

OVERVIEW of the Daf

1) The implications of words in the contract of sale (cont.)

Rav rules that if a seller measures one boundary longer than the other the buyer acquires the land opposite the short boundary.

R' Kahana and R' Assi successfully challenge this ruling.

It is noted that in one case Rav would agree that the buyer acquires a diagonal line between the two boundaries.

2) Identifying the boundaries of a piece of property

The Gemara explains how property should be recorded in the contract of sale when it is adjacent to property owned by Reuven to the east and the west and by Shimon to the north and south.

Three inquiries regarding the meaning of boundaries recorded in the contract are presented and left unresolved.

3) Boundaries of a field that were improperly identified

Rav, Shmuel and R' Assi disagree about what is included in a sale of land when only three of the boundaries are identified.

R' Assi's position is explained.

Rava rules in accordance with the position of Rav but adds two qualifications to that ruling.

An inference is drawn from Rava's position.

A second version of Rava's ruling is presented wherein he follows the ruling of Shmuel and a different inference is drawn from his position.

The Gemara summarizes what could be deduced from the two versions of Rava's ruling.

4) Unclear terms used in the terms of the sale

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REVIEW and Remember

1. What is the dispute between Rava and the position of R' Kahana and R' Assi?

2. In the case of a field that is boarded on opposite sides by Reuven and the other opposite sides by Shimon if the seller did not mention "on two sides"?

3. What is the dispute among Rav, Shmuel, and R' Assi?

4. Does a response of silence to a challenge mean that the one who was challenged retracted his ruling?

Distinctive INSIGHT

Rav was silent

אמרו ליה רב כהנא ורב אסי לרב ויקנה כנגד ראש תור, שתיק רב. ומודה רב היכא דאיכא מצר ראובן וכו'

A seller delineated the borders of the field being sold. The sales document listed a border 100 amos long along the west, but the border along the eastern edge of the field was 50 amos long. The question was how to determine the perimeter of the field included in the sale. Rav ruled that the sale included only the part of the field corresponding to the eastern border, which was half of the field, up to the 50 amos limit. Rav Kahana and Rav Assi questioned Rav, suggesting that the sale should include a border following a diagonal line running from the edge of the 100 amos edge along the west to the edge of the 50 amos line along the east. Upon hearing this suggestion, Rav was quiet and did not respond.

We find several examples in the Gemara of incidents where an Amora is questioned by his students or peers, and the Amora is silent and does not respond. There are three possible approaches to why this happens. One possibility is that the Amora knew that the question was mistaken or that the answer was too obvious, so he felt that it was not necessary to respond. Or, a student in front of his rebbe asked a frivolous question that the student was expected to answer on his own (see incident of Rava and Rav Nachman, Bava Metzia 35a). Another approach is that silence indicates acceptance of the question, and that the Amora was abandoning his position. A third possibility is that the Amora stated a halacha in the name of his rebbe, and although he did not have an answer to the question, he maintained his position nonetheless.

In our Gemara, Tosafos explains that the silence of Rav cannot indicate that Rav dismissed the question of Rav Kahana and Rav Asi outright. They were prominent students of Rav, deserving of his esteem, as the Gemara in Sanhedrin (36b) states, they were dependant upon Rav to teach them, but they were experienced enough that they did not need Rav to explain things to them. This is in contrast to Abaye, to whom Rav also did not respond when he questioned him (63b), but that was because Abaye was a young student at that time and did not deserve an answer. In fact, explains Tosafos, many places where Rav was silent when questioned by Rav Kahana and Rav Asi it is because he accepted their input and admitted to them that they were correct. Accordingly, the halacha follows Rav Kahana and Rav Asi.

