

**A** בס"ד

Intro

Today we will Be"H learn ס"ד of בבא בתרא. Some of the topics we will learn about include:

לא את הבור ולא את הדות  
אע"פ שכתב לו עומקא ורומא

When one sells a house, the water pits and cisterns are not included.

Even when he specified that its depth and height are included in the sale, because this refers only to the rights to dig below the property and build in the airspace, but does not include its water pits and cisterns;

צריך ליקח לו דרך

The מחלוקת whether the seller must purchase from the buyer the right to access his pit, or he reserved these rights?

This may depend on the following factors:

1.

אין אדם רוצה

שיתן מעותיו

וידרסוהו אחרים

The buyer purchased the property with the implicit understanding that no one had the right to walk through it.

**A**

לא את הבור ולא את הדות  
אע"פ שכתב לו  
עומקא ורומא

צריך ליקח לו דרך

אין אדם רוצה  
שיתן מעותיו  
וידרסוהו אחרים

**B** OR

אין אדם רוצה שיטול מעות  
ויפרח באויר

The seller sold the property with the implicit understanding that he reserves the right to access his pit.

2.

בתר דעתא דלוקח או מוכר אזלינן

The primary determinant is the seller's or the buyer's needs.

3.

מוכר בעין יפה או עין רעה מוכר

One sells his property generously or begrudgingly.

**B**

אין אדם רוצה  
שיטול מעות  
ויפרח באויר

בתר דעתא  
דלוקח או מוכר  
אזלינן

מוכר  
בעין יפה או עין רעה  
מוכר

1 So let's review...

Zugt di Mishnah

לא את הבור ולא את הדות  
אע"פ שכתב לו עומקא ורומא

When one sells a house, the water pits and cisterns are not included;

Even when he specified that its depth and height are included in the sale, because this refers only to the rights to dig below the property and build in the airspace, but does not include its water pits and cisterns;

As the Gemara on ג"ס דף explained,  
עומקא ורומא בסתמא לא קני

One does not automatically include these rights in the sale.

Therefore,

אהני עומקא ורומא  
למיקנא עומקא ורומא

His mention of the depth and the height refers to the rights to dig under the house and to build on its roof.

Therefore,

צריך למכתב ליה  
קני לך מתהום ארעא ועד רום רקיעא  
למיקנא בור ודות ומחילות

If he wants to include water pits, cisterns and tunnels, he needs to specify further that he is including everything 'from the depths of the earth to the height of the sky.'

The Gemara there also cited an alternate interpretation of the Mishnah.

The Gemara explains

אחד הבור ואחד הדות בקרקע

Both a pit and a cistern are in the ground. However,  
הבור בחפירה  
והדות בבנין

A pit is merely a hole dug in the ground, while a cistern is reinforced with stones. Therefore, as the Rashbam explains,

תנא בור  
דלא חשיב

The Mishnah teaches us that although a pit is not a significant entity, it is not included in the sale; and  
תנא דות

שהוא כעין הבית

Although a cistern resembles the house in that it is a structure, it is not included in the sale.

1

מקור

לא את הבור ולא את הדות  
אע"פ שכתב לו עומקא ורומא

When one sells a house,  
the water pits and cisterns are not included;  
Even when he specified that its depth and height  
are included in the sale,  
because this refers only to the rights to dig  
below the property and build in the airspace,  
but does not include its water pits and cisterns.

עומקא ורומא בסתמא לא קני

One does not automatically  
include these rights in the sale.

Therefore,

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למיקנא עומקא ורומא

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תנא בור – דלא חשיב

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a significant entity, it is not included in the sale; and  
תנא דות – שהוא כעין הבית

Although a cistern resembles the house in that it is a  
structure, it is not included in the sale.

**2** The Mishnah continues;  
 וצריך ליקח לו דרך  
 דברי רבי עקיבא  
 The seller must purchase from the buyer the right to access his pit.  
 וחכמים אומרים  
 אינו צריך ליקח לו דרך  
 He does not need to purchase this right, because it's understood that he reserved this right in the sale of the property.

However, the Mishnah continues;  
 ומודה רבי עקיבא  
 בזמן שאמר לו חוץ מאלו  
 שאין צריך ליקח דרך  
 If he specified that the pit is not part of the sale, all agree that he does not need to purchase the right to access the pit, because he reserved this right with this superfluous expression, since it's not included in the sale even without specifying.

