

OVERVIEW of the Daf

1) Acquiring a large animal (cont.)

An alternative method of acquiring an elephant according to R' Shimon is suggested.

2) **MISHNAH:** The Mishnah discusses the methods of acquiring land and movable objects.

3) Acquiring land with money

Chizkyah suggests a source for the ruling that money could be used to acquire land.

This source is unsuccessfully challenged.

Rav asserts that in places where a contract is used to acquire property the use of money by itself will not be sufficient.

The practice of R' Idi bar Avin for acquiring land is cited and explained.

4) Acquiring land with a contract

The source that land can be acquired with a contract is identified.

Shmuel asserts that a document works for transferring land by means of a gift but land that is sold requires a transfer of money as well.

R' Hamnuna challenges Shmuel's ruling.

R' Hamnuna and R' Ashi offer alternative resolutions to the challenge.

5) Acquiring land by chazakah

Two sources are cited that teach that land could be acquired by chazakah.

6) Acquiring movable property

The source that movable property is acquired with **משיכה** is identified.

The Gemara explains how R' Yochanan, who maintains that Biblically, movable property is acquired with money, interprets the Mishnah.

7) Acquiring movable objects with land

The source that movable objects can be acquired with land (**אגב**) is identified.

The Gemara inquires whether the movable objects must be on the property when the acquisition of **אגב** is utilized.

Numerous unsuccessful attempts are made to resolve this inquiry. ■

Distinctive INSIGHT

The transaction of כסף—Money

אמר חזקיה אמר קרא שדות בכסף יקנו

The verse from Yirmiyahu teaches that money can be used to acquire land. What is the source, though, that when money is used it can function to acquire movable objects as well? The opinion of Rabbi Yochanan is that money works to acquire movable objects even without their being combined with land. What is the source for this?

Rashi (ד"ה דבר תורה) and Bava Metzia 46b, (ד"ה סבר) reports that the source that money acquires movable objects is from the verse "ונתן הכסף וקם לו" – And he shall give the money and it will be his" (see Vayikra 27:19). This verse is written in reference to redemption of one's ancestral field which was consecrated. The owner pays money and redeems his field. Nimukei Yosef (Bava Metzia, ibid.) notes that this verse is discussing how money affects a consecrated object, and this cannot establish a rule for all transactions. Rather, Nimukei Yosef suggests that the source for this halacha is logic. Since we see that money is valid in most transactions, we can assume that it is effective in acquiring movable objects, as well. Rif writes that the ability for money to acquire movable objects is learned from a **קל וחומר** from the law of acquiring a Jewish slave. A slave is acquired with money, and the master thereby becomes owner of the slave himself (**גופו קנוי לו**), so we can deduce that money should certainly be effective to acquire objects.

When money is used to perform a transaction, ר"ן explains that it is not necessary for the buyer to pay the full amount of the purchase price before the transaction can be completed. Rather, a "down payment" of a portion of the money is sufficient in order to effect the transfer. This is also the ruling of Shulchan Aruch (C.M. 190:2). The commentators differ in their understanding of this halacha. סמ"ע explains that full payment must be arranged, and the peruta or more which is actually given is the beginning of full payment, with the rest now being owed as a loan. ט"ז explains that the money used in a transaction is a technical tool used to effect the transfer. Even one peruta is enough to accomplish this legal maneuver. This is similar to the process of kiddushin, where a single peruta that is given is effective in transforming the woman into being betrothed, and the money has no direct association to the value of the woman. ■

HALACHAH Highlight

Sephardi women reciting Birkas Krias Shema

קרקע כל שהוא חייבת בפאה וביכורים (ע' רש"י דלא גרסי "ובודיו" דאף מי שאין לו קרקע מתוודה על המעשרות)

Any size land is subject to the obligation of peah and bikkurim (Rashi writes that confession should not be included in the list since it is recited even by someone who does not own land)

Rav Ovadiah Yosef¹ was asked whether women should recite Birchos Krias Shema. He answered that at first glance it would seem obvious that women are exempt from reciting Birchos Krias Shema since they are exempt from the recitation of Krias Shema itself. Accordingly, it would seem that whether women are permitted to recite Birchos Krias Shema will depend on the dispute between Shulchan Aruch and Rema whether women are permitted to recite berachos on positive mitzvos that are time bound. Shulchan Aruch² rules that women are not permitted to recite berachos on positive time bound mitzvos, whereas, Rema³ rules that it is permitted.

