



Volume 4. Issue 16

House and Land

The difference between a transaction and a gift

After inspecting a house a few weeks ago, I received a text message on my mobile phone from the real estate agent last week stating that “all the furniture would be offered to the successful purchaser to buy”. Although this seems logical, it would have been equally as logical for the purchaser to assume that all of the furniture is already included in the sale price. It is this exact issue, what is included when you make a sale, which was the topic of almost all of the *mishnayot* this week.

It is clear that when two people are engaged in a monetary transaction where a contract is involved, they are both free to include any and all conditions related to the sale. For example, ‘I will sell the house but not the contents’ or ‘I will sell the field but we will divide the grain you harvest’ etc. However, the *mishnayot* in the fourth and fifth chapter of Baba Batra deal with a case when only a general statement, without a detailed contract, is made with regards to the sale.

Another question that comes up a number of times in these *mishnayot* is what happens if the person selling does keep certain parts of a field or other property; does the seller need to purchase a path from the buyer in order to gain access to his property or does this access path “go without saying”?

Rabbi Akiva holds that the seller does indeed have to purchase an access path while the *Chachamim* hold that the seller does not. The reason for this *machloket* is whether or not the person selling does so with an ‘*Ayin Yafa*’ or not.

If the seller acts with an ‘*ayin yafa*’ then it means that the seller broadens and expands the rights of the buyer to the point where a general statement will include all possibilities – eg. the house, the land and the contents. However, if the seller acts in the opposite manner, with an ‘*ayin ra’ah*’, then it means that the seller limits the boundaries of a general sale to include only the bare minimum – only the house but nothing more.

The *Chachamim* hold that a seller will always act with an ‘*ayin ra’ah*’ and therefore if a well was not included in the sale of a field, then neither will an access path be included in the sale. Therefore, the *Chachamim* hold that an access path need not be purchased as it never left the ownership of the seller in the first place. *Rabbi Akiva*, on the other hand, believes that a seller acts with an ‘*ayin yafa*’ so even when retaining possession of the well, the access path was sold and therefore must be re-purchased.

It is this same *machloket* that explains the difference between buying or selling and between giving something as a present that is brought in last *Mishnah* in chapter four. It is possible to argue whether or not a seller is acting with an ‘*ayin yafa*’ or ‘*ra’ah*’. However, it is very difficult to say that when a person gives a present, they are acting with anything but an *ayin yafa* – why else are they giving the present. It is for that reason that there is no *machloket* regarding presents as everyone holds that a present is given with an ‘*ayin yafa*’ and therefore the maximum amount is included in the present.

Rabbi Ben-Zion Hain

Revision Questions

בבא בתרא ג' ז' – ה' ג'

- If someone is already a party to a shared *chatzer* and purchases another property that backs on to that *chatzer*, can he build a doorway from that new property onto the *chatzer*? (ז': ג')
- List some of the restrictions placed on the construction or modification of windows or entrances to a house? (ז': ג')
- When do these restrictions not apply? (ז': ג')
- What are the two opinions regarding whether one can dig under the public domain? (ח': ג')
- What components are not part of the sale of a house? (Only list those things listed in the first *Mishnah*.) (א': ד')
- Considering that a *bor* is not included in the sale of a house, what is debated regarding such a case? (ב': ד')
- What is the debate regarding the sale of a *bor* on a property? (ב': ד')
- When is an oven included in the sale of a house? (ג': ד')
- What is included in a the sale of a *chatzer*: (ד': ד')
 - Always?
 - Sometimes? (When?)
 - Never?
- What is and is not included in the sale of an olive press? (ה': ד')
- What is never included in the sale of a *merchatz* no matter the stipulation? (ז': ד')
- What is and is not included in the sale of:
 - A city? (ז': ד')
 - A field? (ח': ד')
- In what special case is everything that is in the field transferred to the other party? (ט': ד')
- What are two cases are similar to the previous question? (ט': ד')
- What is and is not included in the sale of:
 - A boat?
 - A wagon? (א': ה')
- According to *R' Yehuda* when does the sale of a yoke include the ox that pulls it? (א': ה')
- What are the three opinions regarding whether the sale of a donkey includes its equipment? (ב': ה')
- What has someone purchased if the rubbish comes with it? (ג': ה')
- If someone purchased honeycomb from a beehive, how much can he take? (ה': ג')

Local Shiurim

Sunday -Thursday

Between mincha & ma'ariv
Mizrachi Shul

Friday & Shabbat

10 minutes before mincha
Mizrachi Shul

Audio Shiurim on-line!

- 613.org/mishnah.html
- www.shemayisrael.com/mishna/

www.
mishnahyomit
.com

Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
9 th September כ"ו אלול	10 th September כ"ז אלול	11 th September כ"ח אלול	12 th September כ"ט אלול	13 th September א' תשרי ראש השנה	14 th September ב' תשרי ראש השנה	15 th September ג' תשרי
Bava Batra 5:4-5	Bava Batra 5:6-7	Bava Batra 5:8-9	Bava Batra 5:10-11	Bava Batra 6:1-2	Bava Batra 6:3-4	Bava Batra 6:5-6

