

One who sells a house.

המוכר את הבית

This deals with the sale of property and the associated items.

How do we decide whether an item is included in the sale of a house?

We ask the question:

Is the item an integral part of the property? Is the function of the item related to the function of the property? The decision is not dependent on whether the secondary item is on, or attached to the property. The more the secondary item is related to the primary property, the more it is considered to be automatically included in the sale. The more it functions as an independent item, the less automatically it is included in the sale. All regulations depend on the prevailing customs in any given place and time.

These rules of the Mishnah only apply in places where no set custom, or universal definition of terms, is used.

המוכר את הבית

One who sells a house.

The terminology, used at the time of the Mishnah, referred only to the room in which one lived. Today, that word may have a different connotation.

Rambam - The rules and limitations of the terms listed in the Mishnah, only apply where there are no local or pre-existing terms. If present, the local customs are followed.

R Chaim Soloveichik - Only if there are no local standards, do we use the definition of terms used in the Mishnah.

R Moshe Feinstein- The reason we follow local custom, is that we consider that the parties to the sale entered into their agreement based on those definitions.

הַמּוֹכֵר אֶת הַבַּיִת

One who sells a house,

without specifying what is included, has not sold its annex.

-What do we mean by annex, veranda or cells?

-Is the size of the annex important in the ruling? No, it is not sold with the house, even if it opens into the house.

He has not sold the store room.

-Why mention store room, if the annex is not included? The annex functions like part of the house, certainly the store room is not included.

-Nor the roof - If it has a parapet, at least 10 tefachim high (a “tefach” is a ‘hand-breadth’, namely the width of 4 thumbs).

R Yehuda says, “He has sold the roof, if it has a door leading into the house”.

We follow local custom.

הגג בזמן שיש לו מעקה גבוה עשרה טפחים

A house should have a barrier at its roof, that is 10 tefachim high

and should have a mezuzah.

Can you go into a house of a Jewish person where these are lacking? Yes, it is permitted, although it is realized that the owner failed to fill a positive commandment, which he could correct by doing so now. However, if a Talmid Chacham enters such a house, the owner could always say, “Those rules are not so important, if even this respected scholar comes to my house”.

It is better to rebuke, or remind the owner than to simply ‘go along’ with his behavior.

מאי יציע

What is an annex?

Discussion of what is meant by the annex, the veranda, or the cells in the Hechal.

Mar Zutra – He has sold the annex if it is more than 4 amos square. It is, then, significant in its own right and not merely an appendage of the house.

‘Store room’ is mentioned and is to be excluded. This is to teach us that even if the store room is within the boundaries of the defined property, it is excluded from the sale. This is because the boundaries are often not exact, but are stated relative to known landmarks, rather than being precise. So, for example, buying an apartment in a multiple apartment building, or buying a field which is part of a much larger field (plain); the larger area may be referred to. Therefore, we don’t include all the property encompassed by the description, in the sale. Therefore, a store room is excluded, as being an overbroad inclusion, unless: (See next entry)

לֹא שׁוֹיִרִית בְּזַבְיָנִי אֵלֶיךָ קִדְמִי כָלֹם

(He includes, as he should, the statement,) “I, the seller, retain nothing for myself in this transaction”.

This makes it clear.

This statement was suggested by Rav Mari, the son of Shmuel’s daughter.

(His father is not mentioned, since his mother, Shmuel’s daughter, had been kidnapped and violated by an idolater (See Kesuvos 23a).

The frequency of imprecisely drawn borders is sufficiently high, so much so, that if a seller claims the boundaries are not exact, he would be believed. Therefore, we ask the seller to give up the right to challenge the sale, by making this statement.

אֶרְצָא דְּבֵי חִיָּיא מְזַבְנָנָא לָךְ הֵנָּא לִיָּה תְּרֵתִי אֶרְצָתָא דְּהוּנָה
מִתְקָרִין דְּבֵי חִיָּיא

I am selling you the land of the house of Chiya, but there were two parcels known as the “house of Chiya”.

Confusion can arise by the words used.

Which?

Both?

Was the word ‘lands’, singular, or ‘lands’ plural, used?

Was the term “all” the lands used?

If he said, “All the lands”, he gets all, but not gardens, vineyards, orchards, vegetable gardens, or fields of grain.

If he said, “Zihara”, it includes all cultivated land, gardens and vineyards, but not his house or slaves. Slaves were considered property, the same as land.

If he used the term “property”, it includes houses and slaves, – but not movable property.

If he used the term “all my property”, it would also include movable property.

וְאִי אָמַר לִיה אֶרְעָתָא סְתָמָא מִיעוּט אֶרְעָתָא שְׁתֵּי

And if he said “lands” (plural), without further qualification, the minimum of “lands” is two.

In a sale where the plural word is used, it is interpreted as the smallest number that fits the plural, namely “two”.

Shimon says, “I would like to buy some diamonds and would like to take a selection to show to my business associates!” Levi gives him a large selection. The price drops and Shimon returns and wants to buy all the diamonds, since they are now so cheap. Levi says, “No, all I am obligated to sell you is two, which fits the halachic definition of the plural word when it is used in a sale”.

מֵצֵר לוֹ מֵצֵר אֶחָד אָרוּךְ וּמֵצֵר אֶחָד קָצֵר

A seller drew one boundary long and another side short.

He gets only the area opposite the short boundary. (For examples, please see Schottenstein diagrams p.62a1)

A detailed discussion regarding boundaries:

If he only marked out the 4 corners, do we connect them to make a field, or only have a field encompassed by them?

or

‘Tishbi Yaaneh Kushious V’Machlokos’, ‘Leave it to the discretion of the judges’.

פֶּלֶגָא דְּאִית לִי בְּאַרְעָא

He sells “half that I own in the land”.

Terminology:

Seller owns half a field and sells the:

- * “Half that I own in the field” – Buyer gets the entire $\frac{1}{2}$ field.
- * “Half in the field that I own” – Buyer gets $\frac{1}{2}$ of what the seller owns,
i.e., $\frac{1}{4}$ of the field.
- * “Let so and so share in my possessions”-So and so gets $\frac{1}{2}$ of his possessions.
An equal part.
- * “Give so and so a share in my possessions”- So and so gets $\frac{1}{4}$ of his possessions.

Why? A share is a part either a $\frac{1}{2}$ or a portion.

We, therefore, give him the smallest portion and divide the uncertain part (the $\frac{1}{2}$) so he gets $\frac{1}{4}$ and a small portion.

פִּלְגָא דְאִית לִי בְּאַרְעָא

If a man declared, “Half that I own in this land, I am selling to you”,

the purchaser receives half the land.

A person and his partner never delineated who owns which asset in the partnership. Can one of them sell, pledge, or betroth a woman with his undivided and unspecified portion of the partnership assets?

Yes, we understand that with partners, each are considered owners of all the assets.

We do not need to divide them for each partner to use his portion, as his own.

המוכר בית לחבירו ואמר לו על מנת שדיוטא העליונה שלי

A person sells his house to another and says, “I sell you my house, but the roof, which contains a fence 10 Tefachim high, is mine.

This is a redundant phrase. We know it is his.

Therefore, this is said, in order to retain ownership rights, such as putting beams on the roof, rebuilding it if it falls, walking on it, or building another story onto it.

He retains the right to rebuild it and use it, even if it collapses. Normally, a person would lose his rights, if the item no longer exists. By saying the redundant phrase, he can rebuild and continue to use it.

