



Today's Daf In Review is being sent l'zecher nishmas Habachur Yechezkel Shraga A"H ben R' Avrohom Yehuda

Bava Basra Daf Samach Daled

MISHNA

- When one sells a house it does not include sale of the “bor” or the “dus” (types of water collection ditches) that are inside the house, even if the seller wrote that he is selling the “depth and height” of the house. Since the seller retains ownership of these water ditches, **R' Akiva** says he must buy a right of way from the buyer in order to get to the ditches. The **Chachomim** say that he does not need to buy a right of way (because he keeps that right along with the ditches).
 - **R' Akiva** would agree that if the seller says “I am selling the house *except for the bor or dus*”, that he would not have to buy a right of way.
- If a person sold his bor or dus, but not his house, **R' Akiva** says the buyer would not have to also buy a right of way to use the ditches, and the **Chachomim** say that he would have to buy it.

GEMARA

- **Ravina** sat and asked, a bor and dus are one and the same!? **Rava Tosfa'ah** told him, a Braisa explains that both are ditches in the ground, but a bor is simply dug out, and a dus is lined and built in with stone.
 - **R' Ashi** asked the same question, and **Mar Kashisha the son of R' Chisda** answered the same answer.

V'TZARICH LIKACH LO DERECH DIVREI R' AKIVA...

- Presumably, they argue in the following – **R' Akiva** holds that a seller sells generously (and therefore even sells his right of way to the ditch), and the **Rabanan** say that a seller does not sell generously (and therefore retains the right of way for himself). In fact, whenever we say in the Gemara that **R' Akiva** follows his view that a seller sells generously, it is derived from this Mishna.
 - **Q:** Maybe that is not the machlokes in our Mishna!? Maybe **R' Akiva** holds as he does in our Mishna, because he holds that a person would not buy a house to allow others to walk through (and therefore, the sale also included the right of way), and the **Rabanan** hold that a person would not sell something in a way in which the only way he can use his retained property would be to “fly through the air” (and therefore, the sale did not include the right of way). If this is the logic behind the machlokes, it has nothing to do with whether a seller sells generously!? **A:** Rather, the machlokes between them, as to whether a seller sells generously can be learned from the next part of the Mishna, which says, “If a person sold his bor or dus, but not his house, **R' Akiva** says the buyer would not have to also buy a right of way to use the ditches, and the **Chachomim** say that he would have to buy it”. In that case the machlokes is surely based on how generously a seller sells.
 - **Q:** Maybe that is not the machlokes there either? Maybe the machlokes is that **R' Akiva** says we follow the buyer's intent, and the **Rabanan** say that we follow the seller's intent?
 - Maybe we can say that the source of the machlokes between them regarding how generously a seller sells is based on a Mishna that says, that the sale of a field does not include the bor, the winepress, or the dovecote within it, whether or not they are currently in use, and **R' Akiva** says the seller would have to buy a right of way from the buyer, whereas the **Rabanan** say that he would not have to do so. Now, this seems to be the same machlokes as in our Mishna regarding the bor in the house. It must be, that this Mishna is teaching that they argue regarding how generously a seller sells.

- **Q:** It may be that we need to be taught a case of a house and a case of a field. If we would only have the case of the house, we would say that **R' Akiva** requires the seller to buy a right of way in that case, because a buyer surely bought a house to have privacy, and therefore did not allow for someone to walk through his house, but in the case of a field, it may be that since there is no expectation of privacy, maybe **R' Akiva** would agree that the seller retains his right of way. And, if we were only taught the case of a field, we would say that only there **R' Akiva** would require that the seller buy a right of way, because walking through a field damages the field, but in the case of a house, where walking through it does not damage the house, maybe he would agree that a right of way does not need to be bought. If so, this is not the basis for the machlokes of the generosity with which a seller sells!?
- Maybe we can say that the source of the machlokes between them regarding how generously a seller sells is based on the next part of that Mishna that says, "If a person sold his bor, winepress, or dovecote, but not his field, **R' Akiva** says the buyer would not have to also buy a right of way to use the ditches, and the **Chachomim** say that he would have to buy it". That case seems to be identical to the second case of our Mishna!? It must be that it is repeated to serve as the basis for the machlokes on how generously a seller sells! **SHEMAH MINAH.**