CHAPTER IV.

RULES AND REGULATIONS CONCERNING UNCONDITIONAL AND CONDITIONAL SALES OR GIFTS OF BUILDINGS, HOUSES, AND PALACES: WHAT IS AND WHAT IS NOT INCLUDED; AND ALSO CONCERNING YARDS, BATH-HOUSES, AND PRESS-HOUSES FOR OIL AND WINE. SALES OF WHOLE CITIES, VALLEYS, FIELDS, WELLS, ETC.

MISHNA *I.*: If one sells a house unconditionally, the yeziah which is upon it is not included in the sale, even when it is open to the house, neither the chamber which is inside, nor the roof if it has a railing ten spans high. R. Jehudah, however, maintains that if it has the appearance of a door, although it is less than ten spans high, it is not included in the sale.

GEMARA: What does *yeziah* mean? Here (in this college) it was explained as αετο--gable. [1] R. Joseph, however, maintains that it is an upper floor with windows. According to the first explanation, the latter one, which is more valuable, it is self-evident is not included in the sale. But according to the latter explanation the first one is included. R. Joseph taught: We find two additional names to yeziah, mentioned in I Kings, vi. 5: "And he built on the wall of the house a gallery (yeziah) round about." It is also named *Zelah* [Ezek. xli. 6]: "And the side chambers--*Zelah*," etc. And also *To* [ibid. xl. 7]: "And every cell (*To*)," etc. The last is also used in Midoth, IV. 6: Said Mar Zutra: All that is mentioned above applies only when it contains four ells. Said Rabhina to him: According to your theory, the succeeding Mishna, which states: "Not the well (it does not matter whether the well is merely dug in the ground or is surrounded by stone walls), although it was written in the bill of sale that he sold to him all that was in the height and depth, it is not included in the sale"--means, also that if it does not contain four ells it is (and this is certainly not so)? What comparison is this? The use of a well is not

the same as the use of a house, while the use of an upper floor is identical with the use of the house; if it contains four ells, it is of value and it is not included in the sale; but if less than this, it is not of value.

"*Neither the inner chamber*." Was it necessary to teach this? If the yeziah is not included, is it not self-evident that much less is the chamber? It speaks of a case in which in the bill of sale were noted some boundaries of the inner chamber, and lest one say that in such a case it is included, the Mishna comes to teach us that it is not so. And this is in accordance with R. Na'hman, who said in the name of Rabba b. Abuhu that if one sells a house depending on a palace, although in the bill of sale were noted the boundaries of the palace, the buyer cannot claim that he sold him the whole palace, as it is to be considered that the boundaries were noted only to make known where the palace was situated. (Says the Gemara:) Let us see how was the case. If people make a distinction in calling the one a house and the other a palace, and the bill of sale specifies a house, then certainly he sold him a house, not a palace. And if people call the

whole building a house (not a palace), then he certainly sold him the house with all its contents? It speaks of a case in which the majority calls it a house, but the minority names it palace. One might say that he sold him the entire building. R. Na'hman comes to teach us that in such a case he ought to write in the bill of sale: "The entire building is sold to you, and I reserve nothing for myself." And because this was not mentioned, it is to be considered that he sold him only one house of this building and the remainder he left for himself. The same said again in the name of the same authority: If one sold a field situated in a valley, although in the bill of sale are specified the boundaries of the valley, he sold him only the field and not the entire valley, as the specifying is to be considered necessary in defining the situation of the valley only. Let us see how was the case? If people make a distinction in calling the one field and the other valley, and the bill of sale specifies a field, then certainly he sold him a field (etc., etc., as above). And the answer is also the same as above, that because it was not written in the bill of sale that he had reserved nothing for himself, he sold him only one field. And both cases were necessary for R. Na'hman to teach; since, if he had taught only of a house, one might say that there is a difference between using a palace and using a house. But in case of a valley of which the use of

every part is equal, the entire valley is sold. And if he would teach from a valley only, one might say that because there was no necessity for the seller to specify which field of the valley he sold him, as every part of it is used for one and the same purpose, therefore it is considered that he sold him only one field. But in case of a palace the chambers of which are for different uses, it ought to be specified in the bill of sale which house was sold; and as it was not, the entire building was sold: therefore both were necessary.

According to whom is the statement of R. Mari, the son of Samuel's daughter, in the name of Abayi, that if one sells to his neighbor a property, he must write in the bill of sale: "I reserve nothing of it for myself"? In accordance with R. Na'hman's statement in the name of Rabba b. Abuhu.

There was one who said to his buyer: I sell to you the ground of B. Hyya. And there were two pieces of ground that were called B. Hyya (and the buyer claimed that both were sold to him, while the seller insisted that only one was sold to him). When the case came before R. Ashi, he decided that only one was sold (as the seller said to him, "I sell you the ground"--singular, and not the "grounds"); and if even the seller had said the grounds, then it would signify two. And if such were three, the third would not be sold unless he should say: "I sell you all the ground I possess." And even then, if the seller possessed, besides this ground, orchards and vineyards, the latter would not be sold. And if the seller should say, "I sell you my *zihra*"(which means in the Persian language fields and plants), then the orchards and vineyards belong to the buyer, but not houses nor slaves, unless he said, "I sell to you all properties I possess."

