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Bava Basra Daf 62

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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

Borders

A person sold a field to his friend, and drew one border long and one border (*on the opposite side*) short. Rav says: In such a case, the buyer only acquires the amount of field that is opposite the short side.

Rav Kahana and Rav Assi asked Rav: Why shouldn't the border should be from the small side to the long side (*a diagonal line*)?

Rav was quiet, and did not answer. Rav agreed (*even before he was asked this question*) regarding the following case: A field being sold was one hundred cubits wide, with Reuven and Shimon bordering one side of the field (*fifty cubits each*) and Levi and Yehudah similarly bordering the other side. If the seller said the border is Reuven and Shimon on one side and Levi on the other side, Rav agrees that the buyer receives a diagonal border from the small side to the long side. Being that he should have written that he acquires Reuven opposite Levi and Shimon opposite Yehudah and he did not, he must mean that he receives a diagonal border.

If Reuven owned the field to the east and west of the field being sold, and Shimon owned the fields to the north and south, the seller must write, "The field borders Reuven in two directions and Shimon in two directions." [*It is certainly valid to write, "The border is Reuven to the east and west, and Shimon to the north and south."*]

They (*people of the Yeshiva*) inquired: What happens if a seller only marks the border of the corner of the field? [*The case is where there are many different fields bordering the field, and the seller merely stated the fields that are by the*

corners, but not the ones that run the length and width of the field.] What is the law? [*Do we say that he sold an entire field, or did he only sell him a few rows from corner to corner?*]

What if he only denoted a set of corners diagonal from each other? [*For example, what if he said that the northwest corner is here and the southeast corner is here? Do we consider this the beginning of each direction, or that he should only acquire a diagonal strip from northwest to southeast?*]

What if he mentioned the border in a staggered fashion? [*For example, if there were two people who owned a field on each side of his field, and he mentioned only one of them on each side, do we say that he meant the entire field or only the area opposite their fields?*] The Gemora leaves all these questions unresolved.

A person noted the border on three sides, but left out the fourth. Rav says: He does not acquire the actual row resting on the fourth border (*but does acquire the rest of the field*). Shmuel says: He acquires the fourth row as well. Rav Assi says: He only acquires one (*row as wide as a*) furrow along all three sides (*of the borders which he mentioned*). Rav Assi holds like Rav that when someone leaves out something, he is clearly leaving something for himself. However, in this case, Rav Assi holds that the fact that he left out the border means he left out everything besides the actual border rows that he mentioned.

Rava says: The law is that he acquires everything besides the fourth border row (*like Rav*). This is only if the fourth border row is not swallowed up in between the three borders (*but rather, the field extends past the neighboring fields*). If it is

swallowed up (*and its border does not extend past the other fields*), it is included. Even if it is not swallowed up, it is only not included if it has a hedge of palms on it or nine *kav* of seeds could be planted there (*for then it is significant by itself, and can be excluded*). However, if it does not (*it is smaller than that*), it is included. This (*the way the rule is stated*) implies that if it is swallowed up, but it has a hedge of palms on it or nine *kav* of seeds could be planted there, it is still acquired.

Others say: Rava says that the law is that he acquires everything, even the fourth border row. This is only if the fourth border row is swallowed up in between the three borders. If it is not, it is not included. Even if it is swallowed up, it is only included if it does not have a hedge of palms on it or nine *kav* of seeds could not be planted there. However, if it does, it is not included. This (*the way the rule is stated*) implies that if it is not swallowed up, but it does not have a hedge of palms on it or nine *kav* of seeds could not be planted there, it is not acquired.

We see from these two versions of Rava that a person does not leave anything (*in the main part of the field*) for himself (*for we are only dealing with the row along the fourth border; everything else is sold*). We also see that if the fourth row is swallowed between the other borders and it does not have a hedge of palms on it or nine *kav* of seeds could not be planted there, it is acquired. If the fourth row is not swallowed between the other borders and it has a hedge of palms on it or nine *kav* of seeds could be planted there, it is not acquired. If it is swallowed up and it has a hedge of palms on it or nine *kav* of seeds could be planted there, or if it is not swallowed up and it does not have a hedge of palms on it or nine *kav* of seeds could not be planted there, some said that it was acquired and some said that it was not. In conclusion, it is up to the judges to decide what to do. [*They should attempt to determine the intent of the seller in this case.*]

Rabbah says: If someone sells, “the half that I have in this land (*i.e. field*),” he has sold his half of a jointly owned field.