The Mishnah concludes;  
 מכרן לאחר  
 If the seller sold the pit or cistern, but kept the property,  
 רבי עקיבא אומר  
 אינו צריך ליקח לו דרך  
 The buyer does not need to purchase the right to access his pit.  
 וחכמים אומרים  
 צריך ליקח לו דרך  
 The buyer needs to purchase this right separately.  
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**3** The Gemara explains that the תנא קמא ורבי עקיבא disagree in a general principle:  
 רבי עקיבא says  
 צריך ליקח לו דרך  
 Because he generally holds  
 מוכר בעין יפה מוכר  
 One sells his property generously.  
 Therefore, when he sells the property, he does not retain the right to access his pit, and when he sells the pit, he does include this right.  
 And the חכמים say  
 אינו צריך ליקח לו דרך  
 Because they generally hold  
 מוכר בעין רעה מוכר  
 One sells his property begrudgingly.  
 Therefore, when he sells the property, he retains the right to access his pit, and when he sells the pit, he does not include this right.

The Gemara adds  
 דקאמר נמי בעלמא  
 רבי עקיבא לטעמיה דאמר  
 מוכר בעין יפה מוכר  
 מהכא  
 Whenever the Gemara references the opinion of רבי עקיבא that one sells generously, our Mishnah is the source for this statement.  
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**2** משנה

<p>ומכנים אומרים</p> <p><b>אינו צריך ליקח לו דרך</b></p> <p>He does not need to purchase this right, because it's understood that he reserved this right in the sale of the property.</p>	<p>רבי עקיבא</p> <p><b>וצריך ליקח לו דרך</b></p> <p>The seller must purchase from the buyer the right to access his pit.</p>
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**ומודה רבי עקיבא בזמן שאמר לו חוץ מאלו שאין צריך ליקח דרך**

If he specified that the pit is not part of the sale, all agree that he does not need to purchase access rights.  
 He reserved this right with his superfluous expression, since it is not included in the sale even without specifying.

**מכרן לאחר**

If the seller sold the pit or cistern, but kept the property,

<p>ומכנים אומרים</p> <p><b>צריך ליקח לו דרך</b></p> <p>The buyer needs to purchase this right separately.</p>	<p>רבי עקיבא אומר</p> <p><b>אינו צריך ליקח לו דרך</b></p> <p>The buyer does not need to purchase the right to access his pit.</p>
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**3**

<p>מכנים</p> <p><b>אינו צריך ליקח לו דרך</b></p> <p>Because they generally hold</p> <p><b>מוכר בעין רעה מוכר</b></p> <p>One sells his property begrudgingly.          Therefore, when he sells the property, he retains the right to access his pit, and when he sells the pit, he does not include this right.</p>	<p>רבי עקיבא</p> <p><b>צריך ליקח לו דרך</b></p> <p>Because he generally holds</p> <p><b>מוכר בעין יפה מוכר</b></p> <p>One sells his property generously.          Therefore, when he sells the property, he does not retain the right to access his pit, and when he sells the pit, he does include this right.</p>
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**דקאמר נמי בעלמא רבי עקיבא לטעמיה דאמר מוכר בעין יפה מוכר מהכא**

Whenever the Gemara references the opinion of רבי עקיבא that one sells generously, our Mishnah is the source for this statement.

4 The Gemara entertains other explanations for our Mishnah's עקיבא ורבי as follows:  
 רבי עקיבא says  
 צריך ליקח לו דרך  
 Because  
 אין אדם רוצה שיתן מעותיו  
 וידרסוהו אחרים  
 The buyer bought the property with the implicit understanding that no one had the right to walk through it. Therefore, the seller needs to purchase the right to access his pit.  
 However, the רבנן maintain  
 אינו צריך ליקח לו דרך  
 Because  
 אין אדם רוצה שיטול מעות  
 ויפרח באויר  
 The seller sold the property with the implicit understanding that he reserves the ability to access his pit. This need supersedes the buyer's preference, because ®  
 אין כאן חסרון ממון  
 The buyer does not suffer any financial loss when the seller walks through his property.  
 Therefore, the seller does not need to purchase this right.

However, the Gemara rejects this explanation, because החליפו טעמייהו  
 In the second case of the Mishnah, when the owner sells the pit and keeps the house, the רבנן and רבי עקיבא seem to reverse their rulings:  
 The רבנן say  
 צריך ליקח לו דרך  
 He does need to purchase this right separately.  
 While רבי עקיבא says  
 אין צריך ליקח לו דרך  
 The buyer does not need to purchase this right separately?

