

OVERVIEW of the Daf

1) The dispute between R' Akiva and Chachamim (cont.)

R' Huna in the name of Rav rules in accordance with the position of Chachamim whereas R' Yirmiyah bar Abba in the name of Shmuel holds like R' Akiva.

R' Yirmiyah bar Abba and R' Huna discuss whether Rav's position as relayed by R' Huna is accurate.

Ravina connects the dispute between Rav and Shmuel in our Gemara with another context in which they disagree whether one sells generously or not.

The necessity for Rav and Shmuel to argue the same issue in two contexts is explained.

R' Huna tells R' Nachman that the halacha follows Shmuel since they have more experience in matters of judgment.

2) Purchasing a right of passage

The Gemara presents a number of different scenarios and rules whether it is necessary for one to purchase a right of passage and then inquires whether the recipient of the inner room as a gift must purchase a right of passage from one who bought the outer room.

It is demonstrated that since people give gifts generously the resident of the inner room does not have to purchase the right of passage.

3) **MISHNAH:** The Mishnah continues to discuss which items are included in the sale of a house and which are not.

4) Identifying the author of the Mishnah

It is assumed the Mishnah does not follow R' Meir since he holds that movable objects are included in the sale of a vineyard.

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Distinctive INSIGHT

Gift giving is done generously

חיצון במכר ופנימי במתנה, סבור מינה אין להן דרך זה על זה, ולא היא, מי לא תנן בד"א במוכר אבל בנותן מתנה נותן את כולן

A discussion is presented in the Gemara regarding a case of two houses, one situated within the path of the other. The inner house was only accessible by traversing the outer house. If both houses are sold to two different people, or if both are given as gifts to two different people, the Gemara states that it is obvious that the receiver of the inner house does not automatically possess the right to walk through the outer house to arrive at his house. He must negotiate and purchase this right, as the receiver of the outer house received his property as is, without exclusions, just as the recipient of the inner house received his house without reservations.

The Gemara also states as a matter of fact that if the outer house was given as a gift, and the inner house was sold, it is also clear that the buyer was not granted automatic passage through the house given as a gift.

The Gemara inquires about the halacha where the outer house is sold, and the inner house is given as a gift. Is the gift presented with an open hand to the extent that it includes passage through the outer property? The Gemara first states that the gift does not include this right, but the Gemara concludes that the gift is presented with a generous hand (see Mishnah, 71a), and it includes the right of passage through the outer house which was merely sold.

Sefer **יוסף דעת** points out that the initial impression of the Gemara seems oblivious to the Mishnah on 71a which states that the presenting of a gift is with a greater degree of generosity than is a sale. Why did the Gemara think otherwise at first, and only then conclude that the gift of the inner house includes passage through the outer house which was sold?

Apparently, the Gemara at first felt that the clarification of the Mishnah regarding a gift was limited to the case of a dove cote located in a field. Although there is a disagreement between R' Akiva and Chachamim regarding the sale of a field, and whether the seller must purchase a path to his dove cote in the field, if the field is a gift, the path to the dove cote is definitely included as part of the gift. However, the Gemara did not think that this rule of gift giving applied to the second case of the Mishnah, of selling a pit and not the field, and this is the case which is similar to our case of selling two houses to two different people. The Gemara then realized that the stipulation about gift giving is presented at a point in the Mishnah which follows the **סיפא**, thus indicating that the rule of a gift applies to both cases listed in the Mishnah on 71a, and a gift is always more generous than a sale. ■

REVIEW and Remember

1. What is the point of dispute between Rav and Shmuel concerning brothers who divide their father's estate?

2. Why did R' Huna state that halacha follows the position of R' Nachman?

3. Why did the Gemara conclude that the Mishnah regarding the items sold with a house is not consistent with R' Meir?

4. Explain קבעו ולבסוף חקקו.

HALACHAH Highlight

Securing an Aron Kodesh to the wall

ר' אליעזר אומר כל המחובר לקרקע הרי הוא כקרקע

R' Eliezer says that anything that is attached to the ground is considered as the ground

Shulchan Aruch¹ rules that it is prohibited for a person to hang tefillin regardless of whether they are suspended by the batim or by the retzuos. Magen Avrohom² adds that when it comes to a Sefer Torah, one is not even permitted to hang it in a bag. Mishnah Berurah³ further extends this concept and writes that one may not suspend an Aron Kodesh that contains in it a Sefer Torah. Chaye Adam⁴ maintains that one may not even store a Sefer Torah in an Aron Kodesh that is attached to a wall if it does not rest on the ground.

