



בס"ד

Intro

Today we will Be"H learn מסכת בבא בתרא of איז סך מדף מסכת. Some of the topics we will learn about include:

בור, גת, שובך

Various items which are not included in the sale of a field;

צריך ליקח לו דרך

Whether the seller must purchase the right to traverse the field to access his property?

מוכר בעין יפה או עין רעה מוכר

Whether one sells his property generously or begrudgingly, regarding:

מכר, a sale,

מתנה, a gift, or

הקדש, consecrating property.

בור, גת, שובך
Items which are not included in the sale of a field

בריך ליקח לו
דרך
מוכר בעין יפה
או עין רעה מוכר

נכסי הגר

The property of a deceased convert who generally has no heirs is הפקר, ownerless, and anyone can claim his estate.

הקונה ב' או ג' אילנות

Whether one who purchases trees in another's property also acquires the land under and between them?

And in the reverse case

מכר קרקע ושייר אילנות

Whether one who sells property and retains trees for himself keeps the land under and around them?









So let's review...

Zugt di Mishnah

לא את הבור ולא את הגת ולא את השובך

בין חרבין בין ישובין

Water pits, winepresses, and dovecotes are not included in the sale of a field, whether they are empty or in use. As the Rashbam adds;

אע"פ שאמר לו

כל מה שבתוכה

Even if he included the field's contents in the sale;

The Mishnah continues

וצריך ליקח לו דרך

דברי רבי עקיבא

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

וחכמים אומרים

אינו צריך

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

However, the Mishnah continues,

ומודה רבי עקיבא

בזמן שאמר לו חוץ מאלו

שאינו 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 continues with the reverse case: מכרן לאחר

If the owner 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.









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The Gemara on דף ס"ד explained that the תנא קמא ורבי 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 field, he does not retain for himself the right to access his pit, and when he sells the pit, he does include for the buyer this right to access his pit.

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 for himself the right to access his pit, and when he sells the pit, he does not include for the buyer this right to access his pit.

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The Gemara on 3"0 P3 explained they disagree in a general principle

מ*מים:* ו אריד ליכח לו

Racausa

מוכר בעין רעה מוכר

Therefore,
when he sells the property,
he retains for himself
the right to access his pit,
and when he sells the pit,
he does not include for the buyer

this right to access his pit

Because מוכר בעין יפה

Therefore,
when he sells the field:
he does not retain for himself
the right to access his pit,
and when he sells the pit:
he does include for the buyer
this right to access his pit

The Mishnah continues and qualifies; בד"א במוכר

All the exclusions listed in this Perek apply only to the sale of a property.

אבל בנותן מתנה

נותן את כולה

When one gives a property as a gift, he includes all the associated items, including the water pit and winepress, and carob and sycamore trees, because, the Gemara explains,

מאן דיהיב מתנה

בעין יפה יהיב

One certainly gives gifts generously, as the Rashbam explains

אפילו מאי דלא הוי בכלל שדה

הואיל וקבוע בתוך השדה

He includes all associated items.

The Gemara points out

זה לא פירש

וזה לא פירש

Although neither a seller, nor one who gives a gift, expresses whether these items are included?

The Mishnah continues and qualifies

אוני דבנים אמוני

במוכר

All the exclusions listed in this Perek apply only to the sale of a property

אכל בנותן מתנה נותן את כולה

When one gives a property as a gift, he includes all the associated items, including the water pit and winepress, and carob and sycamore trees

Because, the Gemara explains

מאן דיהיב מתנה בעין יפה יהיב

One certainly gives gifts generously אפילו מאי דלא הוי בכלל שדה הואיל וקבוע בתוך השדה

The Gemara points out

זה לא פירש וזה לא פירש?

Although neither a seller, nor one who gives a gift, expresses whether these items are included?









However, the Gemara differentiates:

זה היה לו לפרש

וזה לא היה לו לפרש

Since one generally gives gifts generously, he should have stated explicitly what he is excluding; and therefore, מדלא שייר

הפסיד

We assume everything is included. However,

מוכר

זוזי אנסוהו

One only sells when he has a pressing need, and so we assume that these items are excluded.

However, the Rashbam adds,

מעות או תבואה תלושה

ודאי לא קנה

Unassociated items found on the property, such as money or harvested grain, are certainly not included in a gift either.

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The Mishnah continues

האחין שחלקו

זכו בשדה, זכו בכולה

When brothers divide an estate, one who gets a field as his share receives all associated items, including water pits and winepresses.

Similarly,

המחזיק בנכסי הגר

החזיק בשדה החזיק בכולה

If one claims the assets of a deceased convert, who has no heirs and his property is הפקר, ownerless;

By taking possession of the field, he also acquires all associated items, including carob and sycamore trees.

The Rashbam points out:

Although the **G**emara on דף ע' said

חרוב וסדן

חשיבי שדה בפני עצמן

These trees are considered separate property?

However, the Rashbam explains,

ליכא מיצר ביניהן

There is no border between them, and so he acquires both with one קנין.

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The Mishnah continues

האחין שחלקו זכו בשרה, זכו בכולה

When brothers divide an estate, one who gets a field as his share receives all associated items, including water pits and winepresses



המחזיק בנכסי הגר החזיק בשרה החזיק בכולה

If one claims the assets of a deceased convert, who has no heirs and his property is 1700;

By taking possession of the field, he also acquires all associated items, including carob and sycamore trees



The Rashbam points out: Although the Gemara on γ β3' said

חרוב וסדן חשיבי שדה בפני עצמן

these trees are considered separate property?