4 *Other explanations of this Machlokes*

<p><i>רבנן</i></p> <p><b>אינו צריך ליקח לו דרך</b></p> <p><i>Because</i></p> <p><b>אין אדם רוצה שיטול מעות ויפרח באויר</b></p> <p><i>The seller sold the property with the understanding that he reserves the ability to access his pit. This need supersedes the buyer's preference, because</i></p> <p><i>אין כאן חסרון ממון</i></p> <p><i>The buyer does not suffer any financial loss when the seller walks through his property. Therefore, the seller does not need to purchase this right.</i></p>	<p><i>רבי עקיבא</i></p> <p><b>צריך ליקח לו דרך</b></p> <p><i>Because</i></p> <p><b>אין אדם רוצה שיתן מעותיו וידרסוהו אחרים</b></p> <p><i>The buyer bought the property with the implicit understanding that no one had the right to walk through it. Therefore, the seller needs to purchase the right to access his pit.</i></p>
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**החליפו טעמייהו**

*In the second case of the Mishnah, when the owner sells the pit and keeps the house, the רבנן and רבי עקיבא seem to reverse their rulings:*

<p><i>The רבנן say</i></p> <p><b>צריך ליקח לו דרך</b></p> <p><i>He does need to purchase this right separately.</i></p>	<p><i>While רבי עקיבא says</i></p> <p><b>אין צריך ליקח לו דרך</b></p> <p><i>The buyer does not need to purchase this right separately?</i></p>
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5 Therefore, the Gemara suggests, as the Rashbam explains,

בין לרבנן בין לרבי עיקבא  
חשיבי להו הנך שתי טענות  
They agree that both the buyer AND the seller have a  
valid claim. However,

רבי עקיבא סבר  
בתר דעתא דלוקח אזלינן  
בתר דעתא דלוקח אזלינן  
רבי עקיבא holds the primary determinant is the buyer's  
needs, because ®  
אין אדם משליך מעותיו לאבוד  
A person expects fair compensation for his payment, and  
so

יד לוקח על העליונה  
The buyer has the upper hand. ®

רבנן סברי  
בתר דעתא דמוכר אזלינן  
The רבנן hold the primary determinant is the seller's needs,  
because ®

יד בעל השטר על התחונה  
The house is in his possession, and the buyer must prove  
what exactly he purchased.

However, the Gemara rejects this explanation as well,  
because the Mishnah on ע"א דף cites a parallel מחלוקת  
לא את הבור ולא את הגת ולא את השוכך

בין חרבין בין ישובין  
Water pits, winepresses, and dovescotes are not included in  
the sale of a field, whether they are empty or in use. The  
Mishnah then continues

וצריך ליקח לו דרך  
דברי רבי עקיבא  
The seller must purchase the rights to traverse the field to  
access his property.

וחכמים אומרין  
אינו צריך  
He does not need to buy these rights, because he reserves  
these rights in the original sale.

5

בין לרבנן בין לרבי עיקבא  
חשיבי להו הנך שתי טענות

They agree that both  
the buyer AND the seller have a valid claim.

רבנן סברי  
בתר דעתא דמוכר  
אזלינן

The primary determinant is  
the seller's needs,

Because

יד בעל השטר  
על התחונה

The house is in his  
possession, and the buyer  
must prove what exactly  
he purchased.

רבי עקיבא סבר  
בתר דעתא דלוקח  
אזלינן

The primary determinant is  
the buyer's needs,

Because

אין אדם  
משליך מעותיו לאבוד

A person expects fair  
compensation for his  
payment, and so  
יד לוקח על העליונה  
The buyer has the upper  
hand.

מחלוקת, The Mishnah on ע"א דף cites a parallel

לא את הבור ולא את הגת ולא את השוכך  
בין חרבין בין ישובין

Water pits, winepresses, and dovescotes  
are not included in the sale of a field,  
whether they are empty or in use.

חכמים  
אינו צריך ליקח לו דרך

He does not need to buy  
these rights, because he  
reserves these rights in the  
original sale.

רבי עקיבא  
וצריך ליקח לו דרך

The seller must purchase  
the rights to traverse  
the field to access his  
property.

6 Now, the Gemara explains why the Mishnah taught the same Halachah regarding houses and fields:

בית  
משום דבעי צניעותא  
On the one hand, walking through one's house disturbs his privacy.  
On the other hand,  
שדה  
משום דקשי ליה דוושא  
Walking through a field could damage the crops.  
Therefore, the Mishnah tells us that the תנא קמא ורבי עקיבא argue in both cases.

However, the Mishnah then concludes:  
מכרן לאחר  
If the seller sold the pit or winepress, but kept the field,  
רבי עקיבא אומר  
אינו צריך ליקח לו דרך  
The buyer does not need to purchase this right separately.  
וחכמים אומרים  
צריך ליקח לו דרך  
He does need to purchase this right separately.

