21.5.7

67a (אָרעה הדרה פירי מאי) **←** *68a* (ולאו מילתא היא)

Note: our סוגיא *refers to* משכנתא *with two customs. In some places, the minute the borrower paid up, the lender would have to leave the property; in others, he had a preset amount of time to stay on the property and couldn't be evicted earlier*

> *1.* „יֵשׁ רָעָה רָאִיתִי תַּחַת הַשָּׁמֶשׁ כִּשְׁגָגָה שֶׁיֹּצָא מִלִּפְנֵי הַשַּׁלִּיט: *קהלת י:ה*

I   Continued analysis of case of kinsmen selling property with buy-back option

   a   *Land*: is returned – are פירות (eaten by putative buyer in the meantime) returned?

     i   *Lemma1*: it is רבית קצוצה (דאורייתא) – and is seized by דיינים

     ii   *Lemma2*: it is אבק רבית and may not be seized by דיינים

     iii   *Response* (רבא and רבה בר ר' הונא): אבק רבית

     iv   *Query* (אביי לרבה): is the reason because it isn't a set amount – and therefore would apply to משכון as well

       1   *Or*: is it because that's an attempted sale, but a משכון is in the context of a loan**←**אסור

       2   *Answer*: reason for above ruling – no set amount **→** same applies to a משכון

       3   *Note*: רבינא ruled against רבר"ה ורבא and seized פירות of an attempted sale

II   Various laws relating to משכון (see note above)

   a   *In place*: where the borrower can evict with payment

     i   *If*: the lender used up an amount equal to the loan, we remove him; if he ate more, the פירות are not seized

       1   *Nor*: (if the borrower has another loan with the lender) do we credit the פירות to another loan

     ii   *But*: if the borrowers are minor heirs, we do seize the פירות and transfer credit to another loan

     iii   ר' אשי: if we don't seize פירות, we cannot evict מלווה without לווה paying up

       1   *Reason*: evicting him w/o payment is like seizing the פירות - but it's אבק רבית which we don't seize

       2   *Note*: ר' אשי once ruled in a case of minor heirs and treated them like adult heirs (didn't seize פירות etc.)

   b   רבא: in place where they allow סילוק, lender shouldn't eat פירות without נכייתא (set yearly deduction from loan)

     i   *And*: a ת"ח shouldn't eat פירות even with נכייתא – unless he has a קיצותא; which itself is debated as to מותר/אסור

       1   קיצותא *version1*: for first 5 years, lender eats w/o reduction, then, everything he eats reckoned against loan

       2   קיצותא *version2*: for first 5 years, set amount of נכייתא deducted, subsequently, all פירות reckoned

         (a)   *Note*: the one who prohibits קיצותא – if he prohibits version 1, may still allow version 2

         (b)   *But*: if he prohibits version2, how can a ת"ח eat?

         (c)   *Answer*: must use משכנתא דסורא:

           (i)   *Explicitly*: written in שט"ח that when X years are up, land goes back to לווה for no consideration

   c   ר"פ ורהבד"י: in place where there is סילוק, בע"ח of מלווה cannot seize it; בכור (of מלווה) doesn't get פי שנים and שמיטה cancels loan (not considered מלוה על המשכון)

     i   *But*: in place where no immediate סילוק (belongs to מלוה, **→** בע"ח דמלווה may seize it; בכור gets פי שנים and שמיטה doesn't cancel loan (as any debt on a משכון)

   d   ר"פ: where they allow סילוק, we stop מלווה even from collecting fallen fruit unless he already put in basket

     i   *And*: according to מ"ד (in פרק הזהב) that כלי של לוקח ברשות מוכר קנה לוקח, even without putting in basket

       1   *Reason*: the dates fall on to a mat, put there by מלווה **→** כליו של לוקח ברשות מוכר

   e   קנין: in place w/o סילוק, if the מלווה agrees to סילוק, dispute if he needs קנין for land (ruling: required)

   f   סילוק: where they allow סילוק, if borrower says he's bringing money – מלווה must leave

     i   *If*: he says he's putting money together – dispute if he may continue eating (ruling: must leave)

   g   *Story*: ר' כהנא, ר"פ ור"א wouldn't eat בנכייתא; רבינא would

     i   *Justification*: same as paying for redemption of שדה אחוזה (small amount relative to פירות)

     ii   *Counter*: that's הקדש; as opposed to הלוואה – looks like רבית

   h   ר' אשי: elders of מ"מ – default משכנתא is one year; משכון makes the lender a "neighbor" for דינא דבר מצרא

   i   *Practicum summary* (רבא); reject ר' פפא's טרשא (above סה); Mehozan documents (where they commit to ½ profits with middlemen – but there may be no profits and it becomes a loan **→** רבית (story w/אמימר and v. 1); and Narshian sharecropping (back from lender); since there's no point where lender acquired land to give it back

     i   *Solution*: to encourage lending, they leave time-gap between משכון and חכירות – but we reject this as well