

## OVERVIEW of the Daf

### 1) Stones sold together with a field

Two explanations are offered regarding the function of the stones sold together with a field.

Ulla's opinion regarding the function of these stones is unsuccessfully challenged.

The Gemara explains how each opinion fits into the dispute between R' Meir and Rabanan concerning the generosity of the seller.

### 2) Clarifying the Mishnah

The Gemara explains the Mishnah's ruling regarding reeds and how this fits into the dispute between R' Meir and Rabanan concerning the generosity of the seller.

The extents of a number of halachos of the Mishnah are explained.

Additional cases of the Mishnah are explained in the context of the dispute between R' Meir and Rabanan.

The extents of a number of halachos of the Mishnah are explained.

### 3) Items that may or may not be included in the sale of a house

R' Eliezer inquires whether the door steps are included in the sale of a house.

The inquiry remains unresolved.

R' Zeira inquires whether window moldings are included in the sale of a house.

The inquiry remains unresolved.

R' Yirmiyah inquires whether the blocks that are placed beneath the legs of a bed are included in the sale of the bed.

The inquiry remains unresolved.

### 4) Grafted carob and cut sycamore tress

R' Yehudah in the name of Rav cites the source for the Mishnah's ruling that grafted carob trees and cut sycamore trees are not included in the sale of a field even if the seller stated that he was selling everything in the field.

(Continued on page 2)

## REVIEW and Remember

1. What types of stones are sold together with a field?  
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2. Are items attached to a house with pegs considered part of the house?  
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3. What is the meaning of the phrase **ארעא בדיקלי**?  
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4. How do we determine whether a tree is fully grown?  
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## Distinctive INSIGHT

### *Selling the field with the exception of one tree*

אמר ליה לבר מדיקלא פלניא, חזינן אי דיקלא טבא הוא שורי שיריה.  
 אי דיקלא בישא הוא כל שכן הנך

The Gemara presents several expressions used when selling a field, and it teaches how to understand each phrase.

If a seller sold his field, and he stipulated that a particular palm tree was excepted from the sale, we must analyze the nature of that particular tree. If that tree is productive, and it produces a קב of fruit, we assume that the seller meant to leave some fruit for himself, and that all trees are sold except for that one productive tree. If, however, that particular tree is unproductive in that it does not produce even one קב of fruit, then we interpret the seller's words to mean that none of the trees is sold. The seller obviously meant that he is keeping all the trees for himself, including even the unproductive ones.

Most Rishonim understand the Gemara as we have explained. When the seller said he was keeping a productive tree or an unproductive tree for himself, it does not refer to the one most productive tree among the bunch, or the worst tree in the field, but rather a tree among others which is either productive or unproductive. Accordingly, Rashbam explains that there is an objective measure to determine what is considered productivity, and that it whether it produces a קב of fruit or not.

Meiri writes that if the tree referred to by the seller is the worst among all the trees, and even that tree produces at least a קב of fruit, we would still say that he meant to keep all the trees for himself.

In his sefer **המקח**, Rav Hai Gaon explains that the intent of the Gemara in its analysis of the tree excluded by the buyer is to the one best tree or one worst tree in the entire field. If the tree that is indicated by the buyer is the best or worst tree in the field, we judge his words accordingly.

Ra'aved, cited in the Shitta Mikubetzes, questions the explanation of Rav Hai Gaon, because according to his commentary, there are conflicting indications where the tree to be kept by the buyer was neither the best nor worst in the field. For example, if the tree being excluded is "the best one," that one tree is the only one excluded, but if "a medium tree" is excluded, this would also exclude all trees better than it. On the other hand, let us conduct the analysis beginning with where the tree excluded was "the worst tree." Here, all trees are excluded. This suggests that if the tree excluded was "a medium tree," only it is excluded. This leads us to a contradiction, as the analysis beginning with "the best tree" indicated that excluding a medium tree teaches indicates that all trees better than it are also excluded.

The Shitta accepts the approach of Rav Hai Gaon, and explains that when excluding a medium tree, all trees better than it are also retained. ■

# HALACHAH Highlight

## Are mezuzos included in the sale of a house?

כי תיבעי לך דנקיטי בסיכני מאי תיקו

The question arises concerning those things that are attached with nails, are they included in the sale? Teiku.