If a person uses the term, “I sell you this house, from the depth of the earth, to the height of the sky”, the sale includes the pit and cistern. If a person sells a house with no other specification, he does not retain the space above or below.

“Depth and height” refers to the space above and below- ‘Depth of earth and height of sky’. You get space, plus all that is in that space, i.e., the pit, cistern and other excavations (i.e., caves, antiquities), etc.

וְעַד רוֹם רְקִיעָא

To the height of the sky.

A man bought the top floor of an apartment building. Does his purchase include the use of the roof, for his sole use?

A person owns only that which he explicitly wrote that he acquires.

When one makes a purchase, every detail must be classified, to avoid misunderstandings later.

לֹא אֶת הַבּוֹר וְלֹא אֶת הַדּוֹת

Not the pit, or cistern.

(However, that would be included, if he wrote in the deed, “From the depth of the ground, to the height of the sky”).

This continues to enumerate the assets which not included in the sale of a house.

Since the pit and cistern were excluded from the sale and still belong to the seller, how does he access those areas?

R Akiva - He has to buy a right of way from the purchaser (if he sold and did not reserve anything specific for himself). It is sold and he must purchase it.

Chachamim - He retains a right of way to the pit and cistern, together with owning them (a person will sell only the minimum that he has to sell and no more).

R Akiva – Unless he says, “I sell you the house, except for the pit and cistern”. In that case, he does not have to buy a right of way.

(We know he does not sell the pit or cistern. Therefore, this phrase is redundant and teaches us that he reserves the right of way).

R Akiva - The new purchaser does not have to buy a right of way to those areas. It comes with the pit or cistern.

Chachamim – No, the buyer must buy a right of way.

מִכָּרָן לְאַחֵר

He sold the pit and cistern (water reservoirs) to another.

Cistern - A hole in the ground, lined with bricks, to keep the water in.

R Akiva - A seller sells liberally, generously, without reserving any right for himself.

The Chachamim - A seller sells stringently (with an evil eye) selling no more rights than he needs to and reserving as many rights for himself, as possible.

This debate comes from this Mishnah and it relates to any and all sales.

R Akiva – A person does not want to buy a house, or land and have others walk through it.

Chachamim - A person cannot retain a pit, or cistern and have no way to get to it other than to “fly through the air”.

Without a right of way, the pit, or cistern is worthless.

דְּבַרֵּי ר' עֲקִיבָא

This is the opinion of Rabbi Akiva.

R Akiva favors the buyer – A person would not spend money and be inconvenienced.

The seller yields to this buyer's will.

Chachamim – This is not so, unless specified. Only the minimum rights are given up by the seller.

This discussion occurs in another Mishnah, Bava Basra 71a and therefore,

First discussion teaches us that R Akiva and Chachamim disagree in this case.

Second discussion teaches us that R Akiva and Chachamim disagree in a broad range of cases. R Akiva favors the buyer and the Chachamim favor the seller.

Rav agrees with the Chachamim – The seller sells stringently.

Shmuel agrees with R Akiva - The seller sells liberally and retains no rights.

Rav and Shmuel disagree in another case:

Two brothers inherit a field, or a house and they divide the inheritance. There is no way to get to one field, except across the property of the other.

Rav - The seller sold 'stringent' and therefore, retained the right of way.

Shmuel - The seller sold liberally and retained no rights. Therefore, the seller no right of way.

When two brothers divide inherited assets, each is, in effect, selling his rights in one portion, for full possession of the other portion.

כִּי הֵיכִי דְדָרוּ בֵּיה אֲבָהֵתִי

“I have a right to live in my property, like my forefathers did”.

So, he would a ‘right of way’ in a case of inheritance.

הַמּוֹכֵר אֶת הַבַּיִת

A person who sells a house,

without specifying what is included in the sale (sells only the fixed permanent items, even if their use is exclusively for this house).

Has sold the door, but not the key.

Has sold the mortar, but not the movable mortar.

Has sold the mill ring, but not the hopper (the hopper is detachable).

Not the oven, or the stove (These are movable. If attached, however, they are indeed sold).

But, if he said to the buyer, “I sell the house and all that is contained therein”, all of these objects are sold (even the movable objects).

מֶכֶר אֶת הַכֶּרֶם מְכַר תְּשְׁמִישֵׁי כֶּרֶם

If a person sells a vineyard, or a courtyard, he sells the accessories with it, even the movable objects.

Since he sells his entire courtyard/vineyard, we can assume he is moving away and would not wish to be burdened. Therefore, the movable objects are considered sold, also.

If he sells an entire town, even objects that move on their own, are sold (i.e., animals).

Due to its large size, virtually all objects are considered subsidiary to a town.

Since the owner is moving to a new town, it is not worth his while to take even the movable property with him.

However, even if he says, “And all that is contained there in”, he has not sold the pit, cistern, or annex.

Daf Yomi Digest

מֹכֵר אֶת הַמִּכְתָּשֶׁת הַחֲקוּקָה אָכַל לֹא אֶת הַקְּבוּעָה

One who sells a vineyard, automatically sells the accessories of the vineyard.

Rabbis - One who sells all items that were attached to the ground first and later carved out, but does not sell items that were carved out and were later attached to the ground.

R Eliezer – Disagrees. Everything attached to the ground is sold. Does a completed vessel retain the status of a vessel, even after it is attached to the ground?

Mikveh - Water for a Mikveh must never be in a vessel. If a gutter was hallowed out and then attached to the ground, the water is posul.

But, if a gutter was first attached and then hollowed out, the water for the Mikveh is not posul.

A beehive is classified as land. Therefore, it is real property. It can be acquired by “money, document, or a proprietary act”, ‘kesef shtar chazakah’.

Movable property can be acquired by “lifting, drawing, or giving over”, ‘masirah, meshichah, hagbaha’.

It is definitely considered land, such that a Prozbul can be written against it and if one detaches honey from it, he is guilty and must bring a Chatas offering.

Chachamim say- No, it is not classified as land.

A mill stone - dowry for unmarried daughters- can only be taken from real property and Rav Nehemiah ordered a dowry from millstone.

מֵכַר לוֹ חוֹלְסִית וּמְצוּלָה

A person sold to another, both a sand–field and a riverbed.

Is an act of Chazakah required, namely making an improvement in each property, if someone is purchasing more than one property?

If the properties are of diverse nature, yes, he must make a separate chazakah for each category. However, if they are all for the same purpose, i.e., agricultural land for the same purpose, i.e., for farming, only one act of Chazakah is needed, even if they are all in different parts of the world. The Talmud says, “All parts of the world are connected”.

בִּי תִיבְעִי לָךְ הַנְּקִיטִי בְּסִיכֵי תֵּיקוּ

The question arises concerning those things that are attached with removable pegs, are they excluded from the sale? Teiku

Teshuvav Shivas Tzion - Mezuzahs are only attached by nails and may not be considered included in the sale.

Rema states -Items attached, only by nails, are not included in a sale of a house.

Shulchan Aruch rules- When a person leaves a house, he may not take the mezuzahs with him, but may request the new occupant to reimburse him for the mezuzahs.

Teshuvav Shevet Halevi – Mezuzahs are clearly not part of the house and are not included in the sale. But, they are incumbent, as a mitzvah, upon the occupant of the house. Therefore, the seller can expect payment for the mezuzahs that he leaves.

