

## OVERVIEW of the Daf

### 1) Withholding something from a sale (cont.)

Another attempt is made to prove R' Dimi's assertion that one who buys a house does not include the space above it.

This proof is also rejected.

Ravina presents a challenge to R' Dimi's assertion.

This challenge is refuted.

2) **MISHNAH:** The Mishnah continues to enumerate items that are not automatically included in the sale of a house. R' Akiva and Chachamim discuss how the seller will be able to access the areas that he retained for himself that are now situated on someone else's property.

### 3) Water reservoirs

Ravina inquires why it was necessary for the Mishnah to mention a בור and a דות when they are both water reservoirs.

Rava Tosfa'ah cited a Baraisa that explained the difference between the two.

According to a second version the conversation was between R' Ashi and Mar Keshisha the son of R' Ashi.

### 4) The dispute between R' Akiva and Chachamim

It is assumed that the dispute between R' Akiva and Chachamim relates to whether a seller sells the property generously (בעין יפה מוכר) or not.

This interpretation is rejected for an alternative explanation.

It is suggested instead, that it is the end of the Mishnah that teaches that R' Akiva and Chachamim disagree whether one sells property with a generous perspective or not.

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## REVIEW and Remember

1. What is the dispute between R' Akiva and Chachamim regarding one who sold his property but retained for himself a בור?
2. What is the difference between a בור and a דות?
3. What does the Gemara assume is the dispute between R' Akiva and Chachamim?
4. How does the Gemara prove that R' Akiva and Chachamim dispute whether one sells בעין יפה?

## Distinctive INSIGHT

*The point of contention between Rabbi Akiva and Chachamim*

ממאי? דלמא רבי עקיבא סבר אין אדם רוצה שיתן מעותיו וידרסוהו אחרים, ורבנן סברי אין אדם רוצה שיטול מעות ויפרח באויר

**W**hen one sells a house, the yard of the house is included, but the pit situated in the yard is not included. However, the seller who retains the pit must negotiate passage to access his pit. Chachamim hold that the owner who retains the pit maintains rights to tread upon the property of the buyer. He need not negotiate the right to access the pit. The Gemara assumes that the point of contention is how each opinion views the nature of sales in general. Rabbi Akiva holds that a seller acts generously (בעין יפה מוכר), and he sells not only the yard, but also the path to walk to the pit. Chachamim hold that sales are done in a non-generous manner (בעין רעה מוכר), and the yard alone was sold, but the path to the pit was retained. The seller need not pay additionally for the rights to walk upon the path to access his pit.

The Gemara offers an alternative approach to understanding the disagreement. All opinions may hold that in general a sale may be either בעין יפה or בעין רעה. Here, however, Rabbi Akiva holds that a buyer would never buy a house and yard and then have the seller tread upon him. He obviously intended to purchase the yard and the path which leads to the pit. Chachamim hold that no seller would ever accept money to sell his yard, and then have to fly across it to access his pit.

Rashba explains that all opinions certainly agree that the consideration of the seller not to have to fly to his pit is a stronger argument than the buyer's interest that the seller not tread upon his land. However, the Gemara felt that according to Rabbi Akiva, the seller himself knows that the buyer is very opposed to having the seller tread upon his land. Even though the buyer knows that the seller will face great difficulty in accessing his pit without having a path to get there, the seller is in need of cash, and he sells the yard with no exclusions. Rabbanan hold that the seller's pressure to sell does not lead him to agree to unreasonable stipulations, and he will always retain the rights to walk to his pit. This explanation is indicated in the words of the Gemara, which emphasize "a person will not accept money and have to fly to his pit." We see that the sale itself is predicated upon the seller's realization that he will need to access the pit.

