

OVERVIEW of the Daf

1) Ditches and rocks (cont.)

The Gemara questions why the Mishnah in Arachin ruled that ditches and rocks are not redeemed independent of the rest of the field.

A possible answer is suggested and then rejected.

R' Ukva bar Chama suggests that the ditches which are excluded are those filled with water, making them unfit for planting.

Support for this explanation is presented.

The support for this explanation is unsuccessfully challenged.

The Gemara questions whether our Mishnah speaks of ditches that are filled with water or not.

R' Pappa asserts that our Mishnah's ruling applies even if the ditches are not filled with water.

This explanation is unsuccessfully challenged.

2) Rocks less than ten tefachim high

R' Yitzchok asserts that the Mishnah's ruling that rocks less than ten tefachim high are measured with the field is limited to where their combined area is smaller than four kav.

R' Ukva bar Chama and R' Chiya bar Abba in the name of R' Yochanan disagree how widely spread out these rocks may be.

R' Chiya bar Abba asks a related question that is left unresolved.

R' Yirmiyah asks four related questions that are also left unresolved.

Another Baraisa elaborates further on whether a rock is measured as part of a field.

R' Pappa and R' Ashi ask related questions that are both left unresolved.

3) MISHNAH: The Mishnah discusses what happens when the

REVIEW and Remember

1. How do we prove that the Mishnah in Arachin referred to ditches filled with water?
2. Why are rocks treated differently for the sale of a field than they are for redeeming a field?
3. How does a seller indicate that he expects a field to be measured precisely?
4. When a seller mistakenly took too much land, what does the buyer receive in return for that mistake?

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Distinctive INSIGHT

A farming area that is interrupted with obstacles

אין אדם רוצה שיתן מעותיו במקום אחד ויראו לו כשנים ושלשה מקומות

The Mishnah ruled that if a **בית כור** area of land (30 se'ah) is sold for farming, the land must be readily useable for agriculture.

Regarding a person who consecrates an ancestral land, a **בית כור** of land is redeemed at a rate of fifty shekel for the 49 years from one Yovel to the next. If the land has deep ridges or tall stones which are ten tefachim high, these obstacles may not be counted toward the **בית כור**. Rav Ukva bar Chamma explains that the ridges to be excluded from the measurement are those filled with water. These ridges are completely inappropriate for seeding, just like a stone which juts up above the surface of the land. Any ridges which are less than ten tefachim deep are considered merely cracks in the ground, and they do count toward the measured area of the **בית כור**, even if they are filled with water.

Regarding our Mishnah, where a seller sold land, Rav Pappa explains that any ridge which is ten tefachim deep is excluded from the sale of a **בית כור**, even if it is not filled with water. The reason is that a buyer does not wish to pay for land and then have to farm land on different levels. Rashbam explains that the ridges and stones inhibit his ability to plow, seed and harvest, and the buyer is opposed to accepting these areas as part of the deal.

Rosh clarifies that the buyer will still accept this piece of land with the ridges, however he will just not seed the area down in the ditches. Therefore, the seller must offer additional land to make up the loss of the area contained in the non-farmable ditches. If the ditches or stones on the land are aligned such that they actually break up the flow of the field from one edge to the other, the buyer can insist that he is unwilling to accept this field even if the seller compensates with providing extra land for the area which has stones and ditches. The buyer can simply insist that he does not wish to have a land which requires that his farming procedures be interrupted.

The Mishnah in Bava Metzia (117b) presents a case of a building which housed an oil press which was built in a garden. A garden was built on top, but the roof caved in, and the owner

(Continued on page 2)

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HALACHAH Highlight

An inaccurate exchange of dollars for shekels

פיחת כל שהוא ינכה

If the seller gave less land he must deduct from the purchase price

There was once a person in Eretz Yisroel who exchanged dollars for shekels. A short time after the exchange the seller (the one who exchanged dollars for shekels) discovered that the shekel's value had dropped prior to the exchange. As a result, the seller claimed that the exchange was made in error and he wanted to return the shekels and take back his dollars. The buyer responded that since the change in value was less than a sixth the seller's claim should be dismissed since this is no different than any other case of אונאה where if the overcharging is less than a sixth of its value of sale price the sale is not cancelled and the one who was overcharged cannot demand a refund. The two parties decided to consult with Dayan Fisher, author of Teshuvos Even Yisroel for a ruling.

