

OVERVIEW of the Daf

1) Mill ring (cont.)

R' Ashi relates that in the yeshiva of R' Kahana they would collect a dowry for a bride even from rent that was to be paid for houses in her father's estate.

2) **MISHNAH:** The Mishnah discusses what is included in the sale of a courtyard.

3) Selling a courtyard

A Beraisa is cited that presents a more thorough discussion of what is included in the sale of a courtyard.

A contradictory Beraisa is cited.

The Gemara resolves the contradiction.

4) The dispute between Tanna Kamma and R' Eliezer

Rabbah identifies the case in which Tanna Kamma and R' Eliezer disagree.

A second version of Rabbah's qualification of the dispute is recorded.

5) Selling multiple properties

Rabbah in the name of R' Nachman rules that one who purchases a sand-field and a riverbed from the same seller must perform separate proprietary acts on each of the fields.

This ruling is unsuccessfully challenged.

A second version of this discussion is presented.

6) **MISHNAH:** The Mishnah discusses what items are included in the sale of an olive press.

7) Defining the terms in the Mishnah

(Continued on page 2)

REVIEW and Remember

1. What is the point of dispute between Rabanan and R' Eliezer concerning the sale of a courtyard?

2. When is it necessary to make different kinyanim for the different pieces of property that are purchased at one time?

3. When are all the components of an olive press included in the sale of the olive press?

4. What items are always assumed to be excluded from the sale of a bathhouse?

Distinctive INSIGHT

Sale of a yard and what it includes

רבי אליעזר אומר המוכר את החצר לא מכר אלא אורה של חצר

In a response to a halachic inquiry, Rashba (שו"ת ה"ב כ"ד) elaborates to prove that when one purchases a yard (חצר), the sale does not automatically include the airspace above it nor the underground rights to the area below it. Although R' Eliezer rules that one does receive the "אור" of the yard, Rashba explains that just as we find that purchasing a house does not include the airspace above it, unless it is specifically stipulated, so too the airspace is not included with purchase of a yard if it is not clearly mentioned.

Rashba insists that there is no source that the airspace be included in a sale, and the words of R' Eliezer who says that one acquires the אור simply means that the buyer only gets the open area of the yard itself. In fact, he notes that the word אור can mean one of two things, and the intent of the word is to be understood in context of how it is used in each situation. On the one hand, אור can refer to the height (רום), or airspace. This is using the translation of the word as found in the Targum Onkolos to Devrim 4:17, where the verse states "אשר תעוף בשמים," and Onkolos translates "דפרח באויר". This usage of the word is not uncommon in the Gemara (i.e. Chagiga 15b—מגדל הפורח באויר—).

On the other hand, the word אור can mean "open area." An example of this is found later (Bava Basra 163a), "הן ואוירן," referring to the open space found between the signatures of witnesses on a document. Similarly, when R' Eliezer notes that purchase of a yard includes the אור, it refers to the open area of the yard, and his opinion is brought to disagree with the Chachamim at the beginning of the Mishnah who say that a yard includes the houses open to it. Rashba proves his contention by citing the Yerushalmi where we find "לא מכר אלא מילוסא של חצר," which clearly indicates that the sale of a yard includes the open area. ■

HALACHAH Highlight

Selling the airspace together with the courtyard

המוכר את החצר

One who sells a courtyard

Shulchan Aruch¹ rules that included in the sale of a courtyard are the pits, cisterns and caves. Sema² notes that the implication of this ruling is that airspace should certainly be included in the sale. This implication, however, is difficult since in another place Shulchan Aruch³ presents two opinions as to whether the sale of a courtyard includes the airspace. What then is the halacha, is airspace included in the sale of a courtyard or not? Sema answers that the first halacha refers to a case where the entire courtyard was sold and when that is the case it is logical to assume that even the airspace was included in the sale. The second halacha refers to where only part of the courtyard was sold and when that is the case the assumption is that only those items that are specified are included in the sale and thus an uncertainty exists whether airspace is included in the sale.

Bach⁴ rejects this resolution and offers another way to resolve the contradiction. When Shulchan Aruch presents a dispute whether airspace is included in the sale he refers to the airspace above the ground. When he implies that airspace is certainly included in the sale of a courtyard he was referring to the airspace in the pits and cisterns. Taz⁵ suggests that the dispute refers to the question of whether the seller can construct poles and use the space above the

(Overview...continued from page 1)

The Gemara defines many of the terms mentioned in the Mishnah.

A Beraisa is cited that further elaborates on the opinions cited in the Mishnah.

8) **MISHNAH:** The Mishnah discusses which items are included in the sale of a bathhouse.

9) The sale of a bathhouse

A Beraisa is cited that elaborates on the discussion of what is included in the sale of a bathhouse. ■

chatzer and its usable airspace. Regarding the airspace that is immediately above the courtyard all opinions would agree that it is sold together with the courtyard itself. Bais Ephraim⁶ suggests another resolution based on a comment of Rashba. He suggests that pits and cisterns as well as the airspace of a courtyard are automatically included in the sale of a courtyard since the term "courtyard" includes all of these items. The disagreement regarding the depth and the height of the courtyard relates to whether the seller can build a structure above the sold courtyard and utilize that space or whether he is authorized to dig beneath the surface of the courtyard and use the space underground. ■

1. שוייע חוי"מ סיי רט"ו סעי א'.
2. סמ"ע שם סק"א.
3. שוייע שם סיי רי"ד סעי ד-ה'.
4. בי"ח סיי רט"ו.
5. ט"ז שם.
6. שו"ת בית אפרים חוי"מ סיי ל"ג. ■

STORIES Off the Daf

The boundaries of the courtyard

"המוכר את החצר..."

A certain man sold a rather large courtyard adjacent to his home. Under a large part of the courtyard was a cellar that had a locked entrance from the courtyard in addition to an entrance from immediately outside the boundaries of the courtyard. Unfortunately, the two failed to discuss this cellar, each figuring it would obviously be his. Naturally, there was trouble after the sale was finalized. The purchaser insisted that the cellar was obviously includ-

ed in the sale since its boundaries were exclusively below his property, but the seller disagreed. "We never discussed the cellar so why did you assume it was included in the sale?"

When the two finally brought their dispute to their local rabbi, he had no idea how to settle the matter. So he sent this question to the Rashbah, zt"l, for clarification. "Although some authorities hold that a sale automatically includes the height and depths of what is sold no matter what language was used in the actual agreement, the halachah does not follow this opinion. Rather, the buyer only acquires the space purchased unless he stipulates otherwise or used a word which includes

everything.

"In Bava Basra 67 we find that the Rabanan hold that the term חצר includes everything, just as in the Mishkan the term 'court' included the kodosh and the kodosh kodashim. The halachah follows the sages so it actually depends on the precise language used during the sale. If they used the language חצר, the cellar is included. If not, not. Even if the seller delineated the boundaries of the courtyard and said that everything within them is part of the sale, the cellar is still not included."¹ ■

1. שו"ת הרשב"א, ח"ב, סי' כ"ד. ■