Rav Yosef suggests a rationale that may permit women to recite Birchos Krias Shema. Perhaps the restriction against reciting a beracha on mitzvos is that the beracha contains the word **וצונו** – “and we were commanded” and it strikes of a falsehood for a woman to make that declaration since she was not commanded to perform that mitzvah. In contrast, Birchos Krias Shema do not contain such a reference, so perhaps it is permitted for women to recite the beracha if they desire. He dismisses this notion because according to Shulchan Aruch it is not the appearance of stating a falsehood that is the issue but the recitation of a beracha that is not obligatory. Proof that the issue is the beracha rather than the appearance of a lie can be inferred from Rashi. Rashi⁴ in our Ge-

REVIEW and Remember

1. Why is land called נכסים שיש להם אחריות?
2. Biblically, how is movable property acquired according to R' Yochanan?
3. What can be done with land the size of a needle?
4. What quandary did R' Gamliel face while he was traveling by boat?

mara comments that even a man who does not possess land is permitted to make the confession on ma'aser even though it expresses thanks to Hashem for the land He gave us - לנו. The reason it is permitted is that the plural language does not imply that Hashem gave this individual land; rather it implies that He gave the land to the Jewish People and thus it does not appear like a lie. Accordingly, one would expect that Rashi would permit women to recite berachos on mitzvos from which they are exempt since the questionable phrase “וצונו” is in the plural and thus implies that the mitzvah was given to Klal Yisroel. Nevertheless Rashi⁵ rules that women are not permitted to recite berachos on mitzvos from which they are exempt. The explanation, concludes Rav Yosef is that it is not the appearance of a lie that is the impediment but the recitation of a beracha that is not obligatory. ■

1. שו"ת יביע אומר ח"ב או"ח סי' ו'.

2. שו"ת או"ח סי' י"ז וסי' תקפ"ט.

3. רמ"א סי' תקפ"ט.

4. רש"י סע"א ד"ה ובדוי ל"ג.

5. כ"כ הראשונים בשמו ע' שו"ת יביע אומר הנ"ל. ■

STORIES Off the Daf

Cash and the contract

“אבל במקום שכותבין את השטר לא קנה...”

An expensive property owned by several partners needed to be sold. Like many people in this position, they found an agent to sell the property and gave him permission to make a final deal. After much searching, the agent finally found a buyer. They hammered out the terms, the buyer paid a large down payment, and they devised a contract which required the owners' signatures.

But when the owners were presented with the contract, they immediately protest-

ed claiming that there were certain conditions they demanded in addition to what was on the contract. The buyer immediately agreed. While they were still finalizing the conditions of the contract, one of the partners came into a huge sum of money. Now that he could actually afford it, he decided to buy the property off of his partners altogether. They readily agreed, but the original “buyer” was furious. He claimed, “The moment I gave the money, the property was obviously reserved for me. You gave the agent absolute rights to sell it as you readily admit. What right do you have to just sell out from under me?”

This case was presented before the Tzitz Eliezer, ז"ל. “On the surface, the original buyer seems completely correct. It is a

clear Mishnah on Kiddushin 26 that one acquires land with money. But in the Gemara, Rav says that if it is the custom to write a document of sale, the land is not truly acquired until such a document has been duly written. Even if he paid prior to this, the seller may still back out.”

He concluded, “The law is that ownership of property only transfers when it is duly registered with the authorities. The obvious proof that one may surely change his mind even after a contract has been written is the fine which is a standard clause of every contract. Clearly one may legally change his mind even after money has been received!”¹ ■

¹שו"ת ציץ אליעזר, חלק ח', סימן מ'