The conclusion of these sources raises the question about the practice in some synagogues to have the Aron Kodesh attached to the wall without its resting on the ground. Nishmas Adam⁵ expresses uncertainty about the halacha that one may not attach an Aron Kodesh to a wall with nails. Perhaps one could argue, based on our Gemara's discussion that anything that is attached to a wall is considered as though it is attached to the ground and thus it would be permitted to attach an Aron Kodesh to a wall. On the other hand one could argue that something attached to a wall is not considered as though it is resting on the ground because we do not follow R' Eliezer's opinion in the Gemara. Furthermore, one could assert that only items cemented to a wall are considered like the ground but items merely screwed into a wall are not considered as

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The Gemara suggests how the Mishnah could be consistent with R' Meir but rejects that possibility and concludes that it is more logical that the Mishnah is not like R' Meir.

5) Items included in the sale of a house

A Baraisa presents a dispute between Tanna Kamma and Chachamim whether objects that are attached to the ground are included in the sale of a house.

Another Baraisa is cited that discusses the same issue in the context of constructing a mikvah.

The Gemara asserts that the Baraisa does not reflect the respective positions of R' Eliezer nor Chachamim.

The Gemara begins to explore which ruling of R' Eliezer is inconsistent with the Baraisa. ■

though they are at rest on the ground. Others⁶ suggest that the discussion in our Gemara does not have bearing on the Aron Kodesh discussion. The disagreement in our Gemara revolves around the question of whether someone who sells a house considers those items attached to the house to be an essential part of the house or not, but all opinions would agree that something that is attached to the wall is considered attached regardless of whether it is cemented to the wall or screwed into the wall. The only question is whether there is a specific requirement for the Aron Kodesh to rest on the ground. ■

1. שו"ע אר"ח ס"י מ' סעי' א'

2. מג"א שם סק"א.

3. מ"ב שם סק"ג.

4. חיי אדם כלל ל"א סעי' מ"ד.

5. נשמת אדם שם סק"ה.

6. עי' מתיבתא פניני הלכה לדף ס"ה: מש"כ על שיטה זו. ■

STORIES Off the Daf

The Halachic process

"אמר ליה הלכתא כוותיכו..."

On today's daf we find the unerring honesty of Rav Huna who explains why the halacha is like Rav Nachman, not himself.

Rav Wolbe, zt"l, once explained why absolute honesty must be attributed to the true chachamim of each generation. "Every Torah Jew must have absolute confidence in the great achronim of every generation. We must never suspect the Chofetz Chaim, zt"l, or the Chazon Ish, zt"l, of falsehood even in worldly matters and certainly not in the all-important ar-

ea of halacha.

"When the Chofetz Chaim rules in a certain way it is as if he says this in the name of his teacher and his teacher's teacher all the way back to Moshe at Sinai. Someone who doubts this, doubts the veracity of Hillel and Rabi Akiva as well since what is the real difference? Even this confused person must concede that if the halachic process of our greatest authorities is based on falsehood, perhaps the same is true regarding the earlier authorities, chas v'shalom!

"When Hashem sent prophets to warn powerful kings that they would fall and their kingdoms would be destroyed, they did so fearlessly despite the terrible dangers involved. The word of Hashem burned in their hearts and they foretold

these events without the slightest change.

Even though some suffered blows or even imprisonment for telling people what they did not wish to hear, they would not falsify or even hold back their prophecy.

"Like the prophets, the sages valiantly taught Torah whatever the consequences, since their only interest was to promulgate the truth. There can be no doubt that regardless of pressure or political considerations, the great sages of each generation remained true to the halacha which burned in their hearts. It is not for nothing that Chazal teach in Shabbos 138b, that 'devar Hashem' refers to both prophecy and halacha!"¹ ■

1. אגרות וכתבים, עי' רמ"ח-רמ"ט ■