מִי מְצִי אָמַר לִיה שְׁטָרְךָ בְּיָדִי מֵאִי בָּעִי

Can the depositor say to him, “What is your note doing in my hand?”

This presumption represents an assessment of human behavior. A debtor, who has satisfied a debt, simply does not allow a creditor to retain a promissory note that constitutes evidence of ongoing indebtedness. The debtor will decline to discharge the debt, until and unless, the promissory note is returned to him.

הַמּוֹכֵר אֶת הַסְּפִינָה

One who sells a ship,

sells the mast, and the sail, and the anchor, and all that drives the ship (i.e., all items that are necessary for the proper operation of the ship and have no other function).

However, he does not sell the slaves, or sacks that hold cargo, or the cargo itself.

Unless he said, “I sell you the ship and all that is in it.” (There is no distinction made between a sale, gift, consecration, or inheritance, here, in regards to moveable objects. The excluded items are not included. Gemara)

He has also sold the gangplank, water reservoir and tender.

* Now a series of 21 stories.

אֲשַׁתְּעוּ לִי נְחוֹתַי אָמַר רַבָּה יִמָּא הָאִי גִלָּא דְּמִטְבֵּעַ לְסַפִּינָה

Those who go down to the sea in ships, tell a story of huge waves that sink a ship.

They have a fringe of white fire at its tip. But, if you hit it with a stick that has God's name on it, it subsides.

Ulna Gaon (GRA)

Life is like a voyage on the sea.

The purpose of the trip is to obtain profitable goods to bring home.

So too, the souls passage through life, carried by the body, like a person on a ship, truly to acquire profitable merits to take with him to the world to come. The body suffers tribulations, ups and downs, through life, like the waves and the ship.

However, there are some waves, i.e., the trials in life, that threaten to entirely overwhelm. This is the “great wave” and it is equal to the evil influence. The Yetzer Hara looks benign, but this is only to better lure us into its influence. How can we protect ourselves from such power and trickery? By using the force of God's name as our club.

הָיָה אִזְלִינָן בְּאוֹרְחָא עַד דְּחֻזִּינָן בִּי מַרְבַּעַתִּיה דְּכוּכְבָּא זוּטָא

And a wave carried a person so high he could see a small star.

This teaches us not to become haughty, or self important.

3rd Story – On a stormy, windy day, a horseman, riding along a wall, jumped between two mules, while holding 2 glasses of wine and pouring the wine from glass to glass, without spilling. The King's men heard of this feat and killed the horseman.

Explanation:

The wall is Torah. It serves as a protector, much as a wall protects the citizens of the town. The show-off rider is the Torah student, who has succumbed to the Yetzer Hara. He learns to show-off and it is easier for him to learn, because he has given in to the Yetzer Hara. The sincere student is constantly fighting with the Yetzer Hara and therefore, it is more difficult for him to progress. The cups of wine are worldly pleasures and the rider is so careful, that he never loses any of his opportunities for pleasure. At the end, such a life is not productive and the King of the universe, eventually, repeals the rider's lease on life. A life he has used for haughtiness and show-off purposes, but not a life of worthwhile accomplishments.

וּשְׁמָעִית דִּהְיוּ אֲמָרִין מֵאִי שְׁמָעָתָּ
מֹשֶׁה וְתוֹרָתוֹ אֱמֶת וְהֵן בִּדְאִין

I heard that they were saying, “Moses and his Torah are true and they are the contrivers”.

Moses responds to Korach (Bamidbar 16:28), “With this, you shall know that God has sent me to do all these things” and “that they are not my doings”. This sounds redundant.

But it responds to Korach’s challenge (16:3) “Why (Moshe) do you act so authoritatively?” Moshe answers, “Because I was sent by God to object to the mocking of tzitzis and mezuzah. You claim that a garment made of Techeles, should not need tzitzes, and a room full of seforim, should not need a mezuzah, this is mocking”. Moshe also responds, “The laws of the Torah are not my doing, they are ordered by HaShem.” This is why Korach and his crew can be heard chanting from the depths, “Moshe is true, the Torah is true and we are liars”.

וְהֵן בִּדְאִין

And they are liars.

A person was asked to give a recommended action for a notorious evil and dangerous man. He was afraid that if he gave a bad report, he would suffer retribution.

So he gave a glowing, very positive report, “The man is a learned, generous, wealthy, kind, wonderful person and I can recommend him to you, very highly.

But, please be aware that I am known to be a pathological liar”.

עֲתִיד הַקָּדוֹשׁ בְּרוּךְ הוּא לַעֲשׂוֹת סְעוּדָה לַצְדִּיקִים מִבְּשָׂרוֹ שֶׁל לוֹיֵטָן

In the future, God will prepare a feast for the righteous, consisting of the flesh of the Leviathan.

Cain considered that man and the animals were of equal value and as animal sacrifices were acceptable, the killing of a human was morally equivalent.

Vegetarianism was considered with extreme favor by Rabbi Abraham Isaac Kook. He only had these reservations:

- Concern for the welfare of animals should come in a priority of concerns including welfare of fellow humans, enmity between nations and racial discrimination.
- Man was given dominion over animals to impress upon man his spiritual superiority and his heightened moral obligations. If animals are given the same rights as humans, man may degenerate into brutish animal behavior.
- Moral instincts might be channeled toward animals and callous behavior toward people. This may cause people to worry more about the welfare of animals, than the welfare of people.

פְּנֵי יְהוֹשֻׁעַ כְּפְנֵי לְבָנָה

The face of Joshua was like the moon.

A young man agreed to go with an entrepreneur to work in a new venture, even though he was told that he would have to work very hard. His friends in town chose to stay in town play cards, shoot pool, tell jokes and enjoy their young lives.

One day their friend returned, very wealthy and successful. The friends felt foolish for not putting in the effort, which would have made them as successful as their friend. After all, he had been just like them, same town, same age, same prospects for opportunity.

Joshua's face shined like the moon. What an embarrassment. We too, could have learned with Moshe and become great like Joshua, but we chose to waste our time doing other things.

דָּבַשׁ בְּבִוּרָתָא אָמַר רַב כְּהֵנָא אֵינוֹ יוֹצֵא מִיָּדוֹ מֵאֶכָּל לְעוֹלָם

Honey in the beehive, never loses its status as food,

even if it is in liquefied form.

But if liquefied, out of the beehive, it is considered a liquid.

Food, will not make the utensils it is in, tamei.

Liquids will make utensils tamei and every liquid that it touches, also has ‘first degree tumah’.

Exactly when does it change from food to liquid? A debate between Bais Shammai and Bais Hillel.

Daf Yomi Digest

מִכַּר לוֹ חֲטִיץ יְפוֹת וְנִמְצְאוּ רָעוֹת
הַלּוֹקֵחַ יָכוֹל לְחַזֹּר בּוֹ

If he bought superior wheat, but the product turned out to be of inferior quality, the buyer can reverse the deal.

But, if he paid for poor quality wheat and he received superior quality wheat, the seller can back out.

Three categories of questionable sales:

1. The price was significantly over, or under stated. The harmed party can back out.
2. The wrong item was delivered. Either party can back out. The sale is void.
3. There was a misunderstanding regarding the poor, or superior qualities of the commodity. Here the sale is valid, but, the party who is short changed, can reverse the deal, if he wishes. The commodity is in the same category and it is only a matter of preference, regarding the quality.