Some Rishonim say, however, that Rav maintained his opinion that only one half of the field was sold, although he did not answer them. Accordingly, the halacha would follow Rav, who was more authoritative, being the Rebbe teaching his students. ■

HALACHAH Highlight

Using jointly-owned merchandise for kiddushin

אמר רבה פלגא דאית לי בארעא פלגא

Rabbah said: [If a man declared,] "Half that I own in this land [I am selling to you]" the recipient receives half the land

Reuven and Shimon own a hardware store together. One day Reuven approaches a woman and says, "You are betrothed to me with the merchandise that is considered my portion of the partnership that is in the hardware store." Is such a kiddushin valid, since he owns half of the merchandise in the store, or perhaps since Reuven and Shimon never divided the assets it is considered as though Reuven does not actually own any of the merchandise in order to use it to betroth a woman?

Teshuvos Nezer Hakodesh¹ began his analysis of this question by citing our Gemara. The Gemara relates that if Reuven and Shimon are partners and Reuven says to Levi that he is selling, "Half, that I own in this land" his intent is to sell or transfer to Levi his share of the partnership that he has with Shimon. This indicates that one has the right to transfer ownership of one's share in a business even if the partners did not formally divide the assets of the business. The rationale is that Reuven has a proprietary interest in the business and he has the ability to sell his share of the business to someone else. Accordingly, in our case if a man betroths a woman by transferring to her his share of a business the kiddushin is valid. Support for this conclusion can be found in Chelkas M'chokeik² who rules that a partner in a business can effect kiddushin by giving a woman some of the merchandise from

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Rabbah distinguishes between the meaning of the phrase, "half that I own in the land" and the phrase, "half in the land that I own."

Abaye challenges the distinction drawn by Rabbah.

Rabbah was silenced but this did not lead Rabbah to change his position.

Rabbah made another distinction concerning the meaning of two similar phrases.

Abaye challenged the distinction leading Rabbah to be silenced. ■

his business as long as he tells her at the time he gives her the merchandise that the kiddushin is to take effect with the portion of the utensil that is his.

Nezer Hakodesh then expresses hesitation about this ruling since it seems to rely on the principle of ברירה – retroactive clarification – and generally we follow the opinion that concerning Biblical matters we do not accept the principle of ברירה. After an in-depth analysis of the related issues he comes to the conclusion that when two people agree to form a partnership it is understood that each partner is considered to be the owner of all the assets. Accordingly, it is not necessary to utilize the principle of ברירה since ownership of the merchandise is not waiting to be determined; rather each partner is already the owner of the merchandise and as such one could use merchandise owned by the business to betroth a woman. ■

1. שו"ת נזר הקודש סי' מ'.

2. חלקת מחוקק סי' כ"ח ס"ק ל"ב. ■

STORIES Off the Daf

Rav Yisrael steps down

"אישתיק רבה..."

On today's daf we find that Abaye asked Raba a question and Raba was silent. One lesson we can learn from here is that at times it is better to be silent. The truly great know when to answer and when to remain silent.

When Rav Yisrael Salanter, zt"l, would give a regular shiur in the Yeshiva of Reb Mila in Vilna, he was once beset by a very unusual challenge. However, it was his reaction to it that shocked everyone present.

As is well known, Rav Yisrael's Torah

erudition was virtually without peer. Despite the many detractors of the Mussar movement who attended his shiur for the sole purpose of catching him in error so as to defame him, Rav Yisrael was always able to defend himself with ease. He could always answer every question, whether it was on or off his topic.

But one time, an opponent to mussar asked a very powerful question that cast doubt on his entire structure of reasoning. After a few moments of thought Rav Yisrael said, "Your question completely demolishes the foundation of my argument. I was clearly mistaken." And without another word he stepped down from the pulpit.

Later, when his students asked him about this unusual lapse of accuracy, he explained, "Actually, the moment the

question was asked I immediately came up with five very convincing rebuffs that would surely have satisfied the questioner. But I also understood that the question was valid since none of those five answers were really true.

"Don't think for a moment that stepping down was easy for me. Believe me, I was sorely tempted to pull any one of those five responses 'out of my hat' to save face. What about k'vod HaTorah? Perhaps stepping down would damage my influence and the spread of mussar in general – a disaster!

"But then I said to myself, 'Yisrael! You learn mussar!' and I immediately stepped down."¹ ■

1. תנועת המוסר, ח"א, ע' 301. ■