violate a Rabbinic transgression, since work on *Chol Hamoed* is only a Rabbinic prohibition.

See Bais Yosef (OH 530) for a discussion of other opinions in the Rishonim about the status of the prohibition of working on *Chol Hamoed*.