Daf Yomi Digest

מֶכַר לוֹ חֲטִין יְפוֹת וְנִמְצְאוּ רָעוֹת
הַלּוֹקֵחַ יָכוֹל לַחְזוֹר בּוֹ

If the seller sold him superior wheat and it was found to be inferior, the buyer may return it.

A person bought an item and sold it for a profit, but then learned that he paid more for the item, than he should have. He wanted the person who sold it to him, to refund some of his purchase price, for overcharging him but was told, “I should not have to pay you for a loss, you did not have”. The buyer answered, “I would have made a greater profit, if I had bought cheaper”.

R Akiva Eiger ruled that if the purchaser paid too much, he can cancel the purchase, but can't request the difference in payment to be reimbursed to him.

שְׁחֲמַתִּית וְנִמְצְאָה לְבָנָה לַחֲזוֹר בּוֹ לְבָנָה וְנִמְצְאָה שְׁחֲמַתִּית

If one orders red wheat and the seller delivers white wheat, or vice versa, the sale may be cancelled by either party.

Mishnah (Terumah 2:4) teaches that all varieties of wheat are grouped together in one category, for the purposes of terumah.

The rules for terumah are different than for other matters.

Mishnah Berurah - If one made a bracha, ‘Shehechiyanu’ on black figs and later ate white figs, or green figs, he would need a new bracha of Shehechiyanu.

Because, even though the fruit is called by the same name, they do taste differently.

Rav Yaakov Emden and the Shulchan Aruch - A separate ‘Shehechiyanu’ is needed, since the bracha is for the joy of eating the new fruit.

Vilna Gaon and Chacham Tzvi - Only 1 bracha is needed if the fruit share the same name.

הַנוֹטֵל כְּלִי מִן הָאוֹמֵן עַל מִנַּת דְּאָמַר שְׁמוּאֵל לְבָקְרוּ וְנֶאֱמַר בִּירוֹ חַיִּיב

Shmuel says, “If a person takes an item from a craftsman, with intent to inspect it and a mishap occurs while he has it in his possession, he is liable.”

What is the status of a person who handles an item, offered for sale?

If he drops it, must he pay for it?

If a different person agrees to buy it, must he hand it over?

Can the shopkeeper take it off the market, then and there?

Rashbam and Ritva (in Nedarim 31a) consider him a borrower and not a buyer, a ‘shoel’, not a ‘lokeach’.

Tosphos, Rosh, Rambam and Rashi consider him a buyer.

Kehillahs Yaakov - He is a buyer, in that the owner can’t back out and he is a borrower, if he damages it.

Sefer Devar Yaakov - If the buyer is only a borrower, he can’t use the item for betrothal. This is something that only a true owner of the object, could do.

קִשָּׁה עוֹנֶשֶׁן שֶׁל מִדּוֹת יוֹתֵר מֵעוֹנֶשֶׁן שֶׁל אָמַר רַבִּי לֹוִי עֲרִיּוֹת

The punishment, for unjust measures, is more severe, than the punishment for immorality.

Rambam (Hil Genievah 7:12) - Unjust measures is a sin against man and a statement of lack of faith in God, thinking that He does not know of this iniquity. The sin of immorality, is committed as a result of inordinate desire and lust.

R Naftali Zvi Berlin, the Netziv- “If you have little , you can’t repent, so unjust measures indict you forever.

Lack of self control can be repented and Teshuva is likely to be granted”.

קָשָׁה גָזֵל הַדְּיוּט יוֹתֵר מִגָּזֵל גְּבוּהָ

Robbery of a common individual, is worse than robbery from the most high.

Rashi - As soon as one takes an object belonging to another person, he is deemed a sinner. With regards to holy objects, he is not a sinner until he derives some pleasure from it.

Maharal of Prague explains -In robbing holy objects, there is no transference from one domain to another, since everything is in the Almighty's domain.
Therefore, there is no sin until he actually uses the object.

God is more concerned about human rights, than with Heavenly rights.

Since man is created in the image of God, by robbing 'man', one is committing a dual transgression, against man and against God.

אוי לי אם אומר

“Woe to me if I speak, woe to me if I do not speak”.

R Yochanan ben Zakkai was uncertain whether to describe the ways that unscrupulous swindlers cheat people. If he did, others might learn how to be a swindler. If he did not, swindlers would think they:

1. Could increase their swindling, since their methods were not known.
2. The rabbis knew, but did not divulge, so they, the rabbis, could also continue to be swindlers or the rabbis would be swindlers if they, in fact, did know the tricks.
3. They would lose respect for the Torah, which should invest the scholar with every sort of insight.

R Yochanan decided the correct behavior must be taught to all.

אָוִי לֹו לְעוֹלָם שָׂאָבֵד מִנְהִיגוֹ וְאָוִי לָהּ לְסָפִינָה שָׂאָבֵד קְבָרִינְטָא

“Woe to the world, that has lost its leader and woe to the ship, that has loss its captain.”

This refers to the death of Avraham Avinu.

The double expression:

Why is Avraham Avinu referred to as both a leader and a captain? Those words refer to two types of leaders: An ordinary leader (manhig), is appropriate for eras of tranquility, but a wise captain (kvarnit), is required to rescue the world in times of turmoil.

Yalkut Yehuda - There are leaders who are great in times of peace and those who are great in times of strife.

Abraham was a true leader in all seasons.

הַמוֹכֵר פִּירוֹת לַחֲבֵרוֹ וְזָרְעָן וְלֹא צָמְחוּ וְאַפִּילוּ זָרַע פֶּשְׁתָּן אֵינוֹ חַיִּיב בְּאַחֲרֵיּוֹתָן

One sells produce, without specifying whether it is for planting or eating. And the buyer planted it and it did not grow. The seller is not responsible for the loss.

The seller does not need to refund the money. He can say he sold it expecting it to be eaten, not planted.

Even if, that which he sold, is ‘most of the time’ used for planting, the seller may claim that he sold it, expecting it to be eaten. Therefore, we learn that relying on the concept of, “most of the time”, is not a strong enough assumption to permit us to actually take money from a person. You must have a better reason.

Purchase price - Perhaps, we can derive the use it was to be put to, by the price paid for it. For example, an ox for plowing demands a higher price, than one for eating.

Shmuel - The principle of “most of the time”, does not pertain in monetary items.

Rav – Yes, it does pertain in monetary items.

הַמוֹכֵר פִּירוֹת לַחֲבֵרוֹ וְזָרְעָן וְלֹא צָמְחוּ וְאַפִּילוּ זָרַע פֶּשְׁתָּן אֵינוֹ חַיִּיב בְּאַחֲרֵיּוֹתָן

A person sells produce, without specifying whether he is selling it for planting, or eating, and it is appropriate for either. If the buyer plants it and it does not grow, the seller is not responsible.

If the produce was only appropriate for planting and the buyer planted, but nothing grew, the seller is responsible. We consider that something was wrong with the produce and the seller must refund the purchase price.

However:

- if all the planters had trouble that year,
 - if weather conditions were unusually severe,
 - if it can be shown, by proof, that this planter did not plant correctly,
- the seller is not liable to pay a refund.

רַב אָמַר הָרִי זֶה מִקַּח טְעוּת וּשְׂמוּאֵל אָמַר יָכוֹל לֵאמֹר לוֹ
לְשַׁחֲטָהּ מִבְּרִיתוֹ לָךְ

Rav says, “This is considered a purchase made in error”.