If in a bill of sale for real estate there was specified a boundary of a length of one hundred ells on the west side, and of the length of fifty ells only on the east side? Said Rabh: Title is given to the buyer corresponding with the shorter boundary only (*i.e.*, that the specifying of the one hundred ells on the west side is to be considered only a mark to identify the beginning of his field).

Said both R. Kahana and R. Assi to Rabh: Let it be considered that he sold to him a triangle (*i.e.*, that it should be measured from the end of fifty on the east side to the one hundred of the west

side, and the other estate should not belong to him). And Rabh did not answer. (Says the Gemara:) If the

adjoining fields on the west side belonged to A and B, and on the east side to C and D, and in the bill of sale was specified from the boundary of A and B to the boundary of D on the other side, then even Rabh admits that it is to be considered he sold him a triangle, as the boundary of C was not mentioned.

If E owns a field adjoining A's field from east to west, and B's from north to south, and he comes to sell it, he must write in the bill of sale: "I sell you the field adjoining A's field from both sides, and also B's from both sides." And it is not sufficient that he should write: "My field, which is between A's and B's fields," as then he could claim that he sold to him the half of it only (*i.e.*, a half on west side adjoining A's and a half on south side adjoining B's, and the remainder he reserved for himself). If in the bill of sale the three boundaries of the field were specified, but not the fourth, according to Rabh title is given to the buyer from all three boundaries, except a bed of the fourth, which was not specified in the bill of sale. Samuel, however, maintains that title is given to the whole, even to the fourth. But R. Assi maintains that title is given to the buyer for one bed all over this field only. And the reason of his theory is that he agrees with Rabh, that from the fact that the fourth boundary is omitted in the bill of sale, it is to be assumed that he reserved it for himself. And this being reserved for himself, so was his intention with the other boundaries, and the specifying of the three was meant to give him title to one bed all over the field.

Said Rabha: The Halakha prevails that the buyer acquires title to the whole field, even to the fourth boundary, provided it is contained in the three boundaries; but if it is not contained, title is not given. And even if it is, but it contains inoculated trees, or the fourth boundary was of a size in which nine kabs of grain could be sown, it is excluded.

Let us see! Rabha states that if there were inoculated trees, or it were nine kabs, title is not given, from which it is to be understood that if it is not contained properly, title is not given to the fourth boundary, although it does not contain the above. We may infer from this statement that although he has not written in the bill of sale that he reserved nothing for himself (as is said above that so it must be written in a bill of sale), it is supposed that he reserved nothing for himself, and also that the Halakha prevails that if it is contained title is given, provided there were not trees, and the size was less than nine kabs. But

if there were, title is not acquired. However, it was taught in the name of Rabha just the reverse; and therefore, if such a case came before a court, we must leave it to the consideration of the judges.

Rabba said: If A and B were partners in a field, and A sold his share to C, stating in the bill of sale, "I sell you the half I have of this ground," then all his share is sold, and he has reserved nothing for himself. If, however, it states, "Half of the ground I possess," then he sold him only a quarter of the whole field, which is half of his. And to the question of Abayi: "Why should we

make a difference between the two statements (is it only because in the first statement the 'ground' was mentioned later, and in the other statement the expression 'ground' is mentioned first)?" Rabba kept silent. Said Abayi: I thought that because he was silent he receded from his statement, and accepted my opinion; but it was not so, as I have seen the bills of sale which were approved by the court of my master, and in reference to the expression, "I sell the half which I possess in the ground," the court has marked in its approval "that a half of the whole field is sold to so and so," and in reference to the bill of sale which was written, "A half of the ground I possess," the court's approval was: "A quarter of the whole field is sold to so and so." Rabha said again: If two partners have divided their estate, and one of them says to another, "I sell you my share in the ground," and he shows him the boundary, that it begins from the ground belonging to his partner after the division, then all his share is sold. But if the same shows him the boundary of his estate not from the place which belongs after the division to his former partner, but from the opposite side, then a field of nine kabs from his share is sold to him, but not his entire share. 1 And also here Abayi questioned him the reason of the different decisions, at which he again kept silent; and the schoolmen who heard this thought that he had receded from his statement, and in both cases his whole share was sold. In reality, however, it was not so. As R. Youmar b. Shlamjah said: Abayi explained to me that there is no difference whether he has shown him the boundary from which he has divided, or the opposite side. If he has added

to his statement, "and all of its boundaries," then his entire share is sold; but if he has added nothing, then a field of nine kabs only is sold.

