

A בס"ד

Intro

Today we will Be"H begin Perek את הבית, המוכר את הבית, and learn מוסכת בבא בתרא דף ס"א

This Perek discusses whether the sale of real property, such as houses or fields, includes various items associated with the property.

Some of the topics we will learn about include:

המוכר את הבית

Whether one who sells a house also includes the following areas:

בדקא חלילה

A sitting area attached to the main house, whose walls are comprised of a series of windows;

אפתא

A lower structure built as an extension to the main house;

חדר שלפנים הימנו

A storeroom attached to the back of a house;

מצרים הרחיב לו

In order to use commonly known markers to describe boundaries, a seller will include a wider area in his dimensions than he is actually selling.

A

המוכר את הבית

This Perek discusses the sale of real property, and the various items included with the property.

בדקא חלילה

אפתא

חדר שלפנים הימנו

מצרים הרחיב לו

B

המוכר בית בבירה גדולה

If one owns a building containing several individual dwellings, how to determine whether he intends to sell one apartment or the entire structure? Similarly, המוכר שדה בבקעה גדולה

If one owns a large plain comprised of several fields, how to determine whether he intends to sell one field or the entire plain?

How to define several vague terms of a sale, including:

ארעא, land, in the singular;

ארעתא סתמא, land, in the plural;

כל ארעתא, all his land, referring to fields;

זיהרא, a general term for land, that includes gardens and vineyards; and

נכסי, property, referring to all real possessions.

B

המוכר בית
בבירה גדולה

ארעא
ארעתא סתמא

כל ארעתא

זיהרא

נכסי

1 So let's review...

Zugt di Mishnah

המוכר את הבית
לא מכר יצייע

One who sells a house does not automatically included the יצייע in the sale,
ואע"פ שהיא פתוחה לתוכו
Even if it opens into the house;

The Gemara presents two interpretations of a יצייע:

1.

בדקא חלילה

A sitting area attached to the main house, whose walls are comprised of a series of windows and is a place to keep cool during the summer. It is not included in the sale, because since it serves a different function than the house itself, it's considered a separate entity. However,

אפתא

מזדבנא

A lower structure built as an extension to the main house, IS included in the sale, because since it serves the same function as the house itself, it is considered part of the house.

1

המוכר את הבית

המוכר את הבית
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יצייע

1

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מזדבנא

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בדקא חלילה
לא מזדבנא

A sitting area attached to the
main house, and is a place to
keep cool during the summer.
It is not included in the sale,
because since it serves a
different function than the
house itself, it's considered a
separate entity.

2

2.

אפתא

לא מזדבנא

בדקא חלילה nor אפתא nor a יציע are included in the sale, because they are both considered a separate entity.

The Gemara adds

אי הוי ארבע אמות

חשוב

ולא מזדבנא

ואי לא

לא חשיב

ומזדבנא

These rooms are separate entities only if they are four אמות square. But, if they are smaller than four אמות, they are insignificant and considered part of the main structure.

However, the Gemara asks from the next Mishnah on דף ס"ד which states

לא את הבור ולא את הדות

A pit or water cistern is not included in the sale of a house, even though

סתם בור

לא הוי ארבע אמות רוחב

A typical pit is narrower than four אמות?

The Gemara answers and differentiates as follows:

הכא

אידי ואידי

חדא תשמישתא היא

A יציע serves the same basic function as the house that of a מקום דירה, a living space; and so they are included in the sale if they are not significant structures. However,

התם

הא תשמישתא לחוד

והא תשמישתא לחוד

A water pit serves a completely different function than the house, and is always considered a separate entity, regardless of its size.

=====

2

יציע

2

אפתא לא מזדבנא

Neither a אפתא nor a בדקא חלילה are included in the sale, because they are both considered a separate entity.

ואי לא

לא חשיב

ומזדבנא

אי הוי ארבע אמות

חשוב

ולא מזדבנא

These rooms are separate entities only if they are four אמות.

But, if they are smaller than four אמות, they are insignificant and considered part of the main structure.

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היא

A יציע serves the same basic function as the house that of a מקום דירה, a living space; and so they are included in the sale if they are not significant structures.