Shmuel says, “The seller could say, “I sold it to you for slaughtering”.

Discussion:

Rav teaches that the rule of ‘majority’, ‘usual and customary behavior’, apply for monetary items, as well as other items.

Shmuel says- The rule of “majority” does not apply for monetary items. In money matters, the main rule is, “He, who wishes to take from his fellow, must bring proof”.

Case: The majority of oxen are sold as plow animals.

A seller sells a violent ox, claiming he sold it for slaughter, not for plowing. The buyer can request a refund.

- Considerations:
- Does this buyer usually buy for slaughter?
 - Was the price appropriate for plowing, or for slaughter?
 - Is the buyer a butcher?
 - Is the buyer a butcher and also, a farmer?
 - Did the buyer specify his purpose, in purchasing this ox?

Shmuel (92b1): Rav is followed only in regards to a prohibition. For example, if you find meat on a street with 9 stores and only one of which, is not kosher. The principle of majority, presumes the meat to be kosher.

גִּבְרָא דְּזָבִין לְנוֹכְסָתָא

He, is a man, who usually buys oxen for slaughter

This is proof regarding the principle of ‘Rov’, “is most of the time, or usually”.

1. A person who usually buys oxen for slaughter:
The seller claims he sold it for slaughter, the buyer says this time, he bought for plowing.
2. An ox, which has a habit of goring: Seller claims he sold it for slaughter, the buyer claims that he bought it for plowing.
3. Purchase price- A higher price suggests it was to be used for plowing.
A lower price suggests it was sold for slaughter.

Daf Yomi Digest

סִימָן אִשָּׁה וְעֶבֶד שׁוֹר שְׁנֵרִין וּפִירוֹת

Mnemonic: Woman, slave, ox, oxen, produce.

Woman - A woman was divorced, or widowed and tried to collect her ketubah money. She says, “I was a virgin when I married and therefore, deserve 200 zuz”.

Since the majority of women marry as virgins, the rule of ‘Rov’, “majority” applies and she is believed.

But, if she is a virgin, in the majority of cases the community would know that and witnesses could say she is a virgin. Her dress, veil and hair, on her wedding day, would indicate she was a virgin. She is believed. This means that without witnesses, she is not believed. If no witnesses are available to support her, she does not get the presumption of “majority”.

Daf Yomi Digest

סִימָן אִשָּׁה וְעֶבֶד שׁוֹר שְׁוָרִין וּפִירוֹת)

Mnemonic: Woman, slave, ox, oxen and produce.

Woman: Claims, “I was married as a virgin and my ketubah should be 200.”

Husband says, “No, I married you as a widow and your ketubah is only 100.”

If there are witnesses that she went from her father’s house with a veil, or her hair untied, we assume she was a virgin. However, if there were no witnesses,

Rav says- Follow ‘Rov’- Most women marry as a virgin. Therefore, treat her as such and give her \$200.

But: That fact is usually public knowledge and if it is not known in her case, we should presume she is not a virgin.

Therefore, we do use the principle of majority deciding monetary cases (i.e., the common practice directs our decision), but we modify it by the presence of witnesses, or public knowledge.

בְּתוּלָה נִישְׂאָתִי

I was married as a virgin.

To write the word ‘besula’, ‘virgin’, in the ketubah of today, is often not true. To describe the state of chastity of the bride and have no corresponding statement about the groom, seems unfair and not in the spirit of the equality of women, which is accepted as an ethical value in our day.

In the manuscripts of the Cairo Geniza, brides are described as “besula”, ‘virgin’, “mesabbakta”, ‘divorcee’ or “panyeta”, ‘single’, or ‘unmarried’.

This might be a reasonable term to use in our day and resurrect an ancient practice in Judaism.

המוכר עבד לחברו

One sells a slave to his friend.

- a) One sells a slave and he is found to be a thief, or a kidnapper. The sale is valid.
- b) If he is an armed robber, or if he should be sentenced to death by the government, the sale is invalid and the buyer may return the slave.

A) Because that is usual for slaves?

No, not because it is usual, but because it is virtually universal. And the buyer should have assumed. Therefore, we can't use this example to learn our principle regarding 'Rov'.

Example:

An ox gored a cow and its dead fetus was found next to it.

Did the cow give birth before the ox gored it, i.e., miscarried on its own? Or did the cow give birth after the ox gored it and the goring caused the death of the calf?

The owner of ox must pay $\frac{1}{2}$ damages for the cow and $\frac{1}{4}$ damages for calf.

This ruling suggests that though the majority of calves are born alive and this one is dead, we should assume the ox killed it. The payment does not reflect that and therefore, we see the principle of 'Rov', does not apply to monetary cases.

שׁוֹר שָׁנְגַח אֶת הַפָּרָה

If an ox gored a cow and killed it.

Discussion of payment principles:

If an ox, a tam, gores a pregnant cow:

- owner pays $\frac{1}{2}$ the damage done to the cow.
- if injury to calf - is a matter of doubt, therefore, we divide its value and he pays only $\frac{1}{4}$ the value of the calf.

The uncertainty regarding the calf is as follows:

While the rule of ‘Rov’, - “most likely”, would assume the dead calf is caused by injury (since most calves are born alive). The $\frac{1}{4}$ payment is decided upon, because other factors could totally exempt him.

For example, the cow was frightened and miscarried because of that. Because of the uncertainty, the owner pays only $\frac{1}{4}$.

שׁוֹר שָׁנָח אֶת הַפָּרָה וְנִמְצָא שׁוֹר הָרוּג בְּצֶדָהּ

An ox was grazing in a field and a killed ox was found next to it.

- A mating camel (93a3) and another camel was found killed at its side.
- Produce was planted instead of eaten and it did not grow.

Discussion:

What is the extent of the liability of the seller if:

The product was:

- A good product, used for the correct purpose and failed to produce.
- A good product, used for improper purpose and failed to produce.
- A bad product, used for correct purpose and failed to produce,
- A bad product, sold for a purpose, that is not usual.

1. Cost of produce:
2. #2 Expenses in using produce.
3. #3 Loss of expected income. i.e., money for the seed, loss of planting it, plowing it, etc.
4. #4 Embarrassment of the buyer and his guests (a caterer gives a bad meal).

המוכר פירות לחבירו הרי זה מקבל עליו רובע טנופת לסאה

If one sells grain to his fellow, the buyer accepts upon himself 1/4 kav of impurities per seah.

This discusses what percent of impurities a buyer must accept, when he purchases various items.

- Grain - 1/4 kav for each seah - 6 kavs in a seah = i.e., 1/24th volume of impurities.
- Fig - 10% can be impure.
- Celler of wine - 10% can be impure.

Gemara:

Regarding grain, the majority may be from a previous crop, in the same field, i.e., legumes (therefore, Ashkenazim don't allow use of legumes on Pesach, because they may have wheat in them).

Daf Yomi Digest

אָמַר רַב הוּנָא אִם בָּא לְנִפּוֹת מְנַפֶּה אֶת כּוֹלוֹ

R Huna says, “If the buyer comes to sift, he may sift all the grain.”

The Gemara describes other produce- barley, lentils, wheat and the amount of impurities (i.e., other products and soil).

If a person sifts the product and finds more than the allowed % of impurity, he may sift the entire purchase and return all the impurities to the seller, not merely that amount over the usual.