The Gemara points out  
הא תו למה לי  
היינו הך  
Once the second Mishnah cited the מחלוקת regarding a field as well and taught that there's no difference between a house and a field, this additional case is superfluous, because it is obvious that the מחלוקת applies whether he sells the field or the pit as taught in the first Mishnah regarding a house?

Therefore, the Gemara concludes, that this extra case serves to explain that the תנא קמא ורבי עקיבא disagree in a general principle as explained in the beginning:  
רבי עקיבא סבר  
מוכר בעין יפה מוכר  
ורבנן סברי  
מוכר בעין רעה מוכר

6 *The Gemara explains why the Mishnah taught the same Halachah regarding houses and fields*

**בית**  
**משום דבעי צניעותא**  
*Walking through one's house disturbs his privacy.*

*On the other hand,*  
**שדה**  
**משום דקשי ליה דוושא**  
*Walking through a field could damage the crops.*

*Therefore, the Mishnah tells us that the תנא קמא and רבי עקיבא argue in both cases.*

*The Mishnah then concludes:*  
**מכרן לאחר**  
*If the seller sold the pit or winepress, but kept the field,*

*וחכמים אומרים*  
**צריך**  
**ליקח לו דרך**  
*He does need to purchase this right separately.*

*רבי עקיבא אומר*  
**אינו צריך**  
**ליקח לו דרך**  
*The buyer does not need to purchase this right separately.*

**?**  
**הא תו למה לי**  
**היינו הך**  
*Once the second Mishnah cited the מחלוקת regarding a field as well and taught that there's no difference between a house and a field, this additional case is superfluous, because it is obvious that the מחלוקת applies whether he sells the field or the pit as taught in the first Mishnah regarding a house?*

*This extra case serves to explain that the תנא קמא ורבי עקיבא disagree in a general principle,*

*רבי עקיבא סבר*  
**מוכר בעין יפה מוכר**  
*ורבנן סברי*  
**מוכר בעין רעה מוכר**



7 The Gemara cites a מחלוקת in how to rule:  
 רב הונא אמר רב  
 הלכה כדברי חכמים  
 ורב ירמיה בר אבא אמר שמואל  
 הלכה כרבי עקיבא  
 רבי עקיבא רבנן, while Shmuel ruled like רב.

7  
 רב הונא אמר רב  
**הלכה כדברי חכמים**  
 ורב ירמיה בר אבא אמר שמואל  
**הלכה כרבי עקיבא**

8 The Gemara cites a parallel רב ושמואל מחלוקת רב ושמואל:  
 אמר רב נחמן אמר שמואל  
 האחין שחלקו  
 When two brothers divide an estate, it is considered as if  
 each one sold his portion to the other for his portion, and  
 אין להן לא דרך זה על זה  
 ולא סולמות זה על זה  
 ולא חלונות זה על זה  
 ולא אמות המים זה על זה  
 They do not have the rights to access their property by  
 walking through or erecting ladders on the other's  
 property. They also cannot stop each other from blocking  
 their windows, nor can they direct an irrigation channel  
 through each other's properties.  
 However,  
 רב אמר  
 יש להן  
 They do have these rights.

8  
**האחין שחלקו**  
 When two brothers divide an estate,  
 it is considered as if each one sold his portion to the other  
 for his portion, and  
**אין להן לא דרך זה על זה  
 ולא סולמות זה על זה  
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 ולא אמות המים זה על זה**  
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 on the other's property.  
 They also cannot stop each other  
 from blocking their windows,  
 nor can they direct an irrigation channel  
 through each other's properties.  
 However,  
**רב אמר – יש להן**  
 They do have these rights.

The Gemara explains  
 שמואל ס"ל  
 בעין יפה מוכר  
 rules that one sells generously, and so they do not  
 retain these rights, while  
 רב ס"ל  
 בעין רעה מוכר  
 rules that one sells begrudgingly, and so they do retain  
 these rights.

רב ס"ל  
**בעין רעה מוכר**  
 One sells begrudgingly,  
 and so they do retain  
 these rights.  
 שמואל ס"ל  
**בעין יפה מוכר**  
 One sells generously,  
 and so they do not retain  
 these rights.

The Gemara explains that we might have thought  
 בעינא למידר ביה  
 כי היכי דדרו ביה אבהתי  
 Each brother could argue, "I have the right to use this  
 property the way our father did." Therefore, the Gemara  
 tells us that רב ושמואל argue in this case as well.

The Gemara explains that we might have thought  
**בעינא למידר ביה  
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