

OVERVIEW of the Daf

1) Selling a field and retaining some trees (cont.)

The earlier assertion, namely that R' Shimon follows the position of R' Akiva, is challenged.

The Gemara answers that R' Shimon in the Baraisa cited was not expressing his own opinion; rather, he was addressing the position of Rabanan.

The assertion that the Baraisa follows the view of R' Shimon is unsuccessfully challenged from the end of that same Baraisa.

2) The grafted carob and cut sycamore

R' Huna explained that a grafted carob and cut sycamore have the characteristics of trees and characteristics of land.

R' Huna also rules that a sheaf that contains two seah has characteristics of a sheaf and characteristics of a stack. ■

REVIEW and Remember

1. When does the consecration of three trees include the land between them?

2. Does a person sanctify property generously or not?

3. How does one redeem land that was purchased from a father, sanctified and then the father died?

4. How is a grafted carob like land and how is it like a tree?

Distinctive INSIGHT

The distribution of trees in a בית סאה

תניא הקדיש שלשה אילנות ממטע עשרה לבית סאה הרי הקדיש את הקרקע ואת האילנות שביניהם

The Baraisa teaches a case where someone consecrates three trees that are situated over an area at a rate whereby ten trees would be evenly distributed over an area of a beis se'ah. The halacha in this case is that not only are the trees themselves consecrated, but also the land upon which those trees grow, and all trees growing between those three trees are also consecrated.

Rashbam explains that the ratio of ten trees growing in an area of a beis se'ah is used in reference to small tree saplings. Ten small trees nourish from the entire field when distributed throughout the area of fifty amos by fifty amos. The field is thus a שדה אילן. When there are fewer than ten trees in this area, they do not nourish from the entire field, and each tree is evaluated independently. If the owner consecrates the nine trees in this area, for example, only the trees themselves are consecrated, but not the land upon which they grow.

When the trees are larger ones, it is enough to have three trees growing in an area of a beis se'ah for the trees to nurture from the entire area. If three larger trees situated across a beis se'ah are consecrated, the land between them is also consecrated.

The halacha regarding selling trees is somewhat different than we find regarding consecrating them. For the halacha of consecrating trees the calculation for the distance between three trees in a beis se'ah is that they are almost twenty-nine amos apart. Whenever three trees are sold, the trees are independent of each other if the distance between them is sixteen amos, and the land between them is not sold. Why is there this difference?

The answer given is that in regard to civilian transactions, the sale depends upon the mindset of the seller and buyer and how the field appears to the eye, and it is not a function of how the trees nurture. Once there is a distance of sixteen amos between trees, which is the distance of the public thoroughfare, the trees are too far apart to appear to be in one area—שדה אילן. However, when a person consecrates his property, we consider how the trees actually interact with the field and to what degree they nurture from the land. Three larger trees derive

HALACHAH Highlight

Selling three trees one after another

או שהקדישן בזה אחר זה הרי זה לא הקדיש לא את הקרקע וכי
Or if he sanctifies one tree after another he has not sanctified either the land etc.

The Gemara cites a Baraisa that discusses the question of whether one who sanctifies a number of trees also intended to sanctify the land between them. The ruling of the Baraisa is that one who sanctifies three trees that are spread out at a ratio of ten trees per beis se'ah of land has sanctified the trees and the land between those trees. Therefore, when he seeks to redeem the property he redeems the land and does not add anything additional for the trees since they are secondary to the land. If the owner sanctified the trees one after the other rather than simultaneously he has not sanctified any of the land and if he wants to redeem the trees he must redeem them at their full market value and obviously does not add money for any land.

Rambam¹ ruled that one who purchases three trees from his friend, one after the other, does not acquire any of the land that is associated with those trees. Magid Mishnah² suggests that the source for Rambam's ruling regarding a sale of trees is derived from our Baraisa's discussion of one who sanctifies trees. The rationale he gives for this ruling is as follows. When the buyer purchases the second tree he has no right to land since even one who buys two trees together has not acquired the right to any land with that purchase. Accordingly, when he goes ahead and purchases a third tree he also remains without any rights to land since at this point he is purchasing a single tree that affords him no rights to land. Magid Mishnah suggests a second possible source for Rambam's ruling and this source is cited by Beis Yosef³ as well. They suggest that the source is from a Baraisa later in the massechta (83a) that discusses the case of purchasing trees explicitly. ■

1. רמב"ם פכ"ד מהל' מכירה ה"ד.

2. מגיד משנה שם ד"ה או שלקח.

3. בית יוסף חו"מ סי' רט"ז ד"ה ומה שאמר אבל. ■

STORIES Off the Daf

Thwarted efforts

"מנין ללוקח שדה מאביו..."

A certain elderly man had an only daughter who was slated to inherit his worldly goods after he lived out his remaining days on earth. But the father was not at all pleased with his son-in-law and wished to ensure that his daughter would be the sole beneficiary of his estate. He was unsure how to manage this, however. He knew that his daughter could not opt to forgo support from her husband altogether, since her inheritance was not quite great enough to do so comfortably, especially since she would have to forgo support immediately and may only inherit years later. After much thought he asked the Ramban, zt"l, if there was a solution to his

halachic problem.

The Ramban replied that the case involved some particular complexities, "Theoretically there are several ways to give a gift which ensure that the husband does not receive any part of it, but these stratagems only work if the daughter is not slated to inherit. If she is, they are completely ineffective.

"We learn this from Bava Basra 72. There we find that if a son purchased a field from his father and then the father died and the son later consecrated the field, the son may buy back the field at the discount price of a *אחווה*. But why should the son be any different than any other purchaser who consecrates purchased land who must pay the full value to redeem it? Clearly the property remains bound to the father so that the son will inherit it after he passes away. Even though the son can

do what he wants with the property, if it is in his possession while the father passes away, he inherits it. So even if you give your daughter your material goods as a gift, if they are in her possession when you leave the world, she will inherit them and your son-in-law will have the same rights in them as he has in every inheritance. They will become *נכסי מלוג* in which the husband has the right to take *פירות*.

"I am sorry to say that I see no way out of your problem," the Ramban concluded.¹ ■

1. שו"ת רמב"ן, סי' ק"ו. ועי' סי' פתחי חושן, הלכות ירושה, פ"ח, הערה קל"ו, שכן צ"ל בדעת הרמב"ן ■

(Overview...continued from page 1)

nutrients from the entire field even when the trees are close to twenty-nine amos apart. This is why the entire field is consecrated in this case. ■