It is certain that, if a sick man said in his last will, "So and so shall share my properties," he meant the exact half; but how is it if he said, "Give a share to so and so in my properties"? Said Rabhina b. Kisi: Come and hear the following Boraitha: If one said, "Give a share to so and so in my well"--said Symmachos: No less than a quarter is meant (as it is certain that he wanted to help him out in watering his fields, and the rabbis suppose that a quarter of the well suffices for this purpose). If, however, he said: "Give a share from my well in his barrels" (in which the above purpose cannot be supposed), not less than an eighth part is meant. (This Rashbam explains as implying that he wished to help him out in watering his cattle. R. Gershom maintains: So was then the custom--to fill their barrels with water, for the purpose of using it the whole year.) And if it was said: "Give him a share from my well for his pots," not less than a twelfth part is considered; and if it was said: "Give him for his small vessels," then a sixteenth part 1 of the well is meant.

Hence we see that, according to Symmachos, if he said, "Give him a share in my well," without any additional remarks, a quarter is meant; and the same is the case when he said, "Give him a share in my properties."

The rabbis taught: A Levite who sold a field to an Israelite with the stipulation that the tithes of the field (which the Israelite must separate) should belong to him, this stipulation is valid; and if the stipulation was, "to me and to my children," if the Levite dies, the tithe must be given to his children. But if he said, "So long as the field may be in your hands," then, if the Israelite should sell it and rebuy the same thereafter, the Levite has nothing more to do with it. But why should the tithe belong to him? Is there not a rule that one cannot grant a thing which is not as yet in existence, and as the products of the field have not as yet come forth, consequently the tithe is not in existence? The above stipulation is to be considered as

if he should say: The space in which the first tithe shall grow I reserve for myself.

Said Resh Lakish: From this we may infer that if one sold a house with the stipulation, "The upper *diæta* (chamber) shall remain for him," the stipulation is valid. To what purpose does he state so? Is it not said above that even without any stipulation, if it is not plainly stated in the bill of sale that this *diæta* goes with the house, it remains the owner's? Said R. Zebid: Resh Lakish meant to teach that if there was such a stipulation, then the owner has a right to make enclosures in the attic, facing the yard of this house, and the buyer cannot prevent him, as the stipulation was for this purpose. And R. Papa maintains: If the seller wants to build another attic upon that one, he may do so.

(Says the Gemara:) According to R. Zebid's explanation, it is correct, what Resh Lakish said: "From *this* we may infer," as the above Boraitha teaches that his stipulation is to be considered as reserving space for himself. So also with the stipulation as to the attic--he reserves space for himself to make enclosures, etc. But according to R. Papa's explanation, how can this case be inferred from that Boraitha? This difficulty remains.

R. Dimi of Nahardea said: If one sells a house with the intention of giving title to all its contents, although the bill of sale states from the bottom to the top, title is not acquired in wells, etc. (if such there were), unless he writes: "You shall acquire title from the depth of the earth to the height of the sky." And it is not sufficient to state: "From the depth to the height of this house is sold to you"; and the reason is because the last expression gives title only to that which is beneath the house, like a cellar, basement, etc., and also to the roof and the attic, but it does not suffice for the well and its stone walls, which are not included in the same. However, the expression, "from the depth of the earth to the height of the sky," includes them also, and other caves which may be found beneath the house, and also above the roof, if there is an attic that measures more than ten spans in height and width.

The schoolmen [1] propounded a question: If one has sold or presented the house to one man and the *diæta* to another, should it be considered a reservation, or, because he sold the *diæta* to

some one else, he reserved nothing for himself, and it cannot be considered? And if you will say that such is not considered, how is it if the seller said: "The house is sold to you except the *diæta*" (but did not say, "I reserved it for myself")? Said Rabha in the name of R. Na'hman: If we conclude that the house to one and the *diæta* to another is not considered a reservation, the latter case, besides the *diæta*, is to be considered, and it will be in accordance with R. Zebid, who said above that if he likes to make enclosures, etc., he may do so. Hence we see that, as he left the *diæta* for himself so he did with the space of the enclosures.

MISHNA *II.*: Title is not given to a well, or to the stone wall thereof (if this was not plainly mentioned in the bill of sale of the house), although there is mentioned that he sold him the depth and the height; however, the seller must buy a way to the well from the new owner of the house. So is the decree of R. Aqiba. The sages, however, maintain that it is not necessary; and

R. Aqiba admits that it is not necessary for the seller to buy a way if he said plainly that the well in question was not included in the sale. If, however, the house was sold to some one, and the well to some one else, it is not necessary for the latter to buy the way to it from the owner of the house, according to R. Aqiba; but according to the sages it is.

GEMARA: Rabhina was sitting and deliberating the difficulty of the expressions in the Mishna, *Bour* (well) and *Duth* (a well surrounded by a stone wall). Are they not for the same purpose? Why, then, was it needed to mention both? Said Rabha to him: Come and hear the following Boraitha: *Bour* and *Duth* both meant a well which is dug in the ground, but the first means solid ground without a wall for containing water, and the second means surrounded by a stone wall. (Hence if the Mishna should mention the first, one might say that because it is not surrounded by masonry it is not included in the sale; but the second, which is a kind of building, is included. And if the second were mentioned, one might say that because it is a separate building and of value, therefore it is not included; but the first, which is not of great value, is; therefore both are needed.) And so also explained Mar the Elder, the son of R. Hisda, to R. Ashi.