**T**eshuvus Shivas Tzion<sup>1</sup> wonders whether one who sells his house includes in the sale the mezuzos that are affixed to the doorways. The reason to suggest the mezuzos are not included in the sale is that they are only attached with nails and Rema<sup>2</sup> rules in accordance with earlier opinions that items attached to a house with nails are not included in the sale of the house. The rationale behind this ruling, explains Beis Yosef<sup>3</sup>, is that the Gemara is uncertain whether items that are nailed in the walls are considered part of the house and since that question is not resolved the items remain in the possession of their current owner, the seller – המוציא מחבירו עליו הראיה. On the other hand Shulchan Aruch<sup>4</sup> rules that when one leaves a house he may not take the mezuzos with him. Rema<sup>5</sup> adds that the one who is leaving has the right to demand reimbursement for his mezuzos. Accordingly, it is not the seller who is the מוחזק it is the buyer who is the מוחזק. Since the seller may at best only collect money for his mezuzos and there is an uncertainty whether the seller has the right to the money the buyer should not have to pay since the money is in his pocket and the seller is the one seeking payment. Although his primary question is not resolved he writes that where the law of the land indicates that anything attached to the walls is included in the sale of a house the mezuzos would be considered part of the house.

Teshuvus Shevet Halevi<sup>6</sup> rejects the connection between

(Overview...continued from page 1)

R' Mesharshiya derives another halacha from the verse quoted by R' Yehudah in the name of Rav.

### 5) Selling land with trees

R' Yehudah presents a clause that should be included in the contract of one who is selling his field but notes that the contract will have the same meaning even if this clause was omitted.

Three rulings are presented that clarify the meaning of different clauses that may be used when selling a field with trees.

The Gemara discusses cases of a person who sold a field with trees but indicated that he was retaining some or all of his trees.

Rav clarifies how to determine which trees the seller retains for himself and which trees he is selling. ■

the inquiry concerning the mezuzos and our Gemara. A mezuzah is clearly not considered to be a part of the structure of the house and thus is not included in the sale of the house. The mezuzah is an obligation that is incumbent upon the occupant of the house. When an occupant sells his house the obligation transfers to the purchaser and it is obvious that the seller is not expected to pay for the purchaser's mitzvah. The fact that the seller may not remove the mezuzos is due to the spiritual harm that results from removing the mezuzos but this law is not intended to give the purchaser proprietary rights in the mezuzah and thus the seller can expect payment for the mezuzos. ■

1. שו"ת שיבת ציון סי' קי"י.
2. רמ"א חו"מ סי' רי"ד סעי' י"א.
3. בית יוסף חו"מ שם.
4. שו"ע יו"ד סי' רצ"א סעי' ב'.
5. רמ"א שם.
6. שו"ת שבט הלוי ח"ב סי' קנ"ט. ■

# STORIES Off the Daf

## Bare necessities

"מלבנות של חלונות..."

**R**av Chaim Yosef Halevi purchased a nice-sized store from Reb Boaz which was subdivided by a wall of boards that incorporated a door. This strange partition actually served an important purpose. In its original configuration, the store was just large enough to pay higher taxes, but when its size was reduced by the partition, the owner only needed to pay the lower tax. When Rav Halevi

bought the store he assumed that Reb Boaz would leave the partition as it had been before, but he was in error. Shortly after the sale, Reb Boaz explained to Rav Halevi that a worker would be arriving to remove the partition and the door. Of course Rav Halevi declared that Reb Boaz had no right to do such a thing but Reb Boaz disagreed. The two went to Rav Moshe Feinstein, zt"l, for adjudication.

Rav Feinstein ruled that the door and boards were not included in the sale. "This is eminently clear from Bava Basra 69. There we find a question whether windowsills are included in the

sale of the house and the Shulchan Aruch rules that they are not included even if they were cemented in, since in their times it was normal to remove windowsills even though they are a part of the house.

"It is all the more clear in our case that the boards and door are not included in the sale since they are not necessary for the store in any way. On the contrary, their only purpose is to reduce the taxes on the store—and if the law was to change or a bigger concern was to occupy the store, they would certainly be removed!"<sup>1</sup> ■

1. שו"ת אג"מ, חו"מ, ח"א, סי' נ"ג