3 The Mishnah continues
ולא את החדר שלפנים הימנו
A storeroom attached to the back of a house is also not included in a sale.

The Gemara asks that this would seem obvious, because השתא יציע לא מיזדבן חדר מיבעיא
If a יציע, which has a similar function as the house, is not included in the sale, certainly, the storage area, which serves a different function, is not included?

Therefore, the Mishnah must refer to a case אע"ג דמצר ליה מצרי אבראי
The seller delineated the outer boundaries of the house, and included this room in the dimensions. Nevertheless, it is not included in the sale, because we assume מצרים הרחיב לו
One uses commonly known markers to describe the boundaries, and since people are not familiar with his storage area, he used the exterior boundaries as markers. However, he did not intend to include it in the sale.

Tosfos add:
אין הדמים ראיה
We cannot use the price to determine what was included in the sale, because פעמים קונה אדם קרקע הרבה יותר ממה שהיא שוה
One often overpays for real property, such as land or houses, in order to acquire a particular property.

3

משנה

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We cannot use the price to determine what was included in the sale, because
פעמים קונה אדם קרקע הרבה יותר ממה שהיא שוה
One often overpays for real property, such as land or houses, in order to acquire a particular property.

4 The Gemara bases this idea of מוצרים הרחיב לו on two rulings by רבה בר אבוב:

1. המוכר בית לחבירו בבירה גדולה

One who owns several apartments that all open to a large, central lobby, as part of a large apartment building, and while standing in one of the apartments he said, "I am selling you this house;"

אע"פ שמצר לו מוצרים החיצונים מוצרים הרחיב לו

Even if he drew boundaries that include the entire structure, we assume that he only sold him the one apartment, and was merely using known landmarks to describe the building.

The Gemara explains that it depends on the prevalent terminology, as follows:

קרו ליה לבית בית ולבירה בירה

If people always use distinct terms to refer to an apartment or to a building,

בית זבין ליה בירה לא זבין ליה

If he referred to a בית, he clearly meant the apartment only, not the building.

If

לבירה נמי קרו לה בית

People also refer to a building as בית;

כוליה זבין ליה

We certainly would assume that he did sell the entire building, since he included it in the dimensions.

4

רבה בר אבוב

מצרים הרחיב לו

1

המוכר בית לחבירו בבירה גדולה

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לבירה נמי קרו לה בית

People also refer to a building as בית;

כוליה זבין ליה

We certainly would assume that he did sell the entire building, since he included it in the dimensions.

קרו ליה לבית בית ולבירה בירה

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בירה לא זבין ליה
If he referred to a בית, he clearly meant the apartment only, not the building.

5 Therefore, אבוא בר רבה must refer to a case where
 רובא קרו ליה
 לבית בית לבירה בירה
 ואיכא נמי
 דלבירה קרו ליה בית
 Most people use distinct terms, but some refer to both as
 בית. Nevertheless, it is not included in the sale,

because אבוי ruled
 האי מאן דמזבני ליה מידי לחבריה
 צריך למכתב ליה
 לא שיירית בזבני אלן דקמי כלום
 Since it is common to draw wider boundaries in order to
 use conspicuous landmarks, the חכמים instituted that it is
 the buyer's responsibility to ensure that the seller specify,
 "I have not excluded anything from this sale."

Therefore,
 מדהוי ליה למכתב
 ולא כתב
 שמע מינה שיורי שייר
 Since he did not write this, even though
 הוה ליה למימצר ליה
 ולא מצר ליה
 It was possible for him to give precise dimensions of the
 rooms he was selling; nevertheless, since he did not
 specify that the boundaries were exact, we assume that he
 did exclude the rest of the בירה.

5 Therefore, אבוא בר רבה must refer to a case where
רובא קרו ליה
לבית בית לבירה בירה
ואיכא נמי
דלבירה קרו ליה בית
 Most people use distinct terms, but some refer to both as בית.
 Nevertheless, it is not included in the sale,

Because אבוי ruled
האי מאן דמזבני ליה מידי לחבריה
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6

2.