"*He must buy a way*," etc. And the point of their differing is that R. Aqiba holds that usually the seller sells his goods with a good eye (explained above, p. 98), and the rabbis hold

the contrary. And wherever it is said: "R. Aqiba is in accordance with his theory that the seller sells his goods with a good eye," the argument is based upon this statement. [And lest one say that the point of their differing is something else, as, *e.g.*, the seller could not intend that one should fly to his well through the air, etc., therefore there is repeated in the latter part of the Mishna the same difference of opinion, to teach that only in the supposition of a good and bad eye is the point of their differing.]

It was taught: R. Huna in the name of Rabh said: The Halakha prevails in accordance with the sages; and R. Jeremiah b. Aba in the name of Samuel: The Halakha prevails in accordance with R. Aqiba. Said the latter to the former: Why, many times I said before Rabh that the Halakha prevailed in accordance with R. Aqiba, and he said nothing to me. And he rejoined: "That was because you taught before him the reverse--that R. Aqiba was of the opinion that the seller sells with a bad eye." [1] Said Rabhina to R. Ashi: Shall we assume that both Rabh and Samuel decided in accordance with their theories elsewhere (Chap. I., p. 16), where they differ also concerning brothers who have divided their inheritance; and if it is so, why have they repeated this statement twice? (Answered R. Ashi:) It was necessary, as, if one of the two were cited, one might say that Rabh so decided concerning brothers, as one might claim: "I like to dwell in the house wherein my parents dwelt." As it is written [Ps. xlv. 17]: "Instead of thy fathers shall be thy children." But in the other cases he would agree with Samuel. And if the other case were stated, one might say that only in this Samuel differs with Rabh, but concerning brothers Samuel agrees with him. Therefore both statements were needed.

Said R. Na'hman to R. Huna: Should the Halakha prevail as we declare, or in accordance with you? And he answered: The Halakha should be established in accordance with you, as you are nearer to the Exilarchs, whose judges are competent and can be relied upon.

It was taught: [2] Two houses, one beyond the other, so that one has to pass the other in going to

the street or the yard, and both are sold, or presented as a gift, to two different persons---

neither of them has the right to pass the other's house without his permission, and much less when the inner house is sold and the outer is presented as a gift. But how is the case if the outer house is sold, and the inner is presented as a gift? The schoolmen were about to say that the same is the case. However, they were opposed from the following Mishna, which states, in the last Mishna of this chapter, that "there is a difference with a gift," etc., from which we see that all agree that he who makes a gift does so with a good eye. The same is the case here, when the owner of the house has at one time sold the outer, and made a gift of the inner, as it was with a good eye, so that he shall have a right to pass.

MISHNA *III*.: If one sells a house, the door is sold, but not the key to it; the stationary mortar in the house, but not the movable--the ετροβιλοσ (every revolving body--here, however, is meant the lower stone of a handmill), but not the mill-funnel, nor an oven or a stove. If, however, he said to him, "The house with all its contents," all of these are sold.

GEMARA: This Mishna is not in accordance with R. Meir, who said: If one has sold a vineyard, he has sold all the vessels which are used for same.

The rabbis taught: If one has sold a house, he sold with it the door, the bolt, and lock, but not the key; the engraved mortar, but not that which is only attached; the lower stone, but not the mill-funnel, nor the oven or stove nor the handmill. R. Eliezer, however, maintains that all that is attached to the ground is to be considered as the ground proper. If, however, the seller said, "The house and all its contents," all of them are sold. But in any case, the well, the surrounding stones thereof, and the *yeziah* are not sold.

R. Nehemiah b. R. Joseph sent a message by a woman to Rabha b. R. Huna the minor [1] in the city of Nahardea: When this woman shall appear before you, you shall collect on her behalf the tenth of all the properties belonging to her father, for her support, even from the lower stones of the handmills. Said R. Ashi: When we were with R. Kahana we used to collect for such a purpose even from the rent of the houses (the law is, that for the support of a daughter a tenth of the real

estate is to be collected, and R. Ashi holds that the rent of real estate is to be considered the same for this purpose).

MISHNA *IV*.: If one sold a yard, the houses, wells, cellars, and caves are included, but not movable property. If, however, he said, "with all their contents," all is sold; in any case, if there were bath or press houses, they are not included. R. Eliezer, however, maintains: If one has sold the yard without any explanation, he has sold only the ground thereof, but nothing else. (Even if, according to the amount which was paid by the buyer, it seems that all its contents are sold, as the law of deceiving does not apply to real estate.--Rashbam.)