However, the Rashbam explains,

ליכא מילר ביניהן

There is no border between them, and so he acquires both with one yp







6 The Mishnah continues

המקדיש את השדה

הקדיש את כולה

If someone consecrates a field, all the associated items are sanctified. As the Rashbam explains, because the תנא קמא holds

בעין יפה מקדיש

כמו נותן

One sanctifies generously, just as one who gives a gift. ${\mathbb R}$ However.

רבי שמעון אומר

המקדיש את השדה לא הקדיש אלא

את החרוב המורכב ואת סדן השקמה

Because ®

המקדיש

דעתו כדעת מוכר

One who sanctifies is similar to a seller, and does not include all these items.

However, the carob and sycamore trees ARE sanctified, as the Gemara explains

הואיל ויונקין משדה הקדש

Since they draw nourishment from the land of הקדש, and as the Rashbam explains

גידולי הקדש

הקדש נינהו

Growths of הקדש are also sanctified.

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The Gemara cites a related ruling: הקונה ג' אילנות בתוך של חבירו

הרי זה קנה קרקע

One who purchases three trees in another person's field also acquires the land under and between them, because λ' חשיבי שדה אילן

Three trees constitute a field.

However.

הקונה שני אילנות

בתוך של חבירו

One who purchases two trees in another person's field, it depends:

לרבנן

הרי זה לא קנה קרקע

According to the רבנן, who hold

מוכר בעין רעה מוכר

One sells begrudgingly;

The buyer does not acquire the land under and around them.

לרבי עקיבא

הרי זה קנה קרקע

According to ר"ע, who holds

מוכר בעין יפה מוכר

One sells generously;

The buyer does acquire some land.









Nevertheless, in the reverse case, רב הונא rules

ושייר שני אילנות לפניו

יש לו קרקע

One who sells a field and retains two of its trees for himself, DOES keep the land under and around them. And at this point the Gemara explains that ירב הונא ruling is

אפילו לרבי עקיבא

Even according to ר"ע, who generally holds

מוכר בעין יפה מוכר

One sells generously;

הני מילי גבי בור ודות

דלא קא מכחשי בארעא

Where he sold the field and retained the pit, he did not keep land around it, or keep a path, because since it causes no loss to the buyer, the new owner of the field, he's not concerned that he would be denied access or evicted. However.

אילנות בעין רעה מוכר

דקא מכחשי בארעא

רבי עקיבא agrees that one who sells the field and retains two trees, sells the field begrudgingly and intends to also retain some of the land, because otherwise, since the trees deplete the land, he is concerned that the buyer, the new owner of the field, will turn around and demand עקור אילנך שקול וזיל

Remove your trees, because they're depleting my field.



9 The Gemara now challenges רב הונא's ruling from our Mishnah:

ruled רב הונא

שיורי שייר

The seller keeps some land with the trees, according to all opinions.

However, רבי שמעון ruled

לא הקדיש אלא

את החרוב המורכב

ואת סדן השקמה

הואיל ויונקין משדה הקדש

The carob and sycamore trees are sanctified, because they are nourished from land of הקדש. This indicates that המשייר אילנות

לא משייר קרקע

The seller kept the trees but not the land, and so the trees grew from the field of הקדש?







access



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Therefore, the Gemara retracts its previous assumption that

אפילו לר"ע

אילנות בעין רעה מוכר

Rather, מחלוקת ר"ע's ruling is indeed subject to the מחלוקת וורבנן:

ר"ש דאמר כר"ע

מוכר בעין יפה מוכר הכל

 υ "ר holds like "ר"ס that one sells generously. Therefore, although he did not consecrate all the associated items, because ®

מה שלא פירש לא מכר

Nevertheless, whatever he does consecrate, he does so generously and does not keep any rights in the land, and so the trees grew on הקדש's property. However,

רב הונא דאמר כרבנן

מוכר בעין רעה מוכר

רב הוגא holds like the רב הוגא that one sells begrudgingly. Therefore, he keeps some land and the trees are not הקדש, because they grew on private property, and רב הוגא is teaching

נפקא מינה

דאי נפלי הדר שתיל להו

He even retains the right to plant another tree in its place.

However, the Gemara on דף ע"ב rejects this explanation, and offers another interpretation of the אחלוקת ר"ש ורבנן;

10

The Gemara retracts its previous assumption that

Rather, רב הונא's ruling is indeed subject to the מחלוקת ר"ע ורבנן

וב פוןא דאמו בנבון

מוכר בעין רעה מוכר

Therefore,
he keeps some land
and the trees are not laps,
because they grew
on private property

and כב הונא is teaching נפקא מינה דאי נפלי הדר שתיל להו He even retains the right to plant another tree in its place ייש אאר פייץ מוכר בעין יפה

מוכר הכל

Therefore, although he did not consecrate all the associated items,

because DN Kloro Klo DN

Nevertheless, whatever he does consecrate, he does so generously and does not keep any rights in the land, and so the trees grew on הקדע or property



However, the Gemara on "Y P? rejects this explanation, and offers another interpretation of the 1/10/1 ("?)



Dedicated By: _

