

## 21.8.7; 100b (משנה ה') → 101b (תנא מפני שהקיפן מרובה)

## I משנה ה': further investigation into countering claims of profit

- a *Background*: if someone sells his olive trees for wood (burning), and they produce a small amount of oil (<1/4 per סאה לוג)
- i *Then*: the oil belongs to the purchaser
- 1 *Case*: must be that landowner didn't specify when purchaser must cut (*reason*: people aren't מקפיד if less than 1/4)
- (a) *Else*: if he said "immediately", all oil belongs to landowner; if he said "whenever you want" – to purchaser
- (b) *Note*: split of 1/4 is besides the expenses involved in harvesting and pressing the oil
- b *But*: if they produce more
- i *Claim*: the purchaser claims it was "his trees" that generated the (surprising) profit
- ii *Counter*: land-owner claims it was his land that generated the profit; *Ruling*: they split
- c *If*: a river uprooted the trees and transplanted them in another's field and the yield was great,
- i *Claim*: the purchaser claims it was "his trees" that generated the (surprising) profit
- ii *Counter*: owner of land where trees were transplanted claims it was his land that generated the profit
- 1 *Ruling*: they split
- (a) *ל"ל's limitation (version 1 עולא)*: only if it was uprooted after 3 years and with the original dirt (no ערלה)
- (i) *Else*: it all belongs to the purchaser, as the owner couldn't have benefited in any case
1. *Challenge*: owner could've benefited after 3 years – should at least be able to split, *rather*
- (b) *ל"ל's limitation (version 2 רבין)*: only if they were uprooted *during* first 3 years with their dirt
- (i) *Else*: all belongs to the original owner
- (ii) *Defense*: can argue that even during first 3 years, could've planted under them (no shade to block sun)
- 2 *Note*: owner of trees may not retrieve his trees
- (a) *Reason (ר' יוחנן)*: to benefit אי"י
- (i) *Tangent*: if someone rents "ancestral field" from a non-Jew, he's liable for תרומ"מ and gives share to owner
1. *Understood*: "ancestral" refers to אי"י
- a. *Position*: חוכר\* אין קנין לנכרי בא"י להפקיע מידי תרומ"מ and a lessee is like a חוכר (sharecropper)
- b. *Just as*: a חוכר must pay his portion and separate תרומ"מ, whether or not it produced, same here
2. *Challenge*: מה עשר, ר' יהודה ruled that if one rented אבותי שדה from an oppressing non-Jew, etc.
- a. *Rather*: שדה אבותי = his own family land (else why single out מציק)? – קנס to get him to buy back
- b. *And*: לגוי להפקיע and a lessee is *not* like a חוכר
- d Various rulings associated regarding benefiting another without his consent
- i *If*: someone plants in another's yard without his consent
- 1 **רב** we assess the appreciation and he is given the lesser of expense/appreciation
- 2 **שמואל** we estimate what someone would pay to have this field planted
- (a) *Resolution*: שמואל's ruling is in re: a field made for planting; רב – in field not made for planting
- (i) *Note*: רב's ruling inferred from case where he ordered beneficiary to pay – he refused, but when רב saw him put up a fence around the trees, he ordered him to pay the greater amount (שבח)
- ii *If*: someone builds on another's property without his consent and then wants his materials back
- 1 **ל"נ** we allow him to claim them back
- 2 **ל"ש** we don't allow him to claim them back
- (a) *Challenge (to ל"נ)*: רשב"ג reports that this position is that of **ב"ש**, *conta* **ב"ה**
- (b) *Answer*: follows רשב"א, who maintains that **ב"ה** agree with **ב"ש** that we allow him to claim them back
- 3 *Final ruling*: in case of a house, we follow **ל"נ** (he may claim them back); in case of field, we do not
- (a) *Reason*: אי"י ישוב OR not to deplete the land
- (i) *Split the difference*: if it is חר"ל

## II משנה ו': assumed length of rentals

- a *If*: someone rents out a house during winter, he may not evict him until פסח; if in summer, he must give 30 days notice
- i *In major cities*: always 12 months
- 1 *Reason for winter/summer*: hard to find a place to rent in winter
- (a) *Challenge*: how can he evict him after 12 months – if that date falls out during winter
- 2 *Rather*: 12 months/30 days of משנה is time needed to notify him;
- (a) *And*: just as landlord must notify, so must tenant, so that landlord can find suitable tenant
- ii *If*: it falls, tenant - no claim; if sold, given/bequeathed –new owner no stronger than old; if given to his son for his wedding, ask if he could've notified the tenant earlier; if not, no claim (supporting story of man who bought wine etc.)
- iii *If the rental is a business*: always 12 months – even in small towns
- 1 *Note*: רשב"ג - bakery or dye-shop is always 3 years – they have long-standing debtors