Similarly,
המוכר שדה לחבירו
בבקעה גדולה

One who own a large plain, and while standing on one of
its fields he said, "I am selling you this field,"

אע"פ שמצר לו מצרים החיצונים
מצרים הרחיב לו

Even if he delineates the boundaries of the entire plain, we
assume that he only sold the individual field.

Here, too, the Gemara explains that it depends on the
prevalent terminology, and in the case of

איכא דלשדה קרו ליה שדה
ולבקעה בקעה

ואיכא נמי

דלבקעה קרו לה שדה

רבה discussed a scenario where most people use distinct
terms for a plain or a field, but some refer to both as שדה.

Nevertheless, the entire plain is not included in the sale,
because

מדהוי ליה למכתב

ולא כתב

שמע מינה שיורי שייר

Since he did not specify that everything inside these
dimensions are included, although

כולה חדא תשמישתא היא

All the fields have the same function; nevertheless, since
he did not specify that the boundaries were exact, we
assume that he only sold one field.

=====

6

רבה בר אבון

מצרים הרחיב לו

2

המוכר שדה לחבירו
בבקעה גדולה

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and while standing on one of its fields he said,
"I am selling you this field,"

אע"פ שמצר לו מצרים החיצונים
מצרים הרחיב לו

Even if he delineates the boundaries of the entire plain,
we assume that he only sold the individual field.

It depends on the prevalent terminology, and in the case of

ואיכא נמי איכא
דלשדה קרו ליה שדה דלבקעה קרו לה
ולבקעה בקעה שדה

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All the fields have the same function; nevertheless,
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7 The Gemara discusses another sale with vague terms:
ההוא דא"ל לחבריה
ארעא דבי חייא מזבננא לך
Someone specified that he is selling 'the land I bought
from בי חייא', and
הואי ליה תרתי ארעתא
דהוה מתקרין דבי חייא
He owned two parcels of land that he bought from בי חייא.

רבי אשי ruled
חדא אמר ליה
תרתי לא א"ל
He only referred to one field, so the buyer only acquires
one, and the Rashbam adds
יטול הלוקח הפתוחה שבשתיהן
דידו על התחונה
The buyer gets the lesser field, because the burden of
proof rests on the buyer.

However, the Gemara continues,
אי א"ל
ארעתא סתמא
מיעוט ארעתא שתי
If the seller referred to 'Lands,' in the plural, the buyer
acquires two fields, the minimum number included in this
expression, but not more.

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ההוא דא"ל לחבריה
ארעא דבי חייא מזבננא לך
Someone specified that he is selling
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הואי ליה תרתי ארעתא
דהוה מתקרין דבי חייא
He owned two parcels of land that he
bought from בי חייא.

רב אשי
חדא אמר ליה
תרתי לא אמר ליה
He referred to one field, so the buyer only acquires one,

And the Rashbam adds
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8 Furthermore,
 אי א"ל
 כל ארעתא
 כל ארעתא דאית ליה
 לבר מבוסתני ופרדיסי
 If he said he is selling 'All land,' the buyer acquires all the
 seller's fields, but not his gardens and vineyards.

And,
 אי א"ל זיהרא
 אפילו בי בוסתני ופרדיסי
 לבר מבתי ועבדי
 If he used the term זיהרא, a general term for land, the buyer
 also acquires his gardens and vineyards, but not his
 houses and slaves.

However,
 אי אמר ליה נכסי
 אפילו בתי ועבדי
 If he referred to all 'Property,' the buyer acquires all his
 real property and slaves.
 However, the Rashbam adds;
 אבל מטלטלי לא
 עד דא"ל כל נכסי
 His moveable property is not included unless he said 'All
 MY property.'

8
Furthermore,
**אי אמר ליה
 כל ארעתא
 כל ארעתא דאית ליה
 לבר מבוסתני ופרדיסי**
*If he said he is selling 'All land,' the buyer acquires all
 the seller's fields, but not his gardens and vineyards.*

And,
**אי אמר ליה זיהרא
 אפילו בי בוסתני ופרדיסי
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*If he used the term זיהרא, a general term for land, the
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**אבל מטלטלי לא
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*His moveable property is not included
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