

## OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah discusses what is not included in the sale of a house if nothing was specified in the agreement.

### 2) Clarifying the Mishnah

Two interpretations of the term **יציע** are presented.

It is noted that the two interpretations do not necessarily agree with one another.

R' Yosef teaches that the **יציע** has three different names and cites verses that use each name.

Mar Zutra rules that an annex that is less than four amos is automatically included in the sale of a house.

Ravina unsuccessfully challenges this ruling.

### 3) Storeroom

The Gemara questions the necessity for the Mishnah to state that a storeroom is not included in the sale of a house.

The Gemara answers that the novelty applies when the borders of the property were defined in the sale.

The basis of this explanation was a ruling of R' Nachman.

The details of R' Nachman's ruling are clarified.

Another similar ruling of R' Nachman is cited and clarified.

The necessity for these two rulings is explained.

### 4) The implications of words in the contract of sale

A ruling in the name of Abaye is cited and the Gemara explains that it follows the approach of R' Nachman in the name of Rabbah bar Avuha.

An incident is cited where the language of the agreement was helpful to resolve a dispute.

The Gemara continues to clarify the meaning of different words and phrases. ■

## Distinctive INSIGHT

### Defining the terms of a sale

המוכר את הבית לא מכר את היציע...ולא את החדר

**A**ruch HaShulchan (C.M. 214:2) writes that we must realize that the terminology used in real estate sales in the time of the Mishnah was different than it is "in our country." When we use the term "**בית**—house," it is a general term and is understood to include all types of structures. If one wishes to sell a ground floor dwelling or upper level separately, this must be listed clearly. However, in the time of the Mishnah, the term "**בית**" was not an inclusive term, and it only included the room in which one lived.

Rambam (Hilchos Mechira 26:7-8) writes that "the rules and limitations of the terms listed in the Mishnah only apply where there are no local understandings or pre-existing terms used for various structures or appliances. If, however, there are local customs and universally-accepted expressions used when conducting business, the halacha recognizes those terms and their colloquial usage. For example, in some places the term **בית** refers only to the rooms in which people lived, while in other areas the same term **בית** refers to the living quarters, all surrounding areas, and everything above it. In each case, the common usage of the term is legally binding. This is also the general rule regarding the sale of movable objects (**מטלטלין**). It is only in places where there is no set custom nor universal manner of how terms are used that the guidelines of the Mishnah apply."

In his commentary to the Gemara, R' Chaim Soloveichik explains that when Rambam says we are to refer to the expressions in the Mishnah and how our sages define them when there is no established custom, it means that we are always to use the standard usage of terms in the context of a sale, and we do not rely upon any individual and his personal intent. If there is a local usage of terms, we rely upon that. If there is no standard, the definition of terms as they are found in the Mishnah is used. In no case are terms to be left to be defined subjectively.

In Igros Moshe (C.M. 1:72), R' Moshe Feinstein writes that the reason we rely upon either local standards of reference or upon the terms as defined by our sages is that the halacha considers the parties to a sale to have entered into an agreement to both accept objective definitions of terms. Therefore, it does not make a difference who established the definitions, even if the majority of the residents of a place are gentiles, as long as both parties to the sale agree to rely upon the same standard. ■

## REVIEW and Remember

1. What is the **יציע**?

2. How thick was the rear wall of the Heichal?

3. Why was it necessary for R' Nachman to present the same rulings in two different contexts?

4. Why was the phrase, "I am not retaining anything for myself in this transaction" included in the contract of sale?

## HALACHAH Highlight

### The use of plural language in a contract

ואי אמר ליה ארעתא סתמא מיעוט ארעתא שתיים

And if he said "lands" without further qualification – the minimum of "lands" is two

