

12 Iyar 5777
May 8, 2017



Bava Basra Daf 106

Produced by Rabbi Avrohom Adler, Kollel Boker Beachwood

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This Field

The *Mishna* says that if one sold a *kor* size field, and delineates its identifying signs and borders, if the field is lacking less than a sixth of the size, the sale is valid, but if it is lacking up to a sixth of the size, the price must be reduced. (106a)

Exactly a Sixth Wrong

The *Gemora* cites a dispute in the case of a field that was exactly a sixth less than a *kor*, a case not explicitly discussed by the *Mishna*. Rav Huna says the sale is valid, just as in a field that is missing less than a sixth, while Rav Yehudah says the price must be reduced, just as in a field that is missing more than a sixth. Rav Huna explains that the *Mishna* reads, “If the field is lacking less than a sixth or exactly a sixth, the sale is valid, but if it is lacking more, the price must be reduced.” Rav Yehudah explains that the *Mishna* reads, “If the field is lacking less than a sixth, the sale is valid, but if it is lacking more than a sixth, or a sixth, the price must be reduced.”

The *Gemora* attempts to resolve the dispute from a *braisa*. The *braisa* says that if one delineated a field’s signs and borders, and it was a sixth larger or smaller than the specified size, this is similar to a court estimation, and the sale is valid. In a court estimate, a mistake of a sixth in value is equivalent to more than a sixth. This *braisa*’s comparison therefore seems to prove Rav Yehudah, who equates a lack of a sixth in our *Mishna* to more than a sixth.

Rav Huna deflects this proof, by pointing to the end of the *braisa*, which says that the sale is valid, which supports Rav

Huna’s position. Rather, Rav Huna says that the *braisa* follows Rabban Shimon ben Gamliel, who says that a court estimation that erred is valid. The *braisa* is stating that a delineated field lacking a sixth of its declared size is valid, just like a court estimation that erred. Rav Yehudah says that the *braisa* is pointing out one similarity between an error in a delineated field’s size and an error in a court estimate – that if the error is exactly a sixth, the error is not negligible. They do differ, however, in that a delineated field’s error only requires a price adjustment, while a court estimate’s error voids the transaction. (106a)

Knowing the Land

Rav Pappa bought a field. The buyer said that the field was twenty *se’ah*, but the field was found to be fifteen *se’ah*. Rav Pappa came in front of Abaye, who told him that he accepted the field as is.

Rav Pappa challenged Abaye, since the *Mishna* says that if the field is lacking more than a sixth, the price is reduced.

Abaye said that the *Mishna* is a case where the buyer was not familiar with the field, but Rav Pappa was familiar with the field, and knew that it was not twenty *se’ah* large. Although the seller said it was twenty *se’ah*, all he meant was that it was as valuable as a field of twenty *se’ah*. (106a – 106b)

Splitting an Estate

The *Gemora* discusses allocation of inheritance. The *Gemora* first cites a *braisa*, in which Rabbi Yosi says that when brothers split their inherited estate, once one of them



received his share by lottery, all the brothers have taken possession of their portion.

Rabbi Elozar says this *halachah* is learned from the original division of *Eretz Yisroel* among the Jews. Just as they took ownership by lottery, so any division by lottery confers ownership to the participants.

The *Gemora* challenges this source, since the original division of *Eretz Yisroel* was a lottery, but was accompanied with a special box for the lottery, and the *Urim v'Tumim* of the *Kohen Gadol*, as opposed to a simple lottery.

Rav Ashi says that the acquisition is by mutual agreement. The benefit each gets from the fact that they agree to the division makes them agree to let each one acquire their portion by lottery.

The *Gemora* cites a dispute of Rav and Shmuel in the case of two brothers who split their inheritance, and then discovered a lost brother, who has a share as well. Rav says that the original division is void, and they must divide the estate anew, while Shmuel says that the division is valid, but each brother must contribute part of his portion to be given to the new brother.

Rava asked Rav Nachman how this case is different than a case of partners. If two out of three partners split their shares, the division is valid, even without the involvement of the third. Similarly, when the two brothers split their shares, that division should be valid, without the involvement of the third.