The Gemara cites the later halacha of the Mishnah to prove that R' Akiva and Chachamim argue the general concept of sales being עין רעה or עין יפה. When the pit alone is

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# HALACHAH Highlight

## Gaining access to a pit or cistern on another's property

לא את הבור ולא את הדות

[One does not include in the sale of a house] neither a pit nor a cistern

**S**hulchan Aruch<sup>1</sup>, based on our Gemara, rules that one who sells a house does not include in that sale the pit or the cistern that is on the sold property. Therefore, the seller has to purchase the right to enter the purchaser's property in order to be able to gain access to the pit or cistern he retained for himself. Rav Betzalel Stern, author of Teshuvos B'tzeil Hachochma<sup>2</sup>, was asked whether the purchaser is obligated to sell a path on his property for market value to the seller so that he can gain access to his pit or cistern or not. The questioner suggested that it is logical to assume that we should be able to force the purchaser to sell a path to the seller for if he does not have to sell a path what benefit would the seller have from retaining the pit or cistern for himself? The alternative circumstance would put the seller at a great financial disadvantage since the purchaser could decide that he does not want to sell a path unless he receives an exorbitant amount of money. Therefore, the only logical conclusion is to assume that the purchaser could be forced to sell a path to the seller for market value.

B'tzeil Hachochma noted that this question was raised

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This suggestion is also rejected and a third dispute is suggested as the source that R' Akiva and Chachamim disagree whether one sells property with a generous perspective or not.

The third suggestion is also rejected and the Gemara cites a fourth source that is the basis for the dispute between R' Akiva and Chachamim whether one sells property with a generous perspective or not. ■

in Teshivas Toafos Re'eim<sup>3</sup> and he ruled that the purchaser cannot be forced to sell a path to the seller to gain access to his pit or cistern. Regarding the question that it seems unreasonable that the seller would retain for himself the pit or the cistern if he could not access it, there is a simple explanation behind the thinking of the seller. Generally, a person who sells his house has another house to move into and that house will likely have pits and cisterns available. Therefore the seller was not expecting to use the pit or cistern on his old property so it will not bother him if he cannot gain access to them. What then is his intent in retaining ownership of these items? His intent is to sell them separately to the purchaser who would likely be interested in purchasing these items since it would be convenient for him to have a pit and cistern on his property. ■

1. שו"ע חו"מ סי' רי"ד סעי' א'
2. שו"ת בצל החכמה ח"ד סי' כ"ח.
3. שו"ת תועפות ראם חו"מ סי' י"ט. ■

# STORIES Off the Daf

## Selling with a generous eye

"בעין יפה מוכר..."

**A**nyone with a little experience knows that when one is making a purchase every detail must be clarified so as to ensure there will be no misunderstandings afterwards.

A certain man sold a field alongside his house for a relatively cheap price. Although this seemed straightforward enough to both parties, it soon became obvious that this was not at all so. After the sale, the seller designated that the path leading to the field would skirt the property so that the entrance would be from its far side. The buyer

complained, "How can you possibly force me to take a path that is so out of my way? It is obvious to anyone with a little understanding that you sold me the better path."

The seller protested, "That's not true! Anyone with a little understanding would see that the low price meant you would be taking ownership of the less convenient access path."

The two decided to bring their altercation before Rav Yitzchak Elchonon Spector, zt"l, for adjudication. "We find in Bava Basra 64 that everyone admits that if a person sold a pit on his property to his friend the buyer is not obligated to pay for a path even though this was not explicitly included in their agreement, since he clearly sold him a path. The reason why in the

maskana of the gemara is that one who sells something does it with an ayin yafeh."

"Presumably, the same is true in your case," the rav concluded. "Just as one must give a path because he sold b'ayin yafeh, the path we assume to have been sold was the most convenient one. Surely the seller sold the better path to the field, not the awkward one!"<sup>1</sup> ■

1. שו"ת נחל יצחק, ס' ס"א, אות ד', ענף א'

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sold, Chachamim hold that the buyer must also pay for a path to the pit. This shows that people pay money expecting to negotiate further for the rights of passage. The sale was obviously בעין רעה. ■