

OVERVIEW of the Daf

1) **MISHNAH:** The Mishnah continues to discuss those items that are not included in the sale of a field. The Mishnah teaches that the rules presented in this and the previous Mishnayos are limited to sales and discusses what happens when items are transferred in ways other than a sale.

2) The difference between a sale and a gift

Yehudah ben Nekusa suggests an explanation for the difference between a sale and a gift.

This explanation is unsuccessfully challenged.

A related incident is presented.

3) Selling a field and retaining some trees

R' Huna rules that one who sells a field but retains some trees also keeps the land beneath the trees.

The Gemara elaborates on R' Huna's ruling.

R' Huna's ruling is successfully challenged forcing the Gemara to agree that R' Huna's ruling is not consistent with R' Akiva.

The novelty of R' Huna's ruling is explained. ■

REVIEW and Remember

1. What is the point of dispute between Tanna Kamma and R' Akiva?

2. Is sanctifying a field equated with selling the field or with giving a field as a gift?

3. What ruling did R' Huna issue?

4. What is the rationale behind R' Shimon's ruling in the Mishnah?

HALACHAH Highlight

The obligation to tithe produce that grew miraculously
 הואיל ויונקין משדה הקדש

Since they are drawing nourishment from a sacred field

The Gemara discusses a case where a grafted carob or cut sycamore tree is growing on land that belongs to the

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Distinctive INSIGHT

The seller retains the land for himself when he keeps the trees

אבל אילנות דקא מכחשי בארעא אם איתא דלא שייר לימא ליה
 עקור אילנך שקול וזיל

The Mishnah (later 81a) states that a buyer who purchases two trees in someone else's land does not receive the land where the trees grow. Rav Huna taught that nevertheless, if someone sells his land and leaves two trees for himself, it is understood that he does keep for himself the land upon which the two trees stand. This allows him to replant other trees upon the land if the trees he kept for himself wither and dry up. The Gemara initially points out that this ruling of Rav Huna can be agreed upon by Rabbi Akiva who generally holds that a sale is offered in a generous manner (בעין יפה מוכר), and we might expect that the seller includes everything in the sale except the trees which are explicitly excluded. Nevertheless, the seller must retain the rights to the land, or else the buyer might evict the seller and his trees immediately, without waiting for the trees to wither and die. The trees draw nutrition from the ground, and the buyer has no reason to tolerate the trees' depleting his land. Therefore, it is critical that the seller retain the land for the sake of his trees.

The Rishonim differ in their explanations of the statement of the Gemara. Rashbam learns that the seller is afraid that the buyer will evict him only after his trees wither and die, thus preventing him from planting new trees after the first ones die. Tosafos (ד"ה לימא) notes that according to Rashbam, the owner of the field is not content with keeping the trees he retained for himself, but he wants to guarantee that he will have the right to remain in the field forever. Tosafos questions this premise, and he asks where Rashbam detected that this is so. Rather, ר"י explains that the seller is concerned that if he would not keep the land for himself, the buyer would evict him immediately and not allow his trees to derive nutrients from the ground at all. The seller therefore leaves the land under the trees for himself, and this results in his later being allowed to plant other trees when the original ones wither and die.

Ketzos HaChoshen (216:1) asks how ר"י knows that the seller retains the rights to plant new trees when the original ones die. Perhaps the only reason he keeps the land under these trees is to sustain them as long as they survive, but how do we know that he retains rights to

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Beis HaMikdash – hekdesch. Rambam¹ rules that things that grow on hekdesch land are subject to the prohibition of me'ilah – deriving personal benefit from sacred property. The Gemara Yoma (21b and 39b) relates that when Shlomo HaMelech built the Beis HaMikdash he planted in it different varieties of golden trees that produced fruit and when the wind would blow, the fruit would fall off and kohanim would take the fruit and use them to support their families. Or Sameach² questions how the kohanim were permitted to benefit from these golden fruits if they grew on sacred ground and Rambam clearly rules that it is prohibited to derive personal benefit from things that grow on sacred property.

Or Sameach suggests that the restriction against benefiting from something that grows on sacred ground does not apply to something whose growth is miraculous in nature. His rationale is that something that grew miraculously is not considered to have grown out of sacred ground. The basis for this approach is found in a comment of Radak³. Elisha caused one pot of oil to miraculously fill all available vessels and Radak comments that it was unnecessary for her to tithe that oil since it came into existence by miraculous means. The one question that he leaves us with is why the Beis HaMikdash did not immediately acquire the golden fruit that fell on its property via קנין חצר – acquiring

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plant replacement trees later? Ketzos answers that the Gemara later (81b) tells us that when someone buys two trees we have a doubt whether he receives the land under them or not. Due to the doubt, the seller keeps his land. When selling land and keeping two trees, the seller keeps the land where the trees grow. Similarly, when keeping three trees, the seller keeps the land where they grow forever. ■

property that is placed in one's courtyard.

Nachalas Shimon⁴ cites the sefer Teruas Melech who questions the parallel Or Sameach drew between the Gemara in Yoma and the incident of Elisha. In order for produce to be subject to the laws of maaser it must grow from the ground. Thus, for example, a plant that grows in a non-perforated pot is not obligated in ma'aser. Accordingly, since the additional oil increased from the pot in her hand rather than growing from the ground it was not subject to ma'aser. In the case of Yoma, however, after the golden fruit grew miraculously it should become the property of the Beis HaMikdash since ownership has nothing to do with whether it grew miraculously or not. ■

1. רמב"ם פ"ה מהל' מעילה ה"ו.
2. אור שמח הוספות להל' מעילה.
3. פירוש הרד"ק דמלכים ב' ד: ז.

4. נחלת שמעון למלכים ב' ח"א סי' ד' סוף אות ד'. ■

STORIES Off the Daf

Permanence of a gift

"זה פירש..."

When the Nazis started bombing London, life quickly became intolerable for all but the most intrepid. Every night the bombs would fall, breaking their spirit and disturbing their sleep as those who could, rushed to a sometimes distant bomb shelter. Many people fled London to the country where things were relatively safe.

A fairly large number of Jews fled to a small hamlet far from any threat, but also very distant from any normal Jewish community. After a very short time, the urgent need for several basic essentials necessary to live a kosher Jewish

life obtruded itself on the refugees. But the most difficult obstacle to surmount in this regard was procuring a kosher mikveh.

After it became clear that they were there to stay for the winter, a certain very wealthy man decided to donate a mikveh, which he built on his property. After the war ended, most of the Jews moved back to London and the wealthy man wished to sell the house which might have saved his life.

To his surprise the relatively few religious Jews who had decided to stay claimed that he had no right to sell the mikveh since he had given it to the community as a gift.

But the wealthy man disagreed, "It is true that I gave it as a gift, but it was only a gift meant for the duration of the war."

When this question was brought before the Seridei Eish, zt"l, he ruled that the community was correct. "This is clear from Rabeinu Chananel brought in the Rashbam on Bava Basra 71. There we find that since the recipient of a gift is embarrassed to discuss exactly what is included in the gift, it is the giver's obligation to stipulate the precise limits if he means to limit his gift in any way. Therefore, if the giver does not stipulate, the gift is considered to be permanent.

"The same is true in our case. Since the wealthy man admits to having given the mikveh as a gift, it is presumably a gift for all time, unless he explained clearly that his gift was for a limited time only." ■

1. שו"ת שרידי אש, סי' פ"ג ■

