

Bava Basra – Simanim

דף 64 – סד

פרק ד – המוכר את הבית

1. *Machlokes* if one needs to purchase a right-of-way when selling a house and retaining the pit

The next Mishnah states that one who sells a house retains its pit and cistern (even if he included “the depth and the height” in the sale, as explained on the previous Daf). Rebbe Akiva adds: צריך ליקח לו דרך – [the seller] *must purchase a right-of-way* from the buyer to access his pit. The Chochochim say: אינו צריך ליקח לו דרך – *he does not need to purchase a right-of-way*, because he retains it automatically along with the pit. Rebbe Akiva concedes that if the seller said, “חוף מאלו” – “I am selling the house *except for these pits*,” that the seller does not have to purchase a דרך, because this superfluous clause is interpreted to add a דרך to his retained ownership. The Mishnah concludes: מכרן לאחר – *if he sold* [the pit or cistern] *to another*, the opinions are reversed: Rebbe Akiva holds the buyer of the pit does not need to purchase a דרך (from the seller), and the Chochochim say he does.

2. הבור בחפירה והדות בבנין

The Mishnah taught that one who sells a house retains its “בור” – *pit* and “דות” – *cistern*. Ravina sat and asked: היינו בור היינו דות – *a בור and a דות are the same!*? Since both are holes in the ground made to contain water, why did the Mishnah teach both? Rav Tosfa’ah answered Ravina from a Baraisa: אחד הבור – *but a בור is made through digging alone* (in firm earth), *and a דות is made with a stone structure* to contain the water. The Rashbam explains that if the Mishnah had only taught that the seller retains the בור, one could think that a דות, which is a stone structure (similar to the house), would be sold along with the house. If the Mishnah had only taught that the seller retains the דות, one could think that this is because it is independently significant, being a stone structure, but a בור (which is only a hole dug in the ground) would be sold along with the house. Therefore, the Mishnah taught that the seller retains both.

3. The Tannaim argue if מוכר יפה מוכר

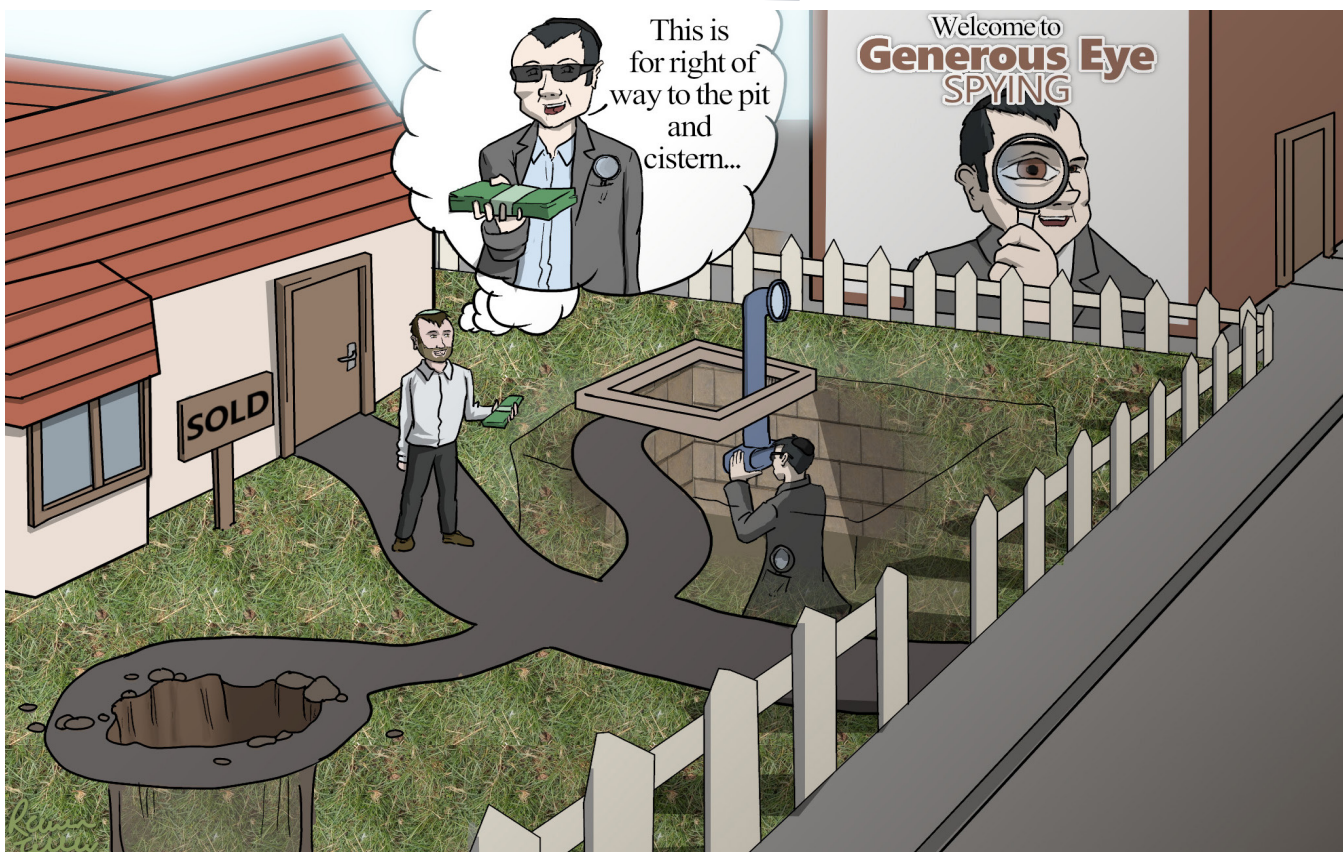
The Gemara explains the *machlokes* if the seller must purchase a דרך for his retained pit. Rebbe Akiva holds: מוכר בעין יפה מוכר – *a seller sells “with a good eye”* (i.e., generously and fully), and so is presumed not to have retained a דרך for himself to access the pit without stipulating it. The Rabbonon hold: מוכר בעין רעה מוכר – *a seller sells “with an evil eye”* (i.e., grudgingly and minimally), and we assume he retained a דרך to access the pit. This principle of Rebbe Akiva, quoted elsewhere in Shas, is based on this Mishnah. The Gemara asks that perhaps their argument is not about a seller’s nature, but particular to this case. Rebbe Akiva may hold: אין אדם רוצה שיתן מעותיו וידרסוהו אחרים – *a person does not want to pay money to purchase property and others will walk through it*. Therefore, the buyer is assumed not to allow the seller a דרך unless he stipulated it. The Rabbonon may hold: אין אדם רוצה שיטול מעות ויפרח – *a person does not want to accept money for a sale and have to fly through the air* to reach assets he retained ownership of. Therefore, the seller is assumed to have retained a דרך. The Gemara eventually proves that their argument is indeed if מוכר יפה מוכר.

Siman – Secret Agent (סוד)

The secret agent **who sold his house and had to purchase the right of way to get to his cistern** to hide in while doing surveillance, was glad the **cistern had such sturdily built walls**, and had a very “good eye” not only for finding clues but also **for being generous while doing sales**.

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Sod (Secret Agent)



The secret agent who sold his house and had to purchase the right of way to get to his pit and cistern, preferred doing surveillance in the cistern since it had sturdy walls, and had a very "good eye" not only for finding clues but also for being generous while doing sales.

3 things to remember

1. **Machlokes** if one needs to purchase a right-of-way when selling a house and retaining the pit
2. הבור בחפירה והדות בבנין
3. The **Tannaim** argue if מוכר בעין יפה מוכר