Rav Nachman said that in the case of partners, the two split their shares in the context of a third partner, but in the case of the brothers, they split their shares, assuming only two brothers, making their division incorrect, and therefore void.

Rav Pappa asked Abaye how Shmuel's position that the

original agreement of the two brothers is valid is consistent with another statement of Shmuel, in the case of a sale. Rav and Shmuel both say that if two people agree to a sale of a *kor* of merchandise for thirty *selas*, they can both back out until the last *se'ah* is measured, while if they specified that the sale is for a *kor*, at the rate of one *sela* per *se'ah*, each *se'ah* is a separate sale, and takes effect immediately. The first case of the sale seems to indicate that Shmuel does not consider an agreement to be irreversible, which seems to contradict his position in the case of the brothers who split the inheritance.

Abaye explained that in the case of a sale, both parties to the sale do not want the sale to be immediate, giving them the option to back out until the last moment in the case of a change in market price. However, brothers who split their estate do not want to reverse the division, and it therefore takes effect immediately, and is not reversed when a new brother arrives. (106b – 107a)

INSIGHTS TO THE DAF

Delineating a Field

The *Mishna* discusses a case of one who delineates the field he is selling. By delineating the field, we allow more leeway in an error in the field's size.

The Rashbam and Tur (*quoting the Rema*) say that the same is true if the seller showed the field to the buyer, and told him that he was selling "this field." However, the Ri Migash says that showing an actual field is equivalent to the earlier case of *hen chaser hen yeser (more or less)*, and does not have the same leeway as our *Mishna*.

The limit of the error accepted in such a sale is a sixth of the specified size. The Rashbam explains that although this amount is the same as the proportion for *ona'ah (over or under charging)*, the mechanism is different. The limit in the case of a delineated field is simply a measure of how far away from the specified size a buyer will forgive, while the

limit in *ona'ah* is defined by the variation accepted in a marketplace.

Beyond a sixth, the *Mishna* says that the price must be adjusted. The Rosh and Ran say that the adjustment is for the whole error. The Kesef Mishnah (Mechirah 28:12) holds that the Rambam agrees, while the Magid Mishnah suggests that the Rambam may only obligate a reduction in price to bring it to within a sixth of the specified size.

Exactly a Sixth

The *Gemora* cites the dispute of Rav Huna and Rav Yehudah in the case of an error of exactly a sixth of the size, with Rav Huna placing it together with less than a sixth, and Rav Yehudah placing it together with more than a sixth.

The Rishonim discuss different versions of the text of the *Mishna*, and how they are read according to Rav Huna and Rav Yehudah.

The *Mishna* rules on two cases:

1. *pachos mishtos* (less than a sixth): valid sale
2. Until *shtos* price must be adjusted

The versions of the first case are:

1. *pachos shtos* = a sixth less [than the size] (Tosfos 106a Hachi)
2. *pachos mishtos* = less than a sixth [away from the size] (Tosfos ibid)
3. *piches shtos* = [if he] reduced [the size] by a sixth (Bach note 3)
4. *piches mishtos* = [if he] reduced [the size] by less than a sixth (Bach note 1)

According to the first and third versions, this case seems to read simply like Rav Huna. In fact, this is a weakness with these versions, since Rav Huna proceeds to explain how to read this first case in accordance with his ruling. Rav Yehudah has to read this case, “[up to] a sixth less.” According to the second and fourth versions, the *Mishna*

does not explicitly discuss the case of a sixth, leading to the dispute.

The second case of the *Mishna* discusses the rule *ad - until* a *shtos*. Here, Rav Yehudah and Rav Huna dispute whether this *ad - until* is inclusive or exclusive.

Tosfos explains that Rav Yehudah can explain that the *Mishna* did not explicitly discuss a sixth in the second case, lest we think that more than a sixth would invalidate the sale. According to Rav Huna, the *Mishna* did not explicitly discuss a sixth in the first case, to indicate that a sixth is a valid sale, just as much as less than a sixth is.

A Silver Goblet Raffled a few Times on Purim

Our *sugya* explains that the heirs to a commonly inherited estate may divide it by lots and, according to Rav Ashi, the *halachic* validity of the lottery is based on the heirs' consensus to divide the estate by that means. We bring you a story about a Purim raffle held somewhere in Germany about 325 years ago, next-door to HaGaon Rav Yair Bachrach, author of *Responsa Chavos Yair*.