Teshuvos Even Yisroel¹ wrote that when an error is related to a miscalculation of the value of a purchase the buyer is correct that it is a case of ona'ah and if the discrepancy is less than a sixth the seller has no recourse. In this instance, however, the case should be examined through the lens of an error that was made pertaining to weights, measures and counting where a discrepancy of any sort cancels the sale. The reason why in every case of ona'ah we do not consider there to be an error in counting is that the intent of the buyer was to receive an object that was equal in value to his money. When the focus is on value halacha dictates

(Insight...continued from page 1)

of the garden insisted that the owner of the press rebuild his roof. In a case where an area of four-amos of the roof caved in, Rav rules that part of the garden should be planted on the remaining roof, and part below, on the floor of the oil press, because it is acceptable for a person to plant part above and part below. Shmuel says that the gardener may plant everything below, as it is not normal to divide one's garden on two levels. Rav seems to be contradicting Rav Pappa in our Gemara. Rashba explains that one who owns land will continue to farm it even if the levels change. However, a person would be opposed to buying land in the first place which is on varying levels. ■

that an error less than a sixth is inconsequential and as such the buyer cannot expect a refund. One who exchanges dollars for shekels is not looking to receive the value of his dollars; his intent is to obtain shekels since the shekel is the currency in Eretz Yisroel. Since his focus is on obtaining shekels any discrepancy is seen as an error in counting and therefore the seller's claim will prevail. The recourse that is available to the seller depends upon our Gemara's interpretation of Rava's statement (90a) that an error in counting cancels the sale. Although some Rishonim² maintain that the sale is cancelled entirely and all the money would be returned to the original owner Shulchan Aruch³ rules in accordance with the position that the sale is valid and the one who was overcharged has the right for a refund of the error. ■

1. שו"ת אבן ישראל ח"ז סי' ס"א.
2. ע"רשב"ם ד"ה פיחת.
3. שו"ת חו"מ סי' רל"ב סי' א'.

STORIES Off the Daf

A change of plans

"פיחת כל שהו ינכה..."

Choshen Mishpat is very complex and it is all too easy to confuse the halachah. For this reason many people are careful to ask a competent authority before jumping to conclusions, since they might very well be wrong. Learning the Gemara without the Rishonim and the halachah is not proof against error.

A certain man owned a large field that he wished to sell. He took the buyer to the field and explained that it was exactly a certain dimension, which was precisely what the buyer wanted. The buyer made a kinyan right there and both went away glad.

But later, the buyer found that the field was actually much smaller than what

the seller had claimed. When he confronted him about this, the seller said that he had not known. "But it makes no difference, since I will be happy to take less money from you."

But the buyer was no longer interested in the field at all. "I need a field with exactly the dimensions we agreed upon, not less," he explained.

The seller claimed that he was clearly obligated to pay for the field since his claim was against an open mishnah in Bava Basra 103. There we find that if a buyer claims that his field is a certain clearly defined measurement and it is really less, the seller pays less. "We don't find any questioning of the validity of the sale though," the seller concluded.

The buyer insisted that this sounded like a classic case of mekach ta'us, so the two decided to consult with the Rashbah. "The seller is correct. Since the mishnah discusses taking off the price if the field's

dimensions are less than agreed upon and adding if the field is larger, it is clear that the sale is binding."

But when the Maggid Mishneh brings this opinion, he also brings that others argue. Some say that the mishnah only means if both the buyer and the seller wish to go through with the sale. If not, it is obviously a מקח טעות!¹ ■

1. מגיד משנה, הלי מכירה, פ' כ"ח ■

(Overview...continued from page 1)

buyer sought to purchase a beis kur of earth and the measurement turned out to be inaccurate.

4) A sale that did not specify the method of measuring the land

The Gemara inquires about the halacha of a contract to sell a beis kur without specifying the method of measuring the land.

Our Mishnah is cited in an attempt to resolve the matter. ■