GEMARA: The rabbis taught: If one sells a yard, the outer houses, the inner ones, *Beth Hulsauth*, [1] and stores which are open inside are included in the sale, but not those which are open outside. If, however, they are open on both sides, they are included. R. Eliezer, however, maintains that if one sold the yard he sold only the *moles* (*i.e.*, the great mass of the air). The text says if they are open from both sides they are sold with it; but has not R. Hyya taught that they are not? This presents no difficulty. Our Boraitha speaks of that of which the main use was inside, and R. Hyya speaks of that of which the main use was outside.

"*Eliezer said*," etc. Said Rabha: If the seller said: "I sell you this foreyard," all agree that the houses are included; but if he said: "I sell you the yard," they differ. According to the rabbis, the yard with all its contents is meant, as the yard of the tabernacle, which is written, "the length of the yard" [Ex. xxvii.], and all its contents is meant; and R. Eliezer holds that with the word "yard" is meant the air only.

Rabha in the name of R. Na'hman said: If one has made a hazakah on the *Chulsu*, title is acquired in the ground to a depth at which silver or gold, if found, belongs to him. Is this not self-evident? Has not Samuel said: If one sold ten fields in ten different countries, as soon as he has made a hazakah on one of them, title is acquired to all? Lest one say that there is a difference, as the surface of the earth is alike everywhere, and the fields are similarly adapted for planting, they are therefore considered as if they were joined each to the other; but in our case the use of the two things mentioned is different,

and one might say that title is not given to the ground-therefore Rabha's statement.

MISHNA *V.*: If one sells a press-house, the sale includes the trough, the press-beam or press-stone, and the poles, but not the boards that are put on grapes while pressing; neither the wheel nor the treading rod. If, however, he told him, "This press-house, with all its contents," all is sold. R. Eliezer, however, maintains that the expression "press-house" means the treading-rod only.

GEMARA: The rabbis taught: If one sell a press-house, the sale includes the bronze plates that prevent the grapes from scattering, the trough, the press-beams, and lower stones of the handmill, but not the upper stones. If, however, he said, "With all its contents," all is sold. In any case, neither the boards which are put on the grapes while pressing, nor the sacks, nor the packing-bags are sold. R. Eliezer, however, maintains that he who sells a press-house sells the treading-rod also, as the expression "press-house" means chiefly the "treading-rod."

MISHNA *VI.*: If one sell a bath-house, the sale does not include the boards on the floor (the baths at that time were heated beneath the stone floors, and boards were placed on the floor for stepping upon), the basin, neither the curtains on the doors. If, however, he said, "With all its contents," all is sold; but in any case the sale does not include the channels with water, nor the wood piles prepared for the bath-house.

GEMARA: The rabbis taught: If one has sold a bathhouse, the sale includes the separate houses for keeping the boards, the tubs, the basins, and the curtains; but not the boards proper, neither the tubs, nor the basins, nor the curtains. If, however, he said to him, "With all its contents," all

is sold. In any case, however, the channels that contain water for the use of bathing in the summer and rainy seasons are not sold, nor the houses for storing the wood, unless he said: "The bathhouse with all its implements," then the sale includes everything that may be used for bathing purposes.

There was a man who said: "I sell you the press-house with all its implements," and there were some stores outside of the press-house, in which poppy was spread out for drying purposes, and the buyer claimed that they were also included, while the seller claimed they were not. The case came before R. Joseph, who decided in accordance with the Boraitha just cited,

that in such a case everything that maybe used for that purpose is sold. Said Abayi to him: But does not R. Hyya teach the contrary? Therefore said R. Ashi: It must be investigated how the sale was; if he said, "the press-house with all its implements and also its boundaries," then title is given to all of them, but not otherwise.

MISHNA *VII.*: If one sells a town, the sale includes houses, wells, caves, bath and press houses, pigeon-houses, and also Beth Hashal'hin, but not the movable property, unless he said, "the town with all its contents"; then, even if there were cattle or slaves, they are also included in the sale. R. Simeon b. Gamaliel said: He who sells a town sells also the *santer* (the meaning will be explained farther on).

GEMARA: Said R. A'ha b. R. Ivya to R. Ashi: From this Mishna is to be understood that slaves are considered movable property; as, if they were to be considered real estate, then they would be sold with the town without any stipulation. Answered he: Even according to your theory that they are considered movable property, why does the Mishna state that if he said, "*even* with all its contents," slaves are sold also, from which is to be understood that they are not movable property proper? And what could you answer to this--that there is a difference between movable property that must be carried and that which is self-moving? The same answer can apply also to the theory that slaves are considered real estate, as there is a difference between stationary real estate "and that which is self-moving."