A disagreement that could arise in the context of a business deal is the definition of a term that is used in the plural but without any further qualification. For example, Reuven sells diamonds to retail stores. One day he walks into Shimon's store and shows him ten diamonds. Shimon expresses interest in purchasing the diamonds but Reuven explains that he needs the diamonds to show to other diamond retailers. They agree that Reuven will return in a week to sell the diamonds and they quickly draw up a contract that spells out that Reuven will sell to Shimon "diamonds." Over the course of the week the value of diamonds increases dramatically and when it comes time to complete the sale Reuven is hesitant since the present market will allow him a greater profit than if he sells the diamonds to Shimon. Therefore, Reuven claims that since the contract only states that he is selling "diamonds" he is not obligated to sell any more than two diamonds. Shimon argues that the agreement was made concerning all ten diamonds that Reuven showed him the

week before. What is the halacha in this case?

Our Gemara teaches that when a person uses plural language without further qualification it is understood to mean the smallest number that fits that definition, which is two. Tosafos notes that this teaching is contradicted by a Gemara in Bava Metzia (103a) that teaches that someone who borrows a shovel to use on his "lands" may use the shovel on all of his lands and we don't limit him to using the shovel on only two of his lands. One resolution suggested by Tosafos is to distinguish between a sale and a loan. A person is hesitant to sell his belongings and therefore plural language is interpreted in the smallest way possible. A person loaning an object does not mind being generous and plural language will be interpreted in the largest way possible. Another resolution cited in the name of Rivam is whether the one who drew up the contract used possessive language. In Bava Metzia the borrower asked to use the shovel for "my lands" as opposed to our Gemara where he merely said "lands." When the possessive form is used it is interpreted to mean all of his lands but when the contract does not utilize possessive language we assign the minimum meaning to the plural language which is two. These two resolutions can serve as the basis for determining the halacha in cases where disagreements arise between buyers and sellers concerning the meaning of plural language that appears in a contract. ■

1. תוס' ד"ה ארעתא תרתי משמע ■

## STORIES Off the Daf

### Communal pressure

בזמן שיש לו מעקה גבוה עשרה טפחי

On today's daf we find that a roof with a barrier ten tefachim high is important in and of itself. Of course, this is the minimum size necessary to fulfill the Torah mitzvah of making a fence around one's roof to prevent a person from falling.

Sometimes poorly educated people absorb some aspects of Yiddishkeit from their families which they fulfill with great self-sacrifice, while they completely ignore many other mitzvos that are explicit in the Torah. For example, in Petach Tikvah many years ago, there was a man who felt very strongly about davening in his home with a minyan, yet

he did not have a ma'akeh on his roof. Since at that time there was no other shul in the area, people wondered if they were permitted to daven in this person's house or not. When this question came before Rav Akivah Yosef Schlesinger, zt"l, he ruled that it is better to daven b'yichidus, without krias haTorah b'tzibur, then to daven in the house until the owner put in a ma'akeh. Sure enough, shortly afterwards the owner of the house erected a proper fence.

When some questioned what halachic basis he had for this ruling, Rav Schlesinger explained, "It is true that technically speaking one is permitted to enter a house that has no mezuzah or ma'akeh, as we find in the Magen Avraham in the name of the Beis Yosef and the Mordechai. The reason why it is permitted is that no one actually violated any prohibition by building the house;

the owner has merely failed to fulfill a positive commandment which can be rectified by putting up the mezuzos or the railing.

"Nevertheless, it is certainly improper for a talmid chacham to enter into such a house since he is strengthening the hand of the sinful owner. If anyone mentions that he is obligated to put up a ma'akeh, he will most likely point out that this doesn't bother the scholars who come to his minyan. In addition, what about the obligation to rebuke the sinner, which holds until the perpetrator is ready to strike him? Surely it is only fitting for the minyan to refrain from gathering in this house so as to pressure this man to fulfill his Torah obligation, even if the congregation is divided on this step and neither side will have a minyan!"<sup>1</sup> ■

1. שו"ת רבי עקיבא יוסף יו"ד ס' צ"ח