

## OVERVIEW of the Daf

### 1) A sale that did not specify the method of measuring the land (cont.)

The Gemara finishes quoting our Mishnah to prove that even if the method of measuring the land was not specified excess or missing land up to a quarter kav per se'ah is allowed.

This proof is rejected since the latter part of the Mishnah implies the opposite.

The Gemara proves from a Baraisa that when a seller sells a parcel of land without specification it is assumed that a deviation of a quarter kav per beis se'ah is accepted.

### 2) Improving the position of the buyer or seller

The Gemara challenges the implication of the Mishnah that enactments were made for the benefit of the seller rather than the buyer.

A resolution to this contradiction is presented.

This resolution is unsuccessfully challenged.

### 3) An over measuring by nine kavs

R' Huna and R' Nachman disagree whether an overmeasure of nine kav is returned to the seller even when a large parcel of land was sold.

R' Nachman's position that an overmeasure of nine kav is not returned when the parcel of land was very large is unsuccessfully challenged by Rava.

### 4) Fields that change

R' Ashi asks whether the significance of the overmeasured field is determined at the time of the sale or when the overmeasure is discovered.

The question remains unresolved.

A Baraisa teaches that if the over measure is adjacent to the seller's field it is returned even if it only a small parcel of land.

R' Ashi inquires about some applications of this halacha but the inquiries are left unresolved.

### 5) Clarifying the Mishnah

Ravin bar R' Nachman cites a Baraisa that has an alternative reading of our Mishnah that seems more logical.

6) **MISHNAH:** The Mishnah discusses cases where the seller made contradictory statements regarding whether the field was being sold with exact measurements or with approximate measurements. ■

## Distinctive INSIGHT

*Where the land being sold borders along the land of the seller*

תנא אם היה סמוך לשדהו אפילו כל שהוא מחזיר לא קרקע

The Mishnah (103b) presented the case of a sale of a specified area of land where the seller said, "More or less." The Mishnah rules that if it turns out that the land was actually larger than expected, if the discrepancy is within a quarter of a kav per se'ah (1/24) of what was promised, the sale stands as is. If the sale was supposed to be for a בית כור, this would add up to being one quarter of a kav for each thirty kav of land. This amounts to 30 quarters, or 7 1/2 kav of extra land which is forgiven (מחילה) by the seller. If the amount of land being sold is such that the overage adds up to nine kav or more, the additional land is large enough to be an independent field, and the extra land is returned to the seller. If the amount extra was less than nine kav, but more than 7 1/2, the Mishnah says "יעשה חשבון"—a calculation must be made."

Our Gemara cites a Baraisa which discusses cases where the land must be returned even if the area in question is less than nine kav. One case is if the land being sold borders along land owned by the seller. Rashbam explains that the extra land that is up to רובע לסאה (the first 7 1/2 kav) is still within the range of מחילה, and it is not returned even if it borders the seller's land. The Baraisa is dealing with any land which is larger than that which is forgiven. Although it is not usually worth it for the seller to take back a small parcel of land, and a financial arrangement is most appropriate, when the land borders on the seller's property he is willing to take back even small amounts of land.

Rashbam notes that some want to say that when the land being sold borders on the seller's property that any amount

(Continued on page 2)

## REVIEW and Remember

1. According to the Gemara's conclusion, is a discrepancy allowed when a parcel of land is sold without specifying whether the measurements should be exact?
2. What is the point of dispute between R' Huna and R' Nachman?
3. What is a useful size parcel of land for a garden?
4. According to the Mishnah, how are two contradictory sentences by a seller to be understood?

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 מרת סימא בת ר' פסח, ע"ה  
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# HALACHAH Highlight

## Collecting land for a small debt

ליפות כוחו של מוכר אמרינן

To improve the position of the seller is why this halacha was said.

