

OVERVIEW of the Daf

1) The appearance of a third brother (cont.)

The Gemara resolves the challenge to Shmuel's position that when a third brother appears, the other two brothers must give him some of their land.

2) The collection of the creditor

Rav, Shmuel and R' Assi disagree what is done if a creditor collects land after the brothers already divided the estate.

Each Amora explains his rationale.

R' Pappa and Ameimar disagree about the halacha in these cases and the Gemara rules in accordance with Ameimar that the original division is rejected.

3) Appraising land

A Beraisa is cited that relates to the correct procedure when there is a difference of opinion regarding the accurate appraisal of a parcel of land.

The Gemara explains the rationale for each of the different opinions in the Beraisa.

R' Huna rules in accordance with the opinion of Acheirim that we add the highest and lowest appraisal and divide it by three.

R' Ashi challenges this ruling.

A similar discussion between R' Huna and R' Ashi is recorded.

4) MISHNAH: The Mishnah discusses the halachos that apply when two parties agree to sell part of a field.

5) Selling an unspecified part of a field

R' Chiya bar Abba in the name of R' Yochanan rules that the buyer receives the inferior part of the field.

This ruling is unsuccessfully challenged.

6) Trenches

A Beraisa discusses the location of the trenches mentioned in the Mishnah. ■

REVIEW and Remember

1. What is the point of dispute between Rav, Shmuel and R' Assi?

2. What is done when a field is appraised for different amounts?

3. How does the Gemara explain the view of אחרים?

4. When there is an uncertainty regarding the sale of land, who gets the inferior portion?

Distinctive INSIGHT

One who sells "half of the field" to a buyer

האומר לחבירו חצי שדה אני מוכר לך משמנין ביניהן ונוטל חצי שדה

The Mishnah teaches that if someone offers to sell half of his field without detailing which half is being sold, the halacha is that the field must be evaluated, both in terms of its valuable and fertile sections, as well as the less desirable sections, and the buyer receives land equal in value to half of the entire the field. The seller cannot offer him the inferior half of the field, nor is he obligated to give him only from the best part of the field.

Rishonim explain that the halacha in our Mishnah is correct even according to the opinion of Rabbi Akiva who holds (64a) that when one sells a house to a buyer, the sale is done with a generous hand (עין יפה). Even though a pit of water located in the house is not included in the sale, the seller, nevertheless, has sold the house without other restrictions, to the extent that the seller must now negotiate to be able to enter the house in order to access his own pit. We see that a seller includes a generous allotment with the sale, rather than being limited and restrictive. Rambam (Hilchos Mechira 25:3) and Shulchan Aruch (C.M. 214:2) rule according to Rabbi Akiva, and they also rule according to our Mishnah. We might have thought that a "generous sale" would mean that "half the field" would mean the better half of the field, but this is not the case. The reason is that when a person sells the entire house or field, and the question is whether the seller has retained any part for himself, this is where Rabbi Akiva says that the sale is complete and without limits. However, where the seller only sells half of the field, and the question is which part is sold, here Rabbi Akiva would say that the seller has the upper hand in interpreting the meaning of "half."

הר"י מקרקושא and רמ"ה, ר"י מיגש explain that Rabbi Akiva uses the rule of עין יפה where the seller decides what will be included in the sale. Accordingly, it is understood that the seller will generously include in the sale everything which might be necessary for the purchase to be complete. However, in our Gemara, the seller himself, together with the buyer, wrote in the sales document that "half the field is sold" - an expression lacking in specificity. In this case we do not override the seller himself and say that more is included than was promised, and the in-

HALACHAH Highlight

A lottery that was flawed

האחין שחלקו ובה בעל חוב וכו'

Brothers who divided their father's estate and a creditor came, etc.

There was once a group of friends who made a lottery for a silver cup. Each one of the participants put a piece of paper with his name in a box. After the winner was chosen they checked the papers that remained in the box and discovered that the paper with the name of one of the participants was missing. The winner quickly went and struck a deal with the person whose name was left out of the raffle, but the other participants claimed that they must redo the lottery with all the names. They turned to the author of Teshuvos Chavos Yair for a ruling.

Chavos Yair¹ answered that a mistake nullifies the drawing, and he based this ruling on our Gemara. Our Gemara discusses different cases of brothers who make a lottery to divide their father's estate only to discover that there is another brother who appeared from out of the country who was not included in the original drawing, or that the father owed money to a creditor. Rav ruled that the original lottery was not valid and the family must make a new lottery that includes the names of all the brothers or re-divide the estate after the creditor collected his debt. The basis of this is that lotteries are a form of Divine Providence, but it is only reliable

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tent of the expression was not necessarily generous.

Until now we have discussed the case of a sale of "half the field." In a case where one gives his friend a gift of "half the field," we might expect that the receiver has a great advantage. After all, the Chachamim agree with Rabbi Akiva that one who gives a gift does so generously. Yet, instead of a receiver of half a field as a gift being granted the best part of the field, Rambam (Hilchos Z'chiya 3:5) and Shulchan Aruch (ibid. 241:4) rule that the receiver only has rights to the inferior half of the field. ■

if the lottery was done correctly. Thus, for example, we find that Achan was identified by means of a lottery as the one who took the spoils from the city of Ai in Sefer Yehoshua. When, however, the lottery was flawed, even if the flaw was not due to anyone's wrongdoing, it is not an expression of Divine Providence and therefore is invalid. Therefore, if a person was to put his name into the box twice the lottery is invalid even if it turns out that he did not win. The other participants have the right to demand the lottery be done a second time since the first drawing was not an expression of Divine Providence. Following this line of reasoning, Magen Avrohom writes that when it was necessary to make a lottery to determine who would say kaddish, if it is discovered that the lottery was flawed it must be repeated. ■

1. שו"ת חות יאיר סי' ס"א

2. מג"א סי' קל"ב סק"א ■

STORIES Off the Daf

An even split

חצי שדה בדרום אני מוכר לך

Two partners decided to purchase a vineyard together. Since one partner's field was adjacent to one side of the vineyard, it was jointly decided that that partner would receive his share on the side closest to his property. This division was not noted in the deed of sale, however, and shortly after they purchased the property there was trouble.

It quickly became clear that the side closest to the partner's field was of a much greater quality than the other side. Obviously, the other partner demanded that they split the field equally

in a way that he would also receive from the better half. But the owner of the adjacent field objected.

He claimed, "I am sorry if you feel cheated, but a deal is a deal. Clearly we made the transaction on condition that I receive specifically the half that is adjacent to my field and you get the rest. I don't even see any point going to beis din over this."

His friend argued that he had only agreed because he had not known that he would be receiving the inferior part of the field that was worth less money. "Why would I pay a full half but then receive less? There can be no doubt that this was an error on my part and is not right to cheat me of my fair share of the better part of the vineyard."

They brought their dispute to the

author of the Teshuras Shai, zt"l, who surprised both when he ruled that both were in a way correct but partially mistaken as well. "Partners who buy property jointly are each others' shliach and cannot change their minds later, as we find in several sources in Choshen Mishpat— especially since there is no overcharging on land. Nevertheless, the second partner also does not lose in our case.

"I learn this from Bava Basra 107. There we find that when a person purchased the southern half of a field and it was of lesser value than the other half, he gets half the value of the field in the southern part even though he will receive more than half of the total area. The same is true in our case."¹ ■

1. שו"ת תשורת ש"י קמא ס' תקכ"ד