"*Sold the santer*." What does this word mean? Here in Babylon they explained it "guardsman," or "bailiff" (a slave). Simeon b. Abtulmus said: It means a *pagus* (land that surrounds the town). According to him who explains it as "guardsman," etc., so much the more is the *pagus* included in the sale; but according to him who explains it as a *pagus*, the guardsman is not included. An objection was raised from our Mishna, which states: "press-houses and Beth Hashal'hin," and the schoolmen explained the expression *shal'hin* (which everywhere means dry field) as meaning the gardens around the town, which also usually ought to be watered. And this is correct only for him who explains the word *santer* as a *pagus*, when the Mishna is to be explained thus: The first Tana holds that only the gardens around the town are included, but not anything else; and R. Simeon b. Gamaliel came to add the *pagus*; which, according

to his opinion, is also included. But according to him who explains *santer* as a "guardsman," if it be assumed that the first Tana speaks about gardens, should R. Simeon answer him with a

"guardsman"? Nay! The explanation of the word *shal'hin* is not gardens, as you thought, but, as is everywhere explained, dry land, which means *pagus*. [And this explanation is correct, as it is written [Job, v. 10]: "And sendeth out waters," etc., which is the translation of *Veshilea'h*.] And R. Simeon b. Gamaliel came to say: Not only a *pagus*, but even the "guardsman," is also included.

Come and hear another objection! R. Jehudah said: The *santer* is not included, but the *anqlmus* (the scribe of the city, who was usually a slave to whom all the surrounding fields on which the taxes were to be collected was known). Hence as the scribe *anqlmus* means a man, so also must *santer* mean a man? Why? *Santer* may mean a *pagus*, and *anqlmus* a man. But this cannot be, because of the latter part of the said Boraitha, which states: It does not include, however, the *shirih*, neither the villages around the town, nor the forests which are near it, and also not the *vivarium* of wild beasts, fowl, or fish. And to the question, What means the word *shirih*? it was said by R. Aba: It means pieces of paguses (*i.e.*, dry land surrounding the town, broken by rocks). Now can you say that part of the *pagus* is not sold, while the whole *pagus* is? Reverse the names! R. Jehudah said: The *anqlmus* is not sold, but the *santer* is.

But how can you say that R. Jehudah is in accordance with R. Simeon? Does he not hold with the rabbis, who said: "The villages that surround the town are not sold," while R. Simeon b. Gamaliel said plainly in a Boraitha: The sale of the town includes the villages near by also? It does not matter. R. Jehudah may agree with him in one thing, and differ in another.

"'*Vivarium' of wild beasts*," etc. There is a contradiction from the following Boraitha: If villages belong to the town, they are not sold with it; if the town contains one part of the sea, or it has a vivarium of wild beasts, fowl, or fish, they are sold therewith. This presents no difficulty! One Boraitha speaks of when the entrance to the *vivarium* was from the city, and the other speaks of when the entrance was from the field. But does not the first Boraitha state: Nor the forests which face the town (which means also the entrance from the town)? Read: The forests that are separated from it.

MISHNA *VIII.*: If one sells a field, the sale includes the stones which are needed for its use; and if it was a vineyard, the sticks which are used for keeping the vines in order. Also the stalks that are attached to the ground, the reed-bushes if they take a space less than that in which a quarter of a kab can be sown, the hut (where the watchman guards) if it is not smeared with clay, and a carob or a sycamore uninoculated; but not the stones, the sticks of a vineyard which are not for use at that time, neither the grain that is not attached to the ground. If, however, he says, "with all its contents," all is sold. In any case, however, the sale does not include the reed-bushes if they take more space than said above, and not the hut if smeared with clay, and not a carob or sycamore when inoculated.

GEMARA: What stones are to be considered to be needed for use? Here in this college it was explained, stones which are prepared for laying upon the sheaves, that they may not be scattered by the wind. Ula, however, said: It means stones that are arranged for a wall.

But did not R. Hyya teach: The stones that were gathered in heaps for this purpose? Read: arranged. To him who explains the stones as for laying upon the sheaves--according to R. Meir,

who says elsewhere that if one sells a vineyard all the things which are useful for it are sold therewith, the stones in question are included, even when they are placed outside the field; and according to his opponents, only when they are placed in the field and prepared for this purpose. And to Ula's explanation that it means stones for a wall--according to R. Meir even when they were not arranged, and to his opponents only when they were arranged.

"*The sticks*," etc. The school of R. Yanai says: It means posts for supporting the vine, in order to prevent its bending. And according to R. Meir, even when they were not prepared for this purpose; and to the rabbis his opponents, however, only when already placed under the vine.

"*Stalks which are attached*," etc. Even when they are ripe for harvesting.

"*The reed-bushes*," etc. Although they are growing separately, or thick ones, which have nothing to do with the vineyard.

"*The hut*," etc. Although it was not attached to the ground.

"*And the carob*," etc. Although thick and strong.

"*But not the stones*," etc. According to R. Meir, when they were not prepared for this purpose, and according to the rabbis when they were outside of the field; and also to Ula's explanation--according to R. Meir, when they were not prepared, and to the rabbis, when they were not arranged.

"*The posts for supporting*," etc. According to R. Meir, when they were not prepared, and according to the rabbis, when they were not placed under the vine.

"*When they were not attached*," etc. Even so they still needed the ground for drying.

