



## Kinyan Peirot

The eighth *perek* of *Bava Batra* deals with the laws of inheritance. The *Torah* lays out the legal order of precedence. We learn in the fifth *Mishnah* that if one wishes to nominate heirs of his estate in contrast to the laws of the *Torah*, his stipulation is disregarded.

The *Mishnah* however teaches that one can gift their property during their life time to individuals such that it will be completely owned by the beneficiary only after the death, even though it appears to contradict the *Torah's* instructions. The seventh *Mishnah* teaches that if one wishes to, e.g gift property to his son in this manner, he must say that he giving it to his son "from today and after death". The stipulation is understood as meaning that he is transferring the ownership of the land to his son now, but retaining the rights to the "*peirot*", produce of the land, until after his death. The *Mishnah* continues that from that point, neither the father or son would be able to sell the land and have it take immediate effect. The father would only be able to sell his right to the *peirot*. After the father's death, the son would then seize the land from the purchaser. Similarly, if the son sold the land, his purchaser would only be able to take the land after the father's death.<sup>1</sup>

Considering the case where the father attempts to sell the land, what is the law considering the transaction? Once it becomes clear that only the *peirot* were sold, can the purchaser retract? If the purchaser is still satisfied, can the father go back on the purchase?

The *Mishneh Lemelech* (*Zechiya* 12:13) cites the *Tur* who rules that only the purchaser can retract, since the purchaser has a valid argument – he wanted to purchase the land entirely. The father however, was aware of his rights to the land and what he was selling at the time of the sale. If the purchaser is subsequently content, the father is committed to the sale. This is also the opinion of the *Ritva*.

The *Rashba* however argues that the sale is only binding if the father only sold the *peirot*. If however he attempted to sell both the land and *peirot*, the sale is considered invalid

with respect to the land. The *peirot*, in the context of the sale, were only included as being part of the land, so even the father can go back on the sale of the *peirot*.

The *Mishneh Lemelech* however resolves this debate by differentiating between two different case, explaining that this case is similar to one of *ona'ah* (fraud). If the purchaser is happy with the original price albeit now for the *peirot* alone, then, like the *Ritva* explains, we disregard the father's opinion. It is comparable to the case of fraud where it is the choice of the defrauded party alone to undo the sale. If however the purchaser still wants the field for the *peirot*, but only at the market value, then the sale is now being renegotiated. Consequently, like the *Rashba* explained, the father can retract on the sale.

The *Mishneh Lemelech* however continues that the *Rashba* however appears to contradict himself. The *Rashba* rules that in the case where one sold land according to its dimensions, and it was later discovered that half the land was stolen, the sale stands with respect to the valid part of the land. Why does the *Rashba* rule differently in the case? Why can either party not retract in this case also?

The *Avnei Milui* (90:23)<sup>2</sup> answers that the two cases are different. In our case, the issue is not the purchaser was misled with part of the sale. As we explained the *Rashba* above, the land was sold alone. The fact that the *peirot* were part of the original sale was not because it was stated as a separate component of the sale, but rather because the land itself being sold implies that *peirot* are included. Consequently, once it is discovered that the land could not be sold, the *peirot* were absent from the sale as well. In the case of the land sale, where half had been stolen, each part of the land mass was sold. Consequently, once discovered that part of the land could not have been sold, the sale of the remainder would still apply.

*Yisrael Bankier*

<sup>1</sup> The *Tosfot R' Akiva* notes, that this would be the case even if the son died prior to the father.

<sup>2</sup> Cited by the *Yalkut Biurim*

**Revision Questions**

בבא בתרא ז' א' – ט' ב'

- What is excluded when a person sells another a *beit kur* of “soil”? And when is it included? (א: ז')
- How is the *beit kur* measured? (ב: ז')
- What is the law if the actual land is smaller or larger? (ב: ז')
- How is the law different if the seller said:
  - “Approximately a *beit kur*”? (ב: ז')
  - “A *beit kur* between these markers”? (ג: ז')
- According to *Ben Nanas* what is the law if the seller used both the terms “measured” and “approximately” when selling the *beit kur*? (ג: ז')
- Regarding a case where a person sells half a field: (ד: ז')
  - On what basis is the division determined?
  - On whose property is the dividing fence built?
- How wide is a *charitz*? A *ben charitz*? (ד: ז')
- Which three cases are: (א: ח')
  - *Nochlin u'manchilin*?
  - *Nochlin ve'lo manchilin*?
  - *Lo nochlin u'manchlin*?
- List the order of people that inherit? (ב: ח')
- How many portions did the daughters of *Tzlofchad* receive? (ג: ח')
- From what inheritance does the *bechor* not take a double portion? (ד: ח')
- Regarding the previous question, what other special law applies to that inheritance? (ה: ח')
- Can someone exclude a son from his inheritance? (ה: ח')
- In what manner can one give more of his inheritance to one child over another? (ה: ח')
- What is the discussion regarding a person who gave away all his possessions to another, even though he had children that would have inherited it? (ה: ח')
- Is a person believed if he says “this is my son”? “This is my brother”? (ו: ח')
- Regarding the second case in the previous question, provide two practical ramifications of this law? (ו: ח')
- Explain the debate regarding how one can ensure that his possessions are transferred to his son after he dies. (ז: ח')
- Regarding the previous question, what are the practical ramifications of such an approach? (ז: ח')
- Why is it harsher if a young girl is an heir amongst only sisters as apposed to being amongst brothers? (ח: ח')
- How is the inheritance managed if the deceased leaves sons and daughters and the inheritance is: (א: ט')
  - Large?
  - Small?
- Regarding the previous question what if one of the children was a *tumtum*? (ב: ט')
- What other case is raised in the *Mishnah* where a child being a *tumtum* has similar implications? (ב: ט')

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17 March י"ז אדר	18 March י"ח אדר	19 March י"ט אדר	20 March כ"א אדר	21 March כ"ב אדר	22 March ט"ו אדר	23 March ט"ז אדר
Bava Batra 9:3-4	Bava Batra 9:5-6	Bava Batra 9:7-8	Bava Batra 9:9-10	Bava Batra 10:1-2	Bava Batra 10:3-4	Bava Batra 10:5-6

