(סיום הפרק) 27b → *(היה חופר בור) 26b ;22.2.9*

Note: עולא *generates a protracted discussion about* ביכורים*. This* מצוה *is really two –* הבאת ביכורים *and* מקרא ביכורים*. There are classes of people who are responsible to bring* ביכורים *but may not make the declaration (...*הגדתי היום...ארמי אבד אבי*) as outlined in* ביכורים פ"א*. This is generally due to a deficiency in their relationship to the land as an owner.*

I   Continuation of analysis of משנה יב: if digging a trench, the owner may cut the roots and *he* keeps the wood

   a   *Question:* who is *he*?

   b   *Attempted answer (ר' חסדא):* from מעילה ג:ז – roots of a חולין tree that are growing on הקדש land are forbidden for mundane use (מדרבנן) לכתחילה but there is no מעילה → roots belong to tree (→roots belong to tree's owner) and not to land

      i   *Block:* inverse is also in same משנה – if tree is הקדש and it grows on mundane land – לא נהנין ולא מועלין

   c   *rather:* משנה is either referring to גידולי הקדש (which, according to that תנא, have no קדושה), or outside of ט"ז אמה

II עולא's ruling: if someone's tree is within ט"ז אמה of another's land, he is a גזלן and ביכורים aren't brought from that tree

   a   *Suggested source:* from rule of עשר נטיעות which are planted within a בית סאה (2500 square אמות)

      i   *Block:* that ruling provides for 250 sq. אמות for each tree – far less than עולא's ruling (32^2 = 1024 sq. אמות)

   b   *Rather:* from ruling that 3 trees, owned by 3 different people, within a בית סאה, are combined to render the area a שדה אילן, allowing plowing to be done there until ר"ה of שמיטה.

      i   *Reckoning:* each tree "claims" 833 sq. אמות

         1   *Challenge:* עולא's amount is still more

            (a)   *Answer:* עולא was inexact

            (b)   *Block:* inexactitude isn't likely if it leads to קולא (i.e. tree that מה"ת is liable for ביכורים is now exempt)

         2   *Correction:* עולא's reckoning is a circle with a radius of 16 אמות - ¾ of size of square → 768 sq. אמות

         3   *Conclusion:* it is inexact לחומרא (should be 16.5 or 16. 7 אמות)

   c   *Challenges to עולא:*

      i   ביכורים א:יא: if someone buys a tree and "its" earth – brings ביכורים with declaration (see note)

         1   *Answer:* means 16 אמות around it

      ii   ביכורים א:ו: if someone bought two trees in another's property, he brings without declaration

         1   *Implication:* if he bought three, he would bring and declare (assumption – any amount of land around trees)

         2   *Correction:* only if he has ט"ז אמה around trees

      iii   פאה ג:ו: any amount of land is liable for פאה, ביכורים, to write a פרוזבול and to anchor a קנין אגב

         1   *Explanation:* must be wheat, as per כל שהוא (hence, no proof against עולא)

      iv   תוספתא מעשרות ב: כב: if a tree is split between א"י and חו"ל:

         1   רבי: טבל and חולין are mixed together

         2   רשב"ג: whatever grows in א"י is liable, rest is exempt

            (a)   *Note:* their dispute is only if split, as to application of retroactive designation (ברירה)

            (b)   *However:* they agree that if the tree was planted fully in חו"ל, it's פטור, in spite of ט"ז אמה proximity to א"י

            (c)   *Answer:* in this case, there is hard rock dividing א"י from חו"ל (→ no root nurturing from א"י)

               (i)   *Challenge:* why does רבי claim that they are "mixed up"?

               (ii) *Answer:* their dispute is whether there is a later admixture above ground

      v   *Our* משנה: provides for a 25 אמה distance from a tree (→ root growth is 25 אמה)

         1   *Answer (אביי):* it grows up to 25 אמה, but only weakens the ground for 16 אמה

   d   *ר' יוחנן weighs in –* the tradents:

      i   ר' יוחנן ר' דימי: ruled like עולא

      ii   ר' יוחנן רבין: said that fruit from a tree planted on another's border or leaning over another's land may be brought with a declaration - יב"נ granted us the Land contingent upon this agreement between neighbors (see .ב"ק פב)

III משנה יג: if a tree leans over into another's property

   a   *Regular tree:* the owner of the field may cut to the height of a cattle-prod (to allow the plow to work there)

   b   *Carob and sycamore:* uses a level to cut

   c   *Irrigated field:* uses a level to cut

      i   *Dissent:* אבא שאול – all deciduous trees, cut with a level

      ii   *Note:* אבא שאול is commenting on רישא, expanding which trees require full cut (not just carob/sycamore)

      iii ר' אשי: infers from his wording – כל אילן סרק is an expansion on חרוב ושקמה, not a limitation of כל האילן

IV משנה יד: a tree which leans over רה"ר, must cut enough to allow a camel and its rider to pass by

   a   *Note:* may follow ר"א, who, re: נזקין, is only concerned with present damage; may even follow רבנן, each here it's visible

   b   ר' יהודה: a camel which is laden with flax or vines (smaller than ת"ק's amount; ר"י would recommend riding lower)

   c   ר"ש: all trees are cut with a level, to prevent טומאת אהל

      i   Reason for explaining אהל: not a bird, e.g., bringing some טומאה; if so, a scarecrow would be sufficient