This is considered a penalty. Since, the amount of impurity is greater than usual, we suspect the seller of having added impurities to make money. Therefore, we punish him and take away even the usual leeway for impurity.

Others consider it as a matter of law. The amount of impurity is not worth the trouble of sifting out and therefore, the buyer accepts it. But, if he goes through the trouble of sifting, he may sift out all the impurities and have the amount of produce replaced.

The Gemara brings other proof for discussion:

For example-.

Mnemonic – Two documents of Ravin bar Rav Nachman, on price fraud and contract from Kilayim.

The seller may reduce mixture of seeds to below 1/4 kav/seah, but can't reduce % of plants since it is already Kilayim. Rav Yose says all the impurities must be removed, or you are deliberately in violation of using a forbidden mixture.

משום דמִידוּי בִּי מְקוּיִם בְּלֵאִים

Sowing Kilayim. Therefore, Kilayim can't be used to challenge our case.

Two people deposit money, 100 and 200, and both claim 200. We give each 100, which is not in dispute and hold the other amount until Eliyahu comes.

Why is the custodian not liable for not remembering which depositor deposited the 200 zuz? BM 37a permits giving the uncontested amount back. In the case of impurities, we, the seller, should also be allowed to reduce the amount of impurities to the uncontested amount.

This is not a comparable case. There the item, money, is certainly not improperly deposited. In our case, perhaps all of the impurities were improperly placed.

Actually, it is the other way around. In the money case, certainly one is lying (and the liar loses nothing). The court should keep all 300 zuz, so the liar also loses out. The fact is, that we give back the uncontested portion and the liar loses nothing.

In the produce case, we can suspect the seller of having placed impurities in, but we are not certain that we have a liar. So in that case, we wish to give each party, the uncontested amount.

הָא שְׁמַע הָאוֹנָא

Come and hear about unjust enrichment.

Confusion regarding, ‘mekach u’memkar’, “buying and selling”.

Confusion regarding product and quality:

– Only those mixed with extra impurities beyond the customary.

-‘Mekach Taut’ (TOS)- “A mistake in the purchase item”. The item is the problem.

It is not the correct product that I expected.

-Onoa - Discrepancy over the price.

The product is excellent, the only question is, is the price correct?

Rules:

1. If we are off by less than ‘stus’, “1/6th,” we forget about it.
2. If we are off exactly 1/6th, he must return the extra payment, but the deal is still on.
3. If we are off by more than 1/6th, the purchase is cancelled.

‘Onoa’ means “unjust enrichment”.

Perhaps, if it is over 1/6th, merely adjusting the price to just below the 1/6th threshold, will suffice? Absolutely not, once we start measuring, the entire excess amount must be returned.

בֵּית כּוֹר עֶפֶר אֲנִי מוֹכֵר לָךְ הָאוֹמֵר לְחִבִּירוֹ

If one steeps the sediment of the grapes, with a measured amount of water.

Soaking pressed grapes in water results in some grape flavored liquid being recovered.

How much “wine” causes the fluid to require a blessing of “borei pri hagefen?”

Wine diluted with 6 parts of other liquids, loses its designation of wine.

Blended whiskey usually has 7 ½% sherry mixed in it.

Sherry is wine and if prepared by someone who is not Jewish, may be prohibited even if it is diluted. It is not acceptable.

כְּרוּבִים בְּנֵס הָיָה עִמָּדֵינָם

The Cherubim stood as a miracle.

(Ex 25:18) “And you shall make two Cherubim of gold”. Had there been only one Cherub on the ark, it might have led to people considering it to be a God.

Having two, made it clear that the oneness, belongs only to God.

(Yoma 21a) The place of the Ark was not included in the measurements, so the Cherubim stood by a miracle.

R Abraham Fishelis - Thus teaching, that Torah is not limited to any particular geographic sector, but is to be studied and adhered to everywhere.

רְבִּים בְּמַאי קָנוּ לֵיהּ

How does the public acquire:

- Sanctification of the land,
- Fulfillment of the Mitzvah of Settlement.

These should not be confused with acquisition, or proprietorship, and the halachic ramification which relates to Abraham.

This discusses the mode of acquisition, by which Abraham acquired the title.

Tosophos - Title to the land was immediately vested in Abraham, but the rights to the usufruct was reserved to the indigenous people, until after the conquest by Abraham's progeny.

בֵּית כּוֹר עֶפֶר אֲנִי מוֹכֵר לָךְ הָאוֹמֵר לְחֵבִירוֹ

If one says to his fellow. “I am selling to you a ‘beis kor’ of land”.

A ‘beis kor’ is a tract of land, in which a kor of barley seed can be sown.

This area is fixed at 75,000 amos. The courtyard of the Tabernacle was 50 x 100 amos or 5000 amos (Exodus 27:18).

(Eruvin 23b) This area is fit for sowing 2 seahs of barley seed.

[a kor = 30 seah, therefore, $15 \times 5000 = 75,000$ square amos which is equal to approximately 4 to 7 ½ acres]

Clefts of 10 tefachim deep, or rocks 10 tefachim high, are not measured with the field.

If he said, “I am selling you approximately a ‘beis kor’ of land”, the clefts and rocks are measured in.

הַמְקַדִּישׁ שְׂדֵהוּ תֵּנֵן הֵתָם בְּשַׁעַת הַיּוֹבֵל

One who consecrates his field at the time of Yovel.

We learn from the laws regarding Yovel, that a kor (chomer) of land can be redeemed for a silver shekel (sela) + 1 pundyon per year (Berachos 50b), excluding clefts, or rocks of 10 tefachim height, or depth. Because one can't plant (the clefts filled with water and rocks you can't plant on) in those areas.

If the cultivability of the cleft, or rock, determines whether it is included in redemption fee, even a more shallow one, may not be cultivatable.

So that is why 10 tefachim is mentioned, to teach us the agreed upon convention, irrespective of the ability to cultivate the area. Up to 10 tefachim are included, more than 10 tefachim are not.

A person does not want to buy a field, that he can't use for its intended purpose.

טְרָשִׁים שֶׁאָמְרוּ אָמַר ר' יִצְחָק בֵּית אֶרְבַּעַת קָבִין

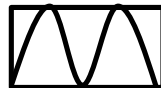
The rocks, of which we spoke, must be accepted by the buyer, only if, they total no more than an area of 4 kors.

The rocks, or clefts of less than 10 tefachim, must be accepted by the buyer, if they total less than 4 kors in a beis kor (4 kors = 1/45 of a beis kor (2.2%). The ratio holds true for any size of field) and the rocks, or clefts, must be generally distributed over the land.

If they are concentrated in one area, it decreases its use as tillable land and that area is excluded from the sale. Other tillable land must be added to the sale.

The pattern of distribution of these rocks, or clefts, is discussed, regarding:

- density of rock formation
- pattern of distribution
- rectangle (which is costly to plow)
- circle = or bracelet
- unbroken line of rocks
- horns of a bull
- zig-zag or “M” shape



Daf Yomi Digest

מִדָּה בְּחֶבֶל בֵּית כּוֹר עֶפֶר אֲנִי מוֹכֵר לָךְ

A person says, I am selling you a beis kor of land, as measured with a rope”.

(This means, he intends to sell precisely a beis kor).

If he gave the buyer even a slightly less amount, he must adjust the price appropriately.

If a person says, “I am selling you a beis kor of land, more or less”. It may be more or less and no adjustment in price is required.

