

This month's Daf Digest is dedicated
L'ilui Nishmas Rivka Yenta bas Asher Anshel (14 Elul) and Yosef ben Chaim haKohen Weiss (8 Elul)
Family Weiss, London

OVERVIEW of the Daf

1) Acquiring movable objects with land (cont.)

The Gemara continues to search for an answer to the inquiry whether the movable objects must be on the property when the acquisition of **אגב** is utilized.

It is finally demonstrated that it is not necessary for the movable objects to be on the property when the acquisition of **אגב** is utilized.

The Gemara inquires whether it is necessary for the seller to state explicitly that he is transferring the property with the method of **אגב**.

It is demonstrated that it is necessary for the seller to indicate that he is transferring the property with the method of **אגב**.

In response to an inquiry the Gemara proves that **אגב** works even when a field is sold and the movable property is given as a gift.

An unsuccessful attempt is made to demonstrate that **אגב** works even when the land goes to one party and the movable objects to another.

Rava asserts that **אגב** works only when the buyer paid in full before the transaction but if he only made a partial payment he will only acquire land proportionate to that payment.

A lengthy Baraisa is cited that supports this qualification.

It is noted that one of the rulings in the Baraisa demonstrates that a teaching of Shmuel is correct. Namely, that when a buyer makes a chazakah on one field, he can take

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REVIEW and Remember

- How does the Gemara prove that it is not necessary for the movable objects to be on the land when **אגב** is performed?
- In what way is a document stronger than money as far as transferring property is concerned?
- Why is purchasing ten animals different than purchasing ten pieces of land?
- Explain **גלגול שבועה**.

Distinctive INSIGHT

קנין אגב—Acquiring movable items together with land
והלכתא צבורין לא בעינן, אגב וקני בעינן

The Gemara arrived at two conclusions regarding the transaction of **קנין אגב**—when movable objects are transferred together with land. One conclusion is that it is not necessary for the movable objects to be situated on the land for the transaction to function. The second conclusion is that the original owner must clearly say that he is using the transaction of **אגב**, and that it is not simply a **קנין** of **חצר**, and that the owner must say, “**קני**”.

In reference to these halachos, Rambam (Hilchos Mechira 3:7) rules that if the movable objects which are to be transferred are situated in the land, the original owner need not say, “**אגב וקני**.” However, if the movable items to be sold are remote from the land, the seller must say, “Acquire these objects together with the land—**קני מטלטלין אגב קרקע**.”

Kesef Mishnah explains that the source for the ruling of Rambam is our Gemara, where, as stated above, two conclusions are determined. Yet, in presenting the second halacha that it is necessary for the owner to say “**אגב וקני**,” the Gemara repeats the first rule. “It is not necessary for the movable objects to be in the land, and the owner must say **אגב וקני**.” Why does the Gemara repeat the rule that the objects need not be in the land? Rather, Rambam learns that it is specifically when the objects are not in the land that the owner must declare that the **קנין** being used is **אגב**. If the objects are situated in the land, however, the **קנין אגב** is understood and it would not be necessary to make this declaration at all.

Magid Mishne and “ר” understand that Rambam feels that when the movable objects are on the property, the transaction being done is **חצר**, and not **אגב**, and this is why no declaration regarding **אגב** is made.

ספר מאירת עינים explains that there is a qualitative difference whether the **קנין** of **אגב** is done with the movable objects on the field or when they are remote. When the objects are not situated on the land, the transaction for the land only affects these objects indirectly, thus necessitating the declaration of “**אגב וקני**” to extend the action on the land to apply beyond the land and to these objects as well. However, when the movable objects are on the land itself, when the transaction is performed on the land, it directly includes these objects, as they are considered part and parcel of the land. This is why it is not necessary to declare “**אגב וקני**” in this case. ■

HALACHAH Highlight

Acquiring movable property with the kinyan of agav

איבעיא להו מי בעינן אגב או לא

They inquired: Is it necessary to state explicitly "agav" or not?