"*And not the reed-bushes*." Although they are still small. And R. Hyya b. Aba said in the name of R. Johanan: Not reed-bushes only, but even if there was a small bed of spices, having a separate name, it is not included in the sale. Said R. Papa: Provided they are called the spices of so and so.

"*And not the hut*," etc. Although it were attached to the ground.

"*Nor the carob*," etc. Whence is this deduced? Said R. Jehudah in the name of Rabh: From [Gen. xxxiii. 17]: "And the field of Ephron . . . and all the trees that were in the field, that were in all its borders round about, were made sure"; from which is to be understood that all those without the borders were excluded (and so also the inoculated carob, etc., are of separate value and had nothing to do with his field). Said R. Mesharshia: From this passage we infer that the boundary is sold to the buyer with the field biblically; *i.e.*, because it is written "round about," which is the boundary, and was sold by Ephron with the field.

R. Jehudah said: It is advisable for one who sells his estate to write in the bill of sale "acquire title to the trees, to the young plants, also to those trees that do not yield fruit." And although title is given to all these, even if it were not so written, it is better for the bill of sale to contain the words just mentioned. If one said: "I sell you the ground and date trees," then, if there were such on his estate, he must give him two of them; and if there were not, he has to buy two for him; and if he possesses them, but they were mortgaged, he has to redeem two for him. If he said: "I sell you the estate with the date trees," if the estate contains such the sale is valid; and if not, the sale is void. If he said: "An estate on which there are date trees," and there were none, the sale is valid; for he meant, it is fit for them. If he said: "I sell to you this estate,

except such and such a tree," it is to be investigated whether this tree is a good one that yields much fruit--then he reserves it for himself; but if it was a bad one, which yields no fruit at all, or only a little, and in this field were better ones, so much the more does he reserve them for himself. If he said: "I sell you this field, except the trees," if there were many kinds of trees they are certainly not included; but even if it contained only date trees or vines, they are excluded also. If, however, there were trees and vines, the trees only are excluded; and if there were date trees and vines, the date trees are excluded but not the vines.

Rabh said: A date tree is considered a reservation only when he must ascend with a rope for gathering the fruit; but if not so high, it is not considered a reservation. The judges of the Exile (Samuel and Karna), however, maintain: If it does not hinder the yoke of oxen which are ploughing around it, it is not considered a reservation; but if it does hinder, it is. However, they do not differ, as Rabh speaks of a date tree and they treat of other trees.

R. A'ha b. Huna questioned R. Shesheth: How is it if the seller says: Accept the half of such and such a carob? It is certain to me that he does not acquire title to other carobs; but I doubt whether he acquires title to the half of the carob in question? And the answer was: He does not. He objected to him from the following Boraitha: If he said, "Accept the half of such and such a carob," title is not acquired to the other carobs, by which is to be understood that he does not to the other carobs, but he does to the half in question? And he answered: Nay! Even to the half left to the buyer, title is not given, this case being similar to one in which it was said, "I sell you this field, except the half of such and such a one." Were we to assume that the buyer acquires title to all his fields except the half in question, although he said plainly, "I sell you *this* field," it must be said he does not acquire title to any except to that which he had shown him; and that his remark, "except the half field," etc., was but redundance. The same is the case here. If he said, "I sell you this field, except the half tree," the last word is to be considered redundance.

R. Amram questioned R. Hisda: If one has deposited something with his neighbor, and taken from him a receipt (approved by witnesses), and thereafter the depositary claims that he has returned the bailment, how is the law? May it be said that,

because if he were to claim that the bailment was taken away from him by force, he would be trusted, the same should be the case with the claim, "I have returned," or the depositor has a right to say: If it were so, how comes thy receipt in my hands? And he answered: He is to be trusted when he takes an oath, the same being the case when the depositary claims "it was taken

away from me by force"--he must take an oath.

Shall we assume that R. Amram and R. Hisda differ on the same point as the Tanaim of the following Boraitha differ: If one holds a document which witnesses to an amount of money given by him to his deceased partner for a half profit, and claims that the amount was not returned to him, while the orphans say that they are not certain whether the amount was returned? The judges of the Exile said: The plaintiff has to take an oath, and collects the whole amount. The judges of Palestine, however, maintain that he collects only the half with this oath. And all of them agree with the sages of Nahardea, that of the money which is given for the purpose of a half profit half of the amount is considered a loan and the other half a deposit. (See Middle Gate, p. 277.) Now is it not to be supposed that the point of their differing is that one party holds that the claim of the plaintiff, "The document in my hand gives evidence that the amount was not returned," is to be listened to, and the other party (who says that with the oath he collects the half only) maintains that such is not considered evidence? Nay! All agree with R. Hisda, and the point of their differing is, that one party holds if the deceased had returned, he would have notified his heirs, and the other holds it may be that death prevented him from doing so.