However, if the amount of error in the measurement is more than $\frac{1}{4}$ kav per seah, which equals $\frac{1}{24}$ th, they must adjust with money, or if the seller prefers, the buyer must return the excess land to him.

We do not want to leave the seller with a small useless plot of land.

The amount must be adjusted in all the excess land, not just that which is over the $\frac{1}{24}$ th amount, but all of it.

בֵּית אִיבְעָיָא לְהוּ כּוֹר סְתָמָא מֵאִי

I am selling you a bais kor without specifying. What is the law?

However, if the seller prefers, instead of permitting the buyer to buy the excess land for money, the seller may request that the excess land be returned to him.

However, if the excess land is a useful plot, i.e., more than 9 kavs in the field, or ½ a kor in a garden (1/4 kav according to Rabbi Akiva), the buyer is not obligated to buy, but may return the excess land to the seller (all the excess land).

Once the deviation from the purchase agreement exceeds the limit that is ordinarily forgiven, the adjustment involves all the land.

בֵּית אִיבָעִיָא לְהוּ כּוֹר סְתָמָא מֵאִי

I am selling you a bais kor without specifying. What is the law?

What if the seller did not specify an exact measurement (by the rope), or an approximate measure, saying, “Be it more, or less.” He simply does not specify.

What is the law?

Must a small deviation from the stipulated size be adjusted? For example, a deviation of $\frac{1}{4}$ kav or less. Greater than that, must always be adjusted

Answer:

#1- Only if he says, “more or less” is an approximation permitted.

If he does not specify, it must be exact.

#2- Only if he says, “by the rope”, do we imply exact measures.

If he does not specify, it means an approximation is permitted.

Therefore, if he does not specify, no inference can be made regarding his exact, or approximate intentions,

Daf Yomi Digest

מִדָּה בְּחֶבֶל אֲנִי מוֹכֵר לָךְ הֵן חֶסֶר הֵן יִתֵּר

I am selling you this amount of land, as measured by a rope, be it more or less.

Seller uses both terms, precise and approximate, in the same statement.

These are self-contradictory statements.

a. I sell you this amount of land, measured by a rope, more or less.

b. I sell you this amount of land, more or less, measured by a rope.

One, who sells by the rope, does not forgive even a slight deviation.

One who sells by “more or less”, forgives up to a 1/4 kav per seah.

Those statements are said as part of the same statement, immediately following each other. We, therefore, consider the second statement to be his final intention.

The second statement nullifies the first.

Rabbi Abba bar Mamal said, in the name of Rav, “No, actually it is uncertain which statement we should follow. Therefore, any disputed property, or funds, are to be divided.

בְּאַחַד שְׁשָׁבַר מֵרַחֵץ מִחֲבִירוֹ
בְּשָׁנִים עָשָׂר זְהוּבִים לְשָׁנָה דִּינָר וְהָב לְחֹדֶשׁ

A man rented a bathhouse from his friend, for 1 year, at the rate of 12 gold dinars for the year, payable at 1 dinar per month.

We have another case (Bava Metzia 102a).

The year was a leap year. What is the status of the 13th month?

When a person makes two contradictory statements.

If it is:

1. confusing and the law is uncertain which to accept, we divide that which is in question.
2. clear, the second statement cancels out the first. The first is retracted and we follow the second statement.

(104a2) Another example - I sell you a kor of grain for thirty seah. A seah, for a sela (30 sela in a kor). Is the sale not complete until all 30 seah are in the buyers hands? Or is the sale for each seah complete, as it reaches the buyer's hand, and he must pay for it, even if he never gets all 30 seah, the full kor?

How do we decide? The second statement is the definitive one.

בְּסִימָנָיו וּבְמִצָּרָיו

A person sold a field, identified by its landmarks and boundaries,

but it did not contain the stipulated size. If it is off by a 6th, either too big, or too small, the sale is good and it belongs to the buyer. If it is off by more than a sixth, the price must be adjusted to include all of the deviations.

A deviation of exactly 1/6th is treated as a deviation of less than 1/6th.

Gemara:

If a person sold a field and said, “I’m selling you this land, which is 20 measures in size and it is really only 15, but the buyer is standing in it, i.e., knows its size. He accepts it, as is and can’t come back later and say it is more than 1/6th deviation from what was represented. The buyer knows how big the land is and accepted it”.

יש נוֹחֵלִין וּמִנְחִילִין וְיֵשׁ נוֹחֵלִין וְלֹא מִנְחִילִין

- a. There are those who both inherit and bequeath.
- b. Inherit, but do not bequeath.
- c. Bequeath, but do not inherit.
- d. Either inherit, or bequeath.

-
- a. A father and his sons, a son and his father, two brothers of the same father.
 - b. A man and his mother (if her husband is no longer living).

A man and his wife (a man inherits from his wife, even if she has sons) and the sons of sisters).

- c. A woman to her son, a woman to her husband, the brothers of the mother.
- d. Brothers of a common mother, but with different fathers.

Daf Yomi Digest

מֵאִי שָׁנָא דְקָתְנִי הָאָב אֶת הַבָּנִים בְּרִישָׁא

Why does the Mishnah start with such a calamitous possibility, that a father would inherit from his dead son?

Especially since the Torah seems very sensitive to this point and does not even mention the possibility of that happening. For example, (Num 28:8-11) – especially dear to him; (Num 28:1)1 and closest to him, is his father.

#2 Father, or son, each can marry a Hebrew maid servant. A process know as “yiud”. Therefore, we see father and son are closest to each other and for each, no new money is needed. Father and son can use the original money the father used to purchase her. Therefore, the son stands in the place of his father (see Ex 21:9) and is his primary heir and not the father’s brother.

Sedeh Achuza – Redeem a field at time of Yovel.

#3 In regards to Yibum: If a man dies and leaves a daughter, his surviving brother does not have to perform Yibum. Therefore, a son and a daughter are alike. This indicates that, as a son inherits from his father, if there is no son, the daughter can take that place, before the inheritance goes to other relatives of the father.

שְׂאֵירוֹ,,

The word ‘Sheayroh’ (Num 27:11), “his relative”,

is the source for the idea that the father is an heir of the deceased. This word appears at the very end of the passage, suggesting that ‘father’ follows all those mentioned earlier and the line of succession,

Ans: The Torah did not list the order of inheritance, in the order of the words of the passage, but told us the order is according to which relative is the closest kin. “Who is closest”.

Could be mother, not only father! - No, it could mean ‘mother’, but the posuk says, “Give the inheritance to the relative closest to him, of ‘his family’.” ‘His family’ means his father’s family (Num 1:2). Therefore, it means the closest one in his father’s family = the father.

Could “mispachto” mean ‘his mother’ (see Judges 17:7)? He was from both his mother’s and father’s family. Therefore, not solely her family, but his father’s family, also.

לְעוֹלָם יִדְבֵּק אָדָם בְּטוֹבִים

Let one always cleave to righteous people.

Discussions:

Family – Advice to marry into a family of righteous people, will assure that your descendants are righteous, also.

Moses married Jethro's daughter and Jonathan, an idolatrous priest, descended from him.

- Aaron married the daughter of Aminadav and Pinchas, a righteous man, descended from him.
- Elazar, the son of Aaron, married a daughter of Putiel (Ex 6:25), who was also involved with idols.

This is advice on how to look for a wife (See Exodus 6:23).

Most sons resemble the brothers of the mother.