If he sells, “half of the land that I have,” he has sold one quarter of the field (*which is half of the land that he owns in this field*).

Abaye asked Rabbah: What is the difference between these two cases? [*Both really imply that he is selling the entire half that he owns.*] Rabbah was quiet.

Abaye says: I thought originally that because he was quiet it meant he accepted my question as a valid question. However, this was not the case. I saw documents that were written by Rabbah where these terms were actually used for sales in the above manner. (62a – 62b)

INSIGHTS TO THE DAF

A SPECIAL "SHUDA D'DAYANEI"

The *Gemora* discusses a case in which a person draws three boundaries of the field that he is selling, but he does not include the fourth boundary. The *Gemora* presents two versions of Rava’s position on the matter. According to both versions, if the fourth boundary is “*muvla*” -- “absorbed” (see sketch in Rashbam D”H v’Lo Amaran) and there is no important piece of property in the area of the fourth boundary (*meaning that there are no hedge of palms on it or nine kav of seeds could be planted there*), the area is included in the sale. In the opposite case, where the fourth boundary is not *muvla* and the area is important, it is assumed that it is not included in the sale. The difference between the two versions is in a case in which only one of the two factors is present (*it is muvla but the area is important, or the area is not important but it is not muvla*). The *Gemora* concludes that the *halachah* is “*shuda d’dayanei*.”

The Rishonim explain that although “*shuda d’dayanei*” usually means that the judges of the Beis Din may do whatever they see fit without any reason or proof for their decision, the application of “*shuda d’dayanei*” in this case is different. The Rishonim quote a tradition, which some say dates from the Rabbanan Savorai, that although in such a



DAILY MASHAL

Rav did not Reveal the "Sod"

case the *halachah* should follow the second version of Rava, or the *halachah* should be "ha'Motzi me'Chaveiro Alav ha'Re'ayah" – the one who is exacting money from his fellow must bring the proof, the ruling of "*shuda d'dayanei*" here is "an logical decision" by the judges. What does this mean?

The Rosh explains that Rava actually said *both* statements quoted in his name. How, though, could he have said two contradictory statements? The Rosh explains that Rava's two statements are not contradictory; the *halachah* may differ depending on the details of the specific case. The judges should assess the mindset of the seller, the mindset of the buyer, the local custom, and the amount of money paid in the sale. Only then should they make a decision, which could follow either statement of Rava, depending on the details of the case.

The Nimukei Yosef similarly mentions that the mindset of the seller and the amount of money paid is a factor in the decision of the judges, although he does not mention the mindset of the buyer and the local custom. It is unclear whether his view differs from that of the Rosh.

The Pilpula Charifta notes that the Rosh and Nimukei Yosef certainly take into account that the *halachah* follows the *Chachamim* (76b) who do not apply, in most situations, the principle of "Damim Modi'im" – "the money shows" to decide a case. However, in this case, in which the ruling is "*shuda d'dayanei*," the *Chachamim* directed the Beis Din to utilize all means possible to determine the correct verdict.

The Rashbam writes that the judges should assess the intentions of the seller, and based on that assessment they should decide what to do.

The Rambam (Hilchos Mechirah 21:15) similarly states that the intention of the seller is the only factor taken into account, in contrast to the view of the Rosh and Nimukei Yosef who write that the amount of money paid should also be taken into account.

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The Chavos Yair (responsa: 152) quotes the Rema who writes that it is well known that Rav is in fact Rav Abba, the chosen disciple of Rabbi Shimon ben Yochai. And everytime that the *Gemora* says, "Rav was quiet," it does not mean that he was silent because he did not know; rather, he knew how to answer according to "sod" – the hidden secrets of the Torah, and he did not want to reveal them.

The Chavos Yair explains the *Gemora* in Bava Kamma (11a), which relates that since Rav Kahana and Rav Assi asked Rav, "Is this truly the *halachah*?" and he kept quiet, we can conclude that the law of assessment does indeed apply. Although it could have been said that Rav remained silent for he did not want to reveal the hidden secrets of the Torah, nevertheless, we do not rule in *halachic* matters based on "sod," rather, it is solely dependent on the "revealed" portion of the Torah.