Sefer Haterumos<sup>1</sup> addresses the following case. A borrower owes money to his creditor and the only property he has to pay back the loan is a parcel of land that is worth more than the debt. If, however, the creditor was to take land proportionate to the money that he is owed, it would be a parcel of land too small for planting or anything else constructive. Sefer Haterumos rules that the borrower may not give the small parcel of land equal to the value of the debt against the will of the creditor, and he gives the borrower two options. He could give the creditor a parcel of land that is large enough to be useful with the expectation that the creditor pay him for the additional land, or he must sell the land and with the proceeds of the sale pay back his debt with cash. He based this ruling on our Gemara. Our Gemara relates that when the buyer was given more land than he paid for but the additional land was too small for anything constructive the seller is given the upper hand and does not have to accept a parcel of land that is too small. Instead the seller has the right to demand that the buyer give him money equal to the amount of extra land. If in the case of a sale of land the seller can demand money rather than land, certainly in the case of a loan the creditor can expect to be paid back in cash rather than receive a parcel of land that is too small to be productive.

Rashba<sup>2</sup> also addresses this case but does not mention the option of the creditor paying more money so that he could be given a larger parcel of land. Beis Yosef<sup>3</sup> asserts that there is no

(Insight...continued from page 1)

the area of a בית כור is to be returned, and we do not allow even the initial מחילה range of רובע לסאה to be granted to the buyer. They explain that the gesture of מחילה is not necessary when the land can easily be absorbed back into the land of the seller. However, Rashbam rejects this approach, because the Gemara earlier concluded that even if a seller merely promises "בית כור" without specifying anything else (סתם), and certainly if he clearly says, "הן חסר הן יתר," his promise indicates a degree of leeway in the sale. If we were to say that every inch over a בית כור must be returned, there would be no significance to the seller's statement.

ה"י מקרקושא notes that although it borders on the seller's property, the land being sold is apparently a separate field, and it is perhaps fenced-in as a distinct farm land. When the seller said he is selling a בית כור, and it turns out to have an area even a bit more than the range of מחילה (more than 7 1/2 kav extra, but less than 9 kav extra), the promise of "הן חסר הן יתר" definitely allows that there be a מחילה range in the first place. It is just that when an adjustment must be made, in our case we rule that land must be returned, and not money. ■

dispute between Sefer Haterumos and Rashba on this matter. Sefer Haterumos was addressing a circumstance where the creditor was willing to pay extra to receive a significant parcel of land, whereas Rashba was discussing a case where the creditor was not interested in paying extra to receive a significant parcel of land. All opinions agree, however, that the choice is in the hands of the creditor. ■

1. ס פר התרומות שער ג' ח"ד אות א'
2. שו"ת הרשב"א ח"א סי' אלף קמ"ג.
3. ב"י חו"מ סי' ק"ג ד"ה ואם אין. ■

# STORIES Off the Daf

## Minor details

"סתמא נמי כהן חסר הן יתר דמי..."

One of the reasons why ruling correctly in monetary disputes can be so difficult is that even a small detail can change everything. A businessman once made a vow to purchase a plot of land of a particular dimension for the purpose of building a new shul. When he heard about a plot of land that exactly matched the dimensions he had vowed, he contacted the owner and agreed to buy it.

Shortly after their kinyan, the owner

told him that he had had the field measured and it was actually significantly larger than he had thought, so the price would be more than the buyer had agreed.

"I don't need or want more land. If you do not wish to give me the land as a gift, I guess I can't do business with you," answered the buyer.

When this question was brought before the rav of the town, he ruled that the buyer was in the right. "This seems clear from the סמ"ע. He explains that although the Gemara in Bava Basra 104 tells us that providing a dimension is approximate in which case the sale should be valid, in our case, the buyer was not

standing on the field and so the principle is not relevant. This minor detail actually invalidates the sale altogether."<sup>1</sup>

But when this issue was presented before Rabbi Akivah Eiger, zt"l, he questioned it. "Although he is correct that this is implied by the language of the סמ"ע, this seems difficult. I have an alternate solution that satisfies all possibilities: why can't the owner present the buyer with a choice of either paying for the extra land or just purchasing what was originally agreed? The extra land can simply remain in the possession of the seller!"<sup>2</sup> ■

1. סמ"ע, חו"מ, ס' ר"י"ח, ס"ק כ"ז
2. חידושי רעק"א, שם ■