לֹא מִמֹּשֶׁה קָא אָתִית דְּכָתִיב בֵּיהּ , וְאַתָּה פֹּה עֹמֵד עִמָּדִי
תַּעֲשֶׂה כְהֵן לְעִבּוֹדָה זָרָה

Do you not descend from Moses, regarding whom, it is written, “But as for you, stand here with me?” How could you be a priest to idols?

This was said to Jonathon, Moses’ grandson.

How could you work for idols, when your grandfather was Moshe Rabbeinu.

Answer: It is better to work for idolaters, than to take charity (11a2).

He misinterpreted this aphorism.

(See Note 13)

Jonathan interpreted this aphorism to mean that it is acceptable to work for idols, as long as you don’t really believe in them. Also, he would tell people that the idols were actually powerless, but if they gave him some goods, he would pray to God for them.

Daf Yomi Digest

לָמָּה יִגְרַע שֵׁם-אָבִינוּ מִתּוֹךְ מִשְׁפַּחְתּוֹ כִּי אֵין לוֹ בֵּן

“Why should the name of our father be omitted from the midst of his family, because he has no son?”

A woman from one tribe cannot marry a man from a different tribe, unless she has brothers. This is so the inheritance will stay in that tribe's area.

But, if she marries outside her tribe, while her father and/or her brothers are alive, but they all die. She inherits. even though the land leaves the original tribe.

(110b3 line 30 B11)

How do we know that a son will inherit before daughters from a deceased mother? We learn it from a kal v'chomer?

A daughter has a weak claim on her father's estate. (She only gets it, if there is no son, or brother). Whereas, she gets a portion of her mother's estate, because there is a Berissa, authorizing the daughter to inherit from her mother. Therefore, a son, who has a strong claim on his father's inheritance, must also inherit from his mother, even though it does not specifically say so anywhere. These rules are learned from a kal v'chomer.

The derived law, must be treated no stronger than the original law.

Therefore, a son and daughter inherit equally.

אַחַד הַבֵּן וְאַחַד הַבֵּת שְׁוִין בְּנִכְסֵי הָאִם

The son and the daughter are equal, with respect to the estate of the mother.

A daughter has a right to inherit from her father and mother.

Does the son inherit double from the mother, if he is a Bechor?

Son and daughter are equal in regard, to inheritance from a mother,

If it is a kal v'chomer, there is a limit on a kal v'chomer, it can't be stronger than the original law. It is sufficient.

Proof: Story of Miriam – (Num 12:14)

HaShem said to Moses, “If Miriam’s father spit in her face, would she not be unclean for 7 days? If I (HaShem) rebuke Miriam, she should be unclean for longer than 7 days. However, due to the kal v'chomer, she can only be unclean for the same 7 days. The kal v'chomer cannot be stronger than the original law.

מִשְׁפֵּט הַבְּכֹרָה לְאִישׁ וְלֹא מִשְׁפֵּט הַבְּכֹרָה לְאִשָּׁה

The law of the first born (2x) applies only to the estate of the father, not to the mother.

In fact, the Bechor does not get 2 x in the estate of the mother, only in the estate of the father.

Only in reference to a father's estate is there the concept of 'Bechor', 'first born.

“To give him a double portion in all that is found with him” (i.e. the father), (See Deut. 21:17).

(111b2) - How do we know a man can inherit from his wife?

They are one flesh (Num 27:11) and you shall give the inheritance to his flesh.

But then, why does she not inherit from him? She is also his flesh.

Rava and Abaya rearrange letters and words to explain.

This is also is Rabbi Akiva's opinion.

But, R Yishmael learns the same rule, but through a different argument,

“and you shall give the inheritance of his flesh to him.”

וְאֶלְעָזָר בֶּן־אֶהֱרָן מֵת וַיִּקְבְּרוּ אוֹתוֹ בְּגִבְעַת פִּינְחָס

And they buried him (Elazar, the son of Aaron) on the hill of Pinchas, his son.

A sage was buried in a grave, to which, he did not acquire title.

Since every person enjoys a presumption of ‘saintliness’.

This refers, not only to a saint, but to any person.

-Every individual must be buried in a grave to which he has title.

-That title must not be lost at a Jubilee year.

Yoreh Deah - If a body is buried in a site that does not belong to the person, it may
be exhumed and moved.

Exhuming is permitted:

-To move the body to a family plot.

-To move the remains to Israel.

-For security against vandalism.

-For public need.

-If the remains were buried in a plot belonging to someone else.

וְלֹא-תִסָּב נַחֲלָה לְבְנֵי יִשְׂרָאֵל מִמָּטָה אֶל-מָטָה

An inheritance of the children of Israel shall not be transferred from tribe to tribe.

In the Gemara, R Pappa challenges the argument of R Yishmael and learns those sentences another way.

There is a requirement on a woman to marry only in her father's tribe, if at the time of her marriage, she stood to inherit an estate. For example, a woman with no brothers.

(112a)

What if a mother dies and the daughter is married to a man from a different tribe?

He will inherit from his wife and the land will, indeed, transfer out of the tribe?

(112b Num 36:7)

An inheritance of the children of Israel shall not be transferred from tribe to tribe.

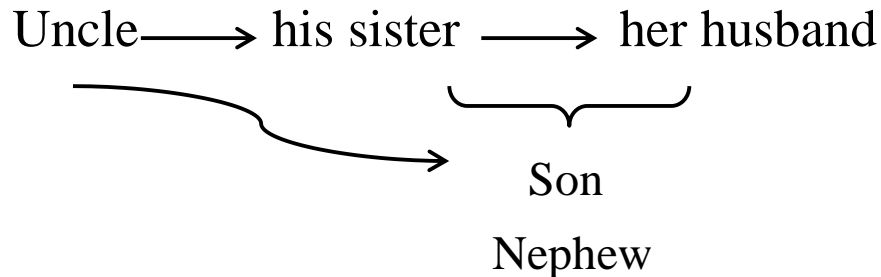
Refers to husband (Num 36:9).

בְּסִיבַת הַבַּעַל הַכָּתוּב מְדַבֵּר

The verse refers to transference through the husband.

A husband gets the assets his wife which she owned at the time of her death.

A wife's prospective assets:



- Husband gets what wife owned at the time of her death.
- Later assets from her family, do not go to husband, but pass to her sons and daughters.

איתמר קנין

It was stated during the acquisitory action of ‘chalifin’, bartering’.

Regarding the acquisition act of chalifin.

Either party can back out if, we are:

1. Still at the negotiating table.
2. And we are discussing the same topic of conversation.

Either party cannot back out, if we are:

1. No longer the table.
2. We have changed the topic of conversation.

This is brought up to question the right of the three witnesses to render judgment, if the dying person still has a right to change his directive. Yes, but after the witnesses stand up, or change the topic of conversation, they can serve as a Bais Din.

(114b 3rd category)

R Yochanan – from R Yehudah ben R Shimon

Use same word (Num 36:8) ‘matos’, ‘the tribes’. Refers to the tribe of her mother and the tribe of her father. The juxtaposition permits the mother to inherit from her son, just as a father does.

R Yehuda - This contradicts our Mishnah.

We have a second posuk regarding a mother’s ability to inherit from her son. We are not relying on the word ‘matos’, to learn this rule. That is learned from Num 27:8, which says, ”If a man should die and he has no son, you shall transfer his inheritance to his daughter.” So therefore , we know that a daughter inherits.