A dozen exuberant friends and relatives were having their Purim banquet at the same table. Somewhat inebriated, they decided to raffle an expensive silver goblet with each paying a participation fee. Each of their names was written on a separate slip and put in a box while another box held 12 more slips – 11 blank and one announcing *mazal tov!* The word was given and a child was picked to take out a slip with a name from the first box and another slip from the second. On the first try, the slip from the second box was blank but already on the second try, the slip from the second box said *mazal tov* and the happy winner was handed his prize. Some people, though, wondered how anyone could win so soon and decided to examine all the slips. They then found another *mazal tov* slip in the second box and an argument soon erupted. The winner claimed that his luck caused him to win and had there been merely one such slip, he would also have won while the other participants insisted that the



whole raffle was invalid as the original conditions of 11 blank slips and one *mazal tov* had not been met. All the participants went to Rav Bachrach's home and the *Gaon* instructed them to conduct the raffle anew.

This time, someone else won but the situation was just as confusing. One of the participants examined all the slips in the box of names and discovered one missing. They all wanted to invalidate the raffle but the winner asserted that as there had been just 11 names in the box, each of the 11 had had a greater chance to win so what are they complaining about? "The only one I should confront," he retorted, "is the twelfth, whose name was missing, and I'm willing to compromise and give him a third of the goblet's worth." The group again came to Rav Bachrach who ruled that even if the twelfth person would agree to the compromise, the others could invalidate the raffle (Responsa, 61).

He found a source for his decision in our *sugya*: Two brothers divided three fields of equal size by drawing lots. Reuven got field A and Shimon field B and they then divided field C equally between them. They then discovered another brother, Levi, whom they had never known and the three drew lots anew for the entire estate while Levi won field C! In Tosfos' opinion (s.v. *Ushmuel*), Rav and Shmuel disagreed if a new lottery should be conducted or if Reuven and Shimon could keep their originally won fields and just give field C to Levi without drawing lots. The *halachah* was ruled according to Rav invalidating the first lottery entirely and we thus deduce that a lottery or raffle somehow excluding a participant who should have been included is invalid.

Basic Conditions for the Results of a Raffle to be Binding

According to the *Chavos Yair*, the reason for the above *halachah* is that the results of a lottery must be determined strictly by Hashem without human machinations or errors. Divine providence works its effect only when a lottery or raffle is conducted properly. If, then, even 13 slips had been

put in the name box, with someone's name appearing twice, and even had that person not won despite his greater chances, the other participants could invalidate the raffle as a raffle not conducted according to the rules has no validity.

This novel opinion, that even someone whose name was recorded twice could invalidate a raffle, was supported in a wonderfully simple explanation by HaGaon Maharil (Reb Yehoshua Leib) Diskin zt"l in his commentary on the Torah (*Miketz*). The twice-inscribed person could claim that he paid to participate in the raffle, assuming he had a chance to win. Had he won, though, the other participants could invalidate the proceedings, being that his name was recorded twice and thus giving him a greater chance to win. This very possibility, then, invalidates his participation retroactively since he had no chance of winning. Moreover, he could further claim that Divine providence wants him to win but his name did not appear for even **had** he won, the others would invalidate his winning anyway; he is therefore allowed to invalidate the whole procedure.

DAILY MASHAL

The Winner of the Lottery Gets the Aliyah

In a certain congregation in *Eretz Yisroel*, the members decided that, for the sake of good order, the Shabbos when a bar mitzvah boy would be called to *maftir* should be determined a year in advance. One day, a congregant came to the *gabai* and informed him that his son would be bar mitzvah and receive *maftir* the coming Shabbos. He already sent invitations, he asserted, and the desired *aliyah laTorah* was even mentioned therein. The *gabai* protested that that Shabbos was reserved for another bar mitzvah boy whose father obeyed the regulations and had advised the congregation a year ago. The question was referred to HaGaon Y.S. Elyashiv, who ruled that the son had no reason to suffer because of his father's negligence and that the boys should draw lots for their *aliyah* (*Tuvecha Yabi'u*, II, p. 68)