Rambam¹ ruled that when the movable property is not resting on the land that is being sold it is necessary for the seller to instruct the buyer to acquire the movable items together with the land. When, however, the movable items are resting on the land it is unnecessary for the seller to give explicit instructions. Ran² explains that when the movable items are on the land the declaration is not needed since it is unnecessary to make the kinyan of *agav* since the kinyan of *chatzer* will also work. Therefore, the Gemara asked about the necessity for the seller to give instructions only after the Gemara concluded that the movable items do not need to be on the land. Kesef Mishnah³ suggests an alternative explanation why explicit instructions are necessary only when the movable items are not on the property. When the movable items are resting on the property it is self-evident that they are being transferred together with the land but when the movable items are elsewhere it is necessary for the seller to make the explicit statement that he is transferring the movable items together with the land.

Ra'avad⁴ takes issue with the position of Rambam and writes that from the Gemara it is clear that whether the movable items are on the property or not it is necessary for the seller to explicitly instruct the buyer to acquire the movable items *agav* the land. Tur⁵ suggests that the wording of Rosh indicates

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possession of ten other fields in ten different countries.

R' Acha the son of R' Ika suggests an analogy in support of Shmuel's ruling.

The parallel is rejected.

An alternative version of this exchange is recorded.

2) גלגול שבועה

Ulla suggests a source for the principle of גלגול שבועה.

The Gemara notes that Ulla's suggestion involves a case of prohibition but does not serve as a source for גלגול שבועה in monetary matters.

The Gemara begins to cite a Baraisa of Tanna D'vei R' Yishmael to pinpoint the source of the use of גלגול שבועה even in monetary matters. ■

that he agrees with Ra'avad. Bach⁶ wonders what Tur saw in the writings of Rosh that indicates that he follows the opinion of Ra'avad when he merely cited the language of the Gemara. Bach answers that since Rosh certainly saw the qualification of Rambam and chose to cite the wording of the Gemara without Rambam's qualification it is an indication that he rejects that qualification and reads the Gemara as read by Ra'avad that there is no distinction whether the movable items are on the property or not. ■

1. רמב"ם פ"ג מהל' מכירה ה"ט.
2. ר"ן י: בדפי הר"ף.
3. כסף משנה שם.
4. ראב"ד שם.
5. טור חו"מ סי' ר"ב.
6. בי"ח שם סק"ב. ■

STORIES Off the Daf

"One benefits, and the other loses nothing by it..."

חזור בשטר ואינו חוזר בשדה

A certain man wished to give a house to a friend who had helped him in many ways over the course of years. He summoned some witnesses, made a kinyan in front of them, and had them write and sign a document of transfer.

Since their city had a rule that only a certain accredited sofer could write a document, the witnesses made their way to the sofer's house to submit the document for copying. When they got there, they found the man who had given the

gift was waiting for them. He said, "I would prefer he didn't have an official document, so do not submit it."

"But you just gave him the house as a gift and we even signed a document, so why shouldn't the recipient of your generosity have a document to prove that the house is his?" they asked. "Isn't this a case of 'one benefits and the other loses nothing by it,' of gratuitously denying a benefit to someone, which was characteristic of the people of Sodom?"

No argument would budge him from his determination that the official scribe refrain from copying the document. They wondered if he had a halachic right to protest this.

When the Rosh, zt"l, was consulted regarding this question he ruled that the

man had every right to protest. "On Kidushin 27 we find that if someone said to his messenger, acquire this land for so-and-so and write the document, he may retract his authorization to write the document but not the gift itself. Here too, although he may not retract the gift, he can change his mind about writing an accredited document.

The Rosh concluded, "The recipient's claim that the giver loses nothing by issuing the official document is false. If people see that the benefactor gave a large gift, they will think that he settled old debts and will not get a good price for other properties he may wish to sell. Why should he limit his ability to sell for a good price in order to do his friend a good turn?"¹ ■

¹שו"ת רא"ש, כלל סי' ס, סימן א'