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Bava Basra Daf 83

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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

### **Trees and Land**

The *halachah* is that if one buys three trees in a field, he has acquired the land in between the trees. The *Gemora* asks: How much space must there be in between the trees?

Rav Yosef said in the name of Rav Yehudah in the name of Shmuel: There must be a distance of four to eight cubits between any two trees. Rava said in the name of Rav Nachman in the name of Shmuel: From eight to sixteen cubits. Abaye said to Rav Yosef: Do not argue with Rav Nachman, for the following *Mishna* is in agreement with him: He who plants his vineyard and leaves distances of sixteen cubits between the rows may plant seeds there (*for it is not regarded as a vineyard*). Rabbi Yehudah said (*to support the Tanna Kamma*): It once occurred in Tzalmon that one planted his vineyard, leaving distances of sixteen cubits between each of the rows, and he turned the branches of every two adjacent rows towards one side (*so that they faced each other*), and planted in the clearing (*for there was a complete sixteen cubits between the two rows*). In the following year, he turned the branches towards the spot planted in the previous year, and planted the area which was presently barren. When the matter was reported to the Sages they allowed it.

Rav Yosef said: I do not know about this. However, there was an incident in a city of shepherds (*where a person sold three trees within a space of eight square cubits to someone - Rashbam*). Rabbi Yehudah told the seller: Give the buyer an amount of land equal to cattle and its vessels. We were unsure how much land this equaled. We then heard the *Mishna* that stated: A person should not plant a tree next to his friend's field unless he distanced the tree four cubits from his friend's field. We also heard that a *braisa* explained the *Mishna* as stating four cubits because this was the amount of space required to work a vineyard. We then understood that the amount of cattle and its vessels (*meaning an animal for plowing and items attached to the animal when plowing*) means four cubits.

The *Gemora* asks: Isn't there a *Mishna* according to Rav Yosef? [*Why did Abaye say to Rav Yosef that he should not argue on Rav Nachman because there is a Mishna that supports his opinion? There is a Mishna that supports Rav Yosef's opinion as well!*]

The *Mishna* states: Rabbi Meir and Rabbi Shimon say that if someone plants his vineyard in a way that there are eight cubits between vines, he can plant other seeds between the rows. [*This is in accordance with Rav Yosef's opinion.*]

The *Gemora* answers: Even so, being that there was an incident recorded in the *Mishna* where the ruling of Rav Nachman was applied, one should not argue on Rav Nachman (*as this is better than just a ruling*).

The *Gemora* asks: Rav Yosef's opinion based on Rabbi Shimon is understandable, as we have seen cases of scattered vines (*eight cubits*) and of vines that were closer together (*four cubits*). The *Mishna* regarding eight cubits is as stated above (*in the name of Rabbi Meir and Rabbi Shimon*). The *Mishna* regarding four cubits is as follows. The *Mishna* says: If a vineyard is planted with less than four cubits between vines, it is not considered to have the status of a vineyard. These are the words of Rabbi Shimon. The *Chachamim* say: It is a vineyard, and we see the middle vines as if they are not there. [*The Rashbam explains that Rabbi Shimon is stating a leniency, that other things can be planted there because it is not considered a vineyard, and the Chachamim are being stringent.*]

However, how can we understand Rav Nachman's opinion according to the *Chachamim*? While we see their amount for scattered vines (*sixteen cubits*) has a source in the incident in Tzalmon (*recorded in the Mishna*), where is his source for his amount of vines close together (*eight cubits*)?

The *Gemora* answers: This is logical. If Rabbi Shimon's amount of vines close together (*eight*) is half the amount of his scattered vines (*four*), the *Chachamim's* amount of vines close together is half the amount of their scattered vines (*sixteen*).

Rava says: The law is four until sixteen cubits. [*This is according to the opinion of Chachamim, but not according to the answer above that the Chachamim must hold eight and sixteen. Rather, they hold four and sixteen.*]

The *braisa* supports Rava's opinion. The *braisa* states: How close can they be? Four cubits. How far apart can they be? Sixteen cubits. This means the person would acquire the land and the (*small and not important*) trees on the land (*together with the big trees that are the main part of the sale*). Therefore, if a tree dries up or is cut down, he still owns the land (*to plant another in its place*). However, if it is less than this (*four cubits*) or more (*than sixteen cubits*), or he bought one tree after the other, he does not acquire the land and the (*small and not important*) trees on the land. Therefore, if a tree dries up or is cut down, he does not own the land.

Rabbi Yirmiyah inquired: When he measures the land, does he measure from the short area (*higher on the tree where the tree becomes thinner*) or the wide area (*the tree stump next to the ground*)?

Rav Geviha from Bei Ksil said to Rav Ashi: We can answer this question from the following *Mishna*. The *Mishna* states: A young vine is only measured from its second knot (*this shows that we measure at the medium point of the tree, unlike either of the two possibilities presented by Rabbi Yirmiyah*).