R. Huna b. Abi sent the following message: A depositary who claims that he had returned the bailment, although his receipt is still in the hands of the depositor, is to be trusted (with an oath), and with a document of a half profit in the hands of the plaintiff suing the orphans, he may swear and collect the whole amount. Do these two statements contradict each other (as in the case of a depositary the document is in the hand of the plaintiff, and the *defendant* is trusted with an oath, and in the case of a half profit the *plaintiff* is trusted with an oath)? The latter case is different, because, if the deceased had made return, he would have notified his heirs. Said Rabha: The Halakha prevails concerning orphans, that he takes only the half with an oath. Mar Zutra, however, said: The Halakha

prevails with the judges of the Exile. And to the objection of Rabhina, that Rabha had long ago decided that he takes only the half with an oath, he answered: We have learned the reverse; *i.e.*, that the judges of the Exile hold that he takes the half only with an oath, and the Palestinians, that he collects the whole amount. Hence my decision is the same as Rabha's.

MISHNA *IX*.: In selling a field, if it contains a well, cistern, or pigeon-house, no matter whether they are still in use or damaged, they are not included in the sale. However, the seller must buy a way from the buyer for passing to them. So is the decree of R. Aqiba. The sages, however, say that it is not necessary. R. Aqiba, however, admits that if the bill of sale states, "except the above things," he need not buy a way. If the seller sold the above separately to another--according to R. Aqiba it is not necessary for the buyer of them to buy a passage, and according to the sages it is. This is all said concerning a sale; but if the owner of the field has made a gift of it, title is given to the field with all its contents. The same is the case when brothers divide their inheritance, and the field falls in a share of one of them: he acquires title to all its contents.

If one made a hazakah on the estate of a childless proselyte, the hazakah applies to all the above-mentioned things, if they were to be found on it. If one consecrate his field, all that is to be found in it is sanctified. R. Simeon, however, said: The above-mentioned things are not included in the sanctification; but if there was an inoculated carob or a trunk of a sycamore, it is included,

because while growing they are nourished by the sanctified ground.

GEMARA: What is the difference between a sale and a gift? Jehudah b. N'qusa explained before Rabbi: The one who makes a gift, if he desires to reserve any part of it for himself, he ought to state so plainly, which is not the case with a seller, who needs money: the details of the sale must be determined by the buyer, and if not so done, the seller has the preference.

There was a man who said in his will: Give to so and so my house that contains a hundred barrels (*i.e.*, that within the width, length, and height of the house ten barrels square could be placed). After investigation it was found that the house contained one hundred and twenty barrels (*i.e.*, twelve rows, each of ten barrels), and no other house was found on the deceased's estate. And Mar Zutra said: The will states a hundred, but not a hundred and twenty. Said R. Ashi to him:

[paragraph continues] Did not our Mishna state: All this is said concerning a sale, but concerning a gift title is given to all; and the reason is that he who makes a gift does it with a good eye? The same is the case here. The deceased thought that it contained a hundred only. He therefore said so, that the donee should be aware that he bequeathed him such a big house, but not to exclude it if it contained still more than he thought, as it must be supposed it was given to him with a good eye.

"*If one consecrated his field*," etc. R. Huna said: Although the rabbis have declared that he who buys two trees that are between others does not acquire title to the ground beneath, if the seller has sold the ground with the trees, but reserved two trees for himself, the ground beneath belongs to him. And even R. Aqiba's theory, that usually a seller sells with a good eye, is only concerning a well, etc., which does not cause any harm to the ground; but as for trees, which while nourishing do so, if the buyer should not agree that the ground beneath should belong to the seller, he would tell him to cut down the trees and go; and if he did not do so, it must be supposed that he was willing that the trees with the ground beneath should remain to the seller forever, so that in case the trees should wither he might plant others instead.

Footnotes

147:1 The commentator Rashbam explains it as a shelter in the rear; and R. Joseph's explanation means the same, but with windows. Our explanation, however, is in, accordance with Schönhak's Dictionary, which seems to us to be the proper one.

151:1 In the text are only a few words, their meaning being very obscure. The commentators Rashbam and Rabana Gershom differ in their explanation, and in the first saying of Rabba we have adopted Rashbam's interpretation, and in the second Gershom's, though both are very complicated and difficult.

152:1 The reason is, according to Rashbam, that all those quantities were known for said

Purposes. However, he himself was not satisfied with this exposition, and explained it in accordance with Symmachos's theory elsewhere, that all doubtful moneys or properties must be divided. But it is very complicated, and therefore we leave its interpretation to the reader.

153:1 Transferred from 148*b* in this Tract.

155:1 This explanation is the best we can offer, not to contradict Rashbam and R. Gershom (*q. v.*).

155:2 This is a Boraitha with the unusual expression Itemar. See Explanatory Remarks (back of title page).

156:1 According to Halpern he was of the time of R. Huna the Exilarch, and was called "minor" to distinguish him from the former. Others, however, say that it must be Hamnunah.

157:1 A Beth Hulsauth, according to Rashbam, means sand of which glass is made; to Gershom, it means rock. Schönhak, however, maintains that it is a Greek word, meaning *bank*. The reader may choose.

Next: Chapter V