Rabbi Yirmiyah inquired: If a person sold three parts of a tree (*which became flooded or covered with ground somehow, so that the trunk of the tree is underground, and these look like three separate*



trees), what is the law? [*Do we say that these are considered three separate trees and he therefore acquires the land, or do we say it is one tree?*]

Rav Geviha from Bei Ksil said to Rav Ashi: We can answer this question from the following *Mishna*. The *Mishna* states: If someone grafts together three vines and their roots are apparent (*meaning they have each taken root separately*), Rabbi Elozar the son of Rabbi Tzadok says that if there are between four and eight cubits between them, they combine. If not, they do not. [*This shows that here, too, we should say that they are considered separate trees.*]

Rav Pappa inquired: What is the law if he sold him two trees in his field and one on the border of his field? [*If in this case he receives the land, what about the following question?*] What is the law if he sold him two trees in his field, and one in his friend's field (*he owned a single tree in his friend's field*)? The *Gemora* leaves these questions unresolved.

Rav Ashi inquired: Does a pit divide the trees? Does a public domain divide the trees? If there are a lot of palm trees in one place, do they divide the trees on either side of them? The *Gemora* leaves this question unresolved.

Hillel asked Rebbe: What if a cedar tree grew between the other trees after the sale?

The *Gemora* asks: [*What kind of question is this?*] What is the problem if it grew? It grew in the buyer's domain (*after he acquired the field*)!

Rather, the *Gemora* explains the question is what is the law if the cedar tree was there during the sale.

Rebbe answered: He acquires both the land and the tree.

The *Gemora* asks: How do the trees have to be standing in order for the land between them to be part of the deal?

Rav says: They must be in a row.

Shmuel says: They must be in a tripod-like arrangement.

The *Gemora* notes: The opinion that says in a row will certainly agree this is true if they are in a tripod-like arrangement. The opinion that says they must be in a tripod like arrangement will say that if they are in a row, the land is not acquired. Why? This is because it is possible (*i.e. easier*) to grow things between the trees (*as opposed to a tripod-like arrangement where the center is more narrow*).

Rav Hamnuna asked: The opinion that says they must be in a tripod like arrangement will say that if they are in a row the land is not acquired. Why? This is because it is possible to grow things between the trees. Accordingly, if someone sold three thornbushes to someone in a row (*where nobody will plant in between them as otherwise they may be poked by the thorns*), this opinion should agree that the land is sold!?

The *Gemora* answers: These trees are important, but the thornbushes are not. [*In order to say the land is*



included, the deal must involve important trees and difficulty in planting anything between the trees.] (82b – 83b)

### **Mishna**

If someone sells the head of a large animal, he does not include the feet. If he sold the feet, he did not include the head. If he sold the lungs, he did not include the liver. If he sold the liver, he did not include the lungs. However, regarding the sale of a small animal, if he sold the head, he automatically includes the feet. If he sold the feet, he did not include the head. If he sold the lung, he included the liver. If he sold the liver, he did not include the lung.

There are four types of sales. If he sold good wheat and it turned out to be bad wheat, the buyer can retract the purchase. If he sold bad wheat and it turned out to be good wheat, the seller can retract the sale. If he sold bad wheat that turned out to be bad and good wheat that turned out to be good, neither can retract the sale. If he sold red wheat that turned out to be white, or white that turned out to be red, or olive trees that turned out to be a tree that does not bear fruit, or trees that do not bear fruit that turned out to be olive trees, or wine that turned out to be vinegar, or vinegar that turned out to be wine, either can retract the sale. (83b)

### **HALACHOS OF THE DAF**

#### ***Paying for One Item and Receiving Another***

In an instance where a buyer paid for an item of a certain quality, and finds that he received either an item of a different quality, or a different type of that item, the *halachah* will depend in the different scenarios.

- 1) **The buyer paid for a superior quality and received an inferior quality:** This is not a *mekach ta'us* (a mistaken or fraudulent sale), since the item which the buyer paid for, is in fact the one he received. Rather the quality which was received is not worth the amount paid. Therefore only the buyer has a right to return the item and get a full refund. This is true even in a case where the price had risen, and the inferior is worth the same amount as he had paid; since the buyer might have specifically wanted the superior.
- 2) **The buyer paid for an inferior and received a superior:** Only the seller has a right to void the sale.
- 3) **The buyer paid for and received the same quality:** Neither the buyer nor the seller may retract. Even if the item is not the best or worst quality (i.e. the buyer can't claim that when he paid for the superior he thought he is getting the very best).
- 4) **The buyer paid for one type and received a different type:** For example the buyer paid for red wheat and received white wheat. Since both types of wheat are commonly bought, the buyer and the seller may claim that they specifically wanted to buy/sell this specific type, and they may both retract.