

22.3.7

36b (הכא נמי איבעי ליה למחויי) → 38a (אמר ר"י בד"א בשדה הלבן)

- I Analysis of final clause- dispute – ישמעאל ר' approach to אילן שדה (3 harvests)
- a *Implication*: רבנן would agree that if he had 30 trees planted in a grove of 10 trees per סאה (2500 sq. אמות) and he harvested 10 trees year 1, another 10 year 2 and another 10 year 3 – חזקה
- i *Argument*: just as ר"י said that one type of fruit is a חזקה for all the fruit of that orchard
- 1 *Similarly*: רבנן would say that each set of 10 is a חזקה for the other 20
 - 2 *Caveat*: only if the other 20 aren't producing that year (i.e. he's harvested all the productive trees)
 - 3 *Caveat*: only if the trees are spread throughout the grove; but if the 10 he works one year are all concentrated, the חזקה is only valid for that section
- II Dispute between ר' זביד and ר' פפא regarding land with trees sold to two buyers, no one has better claim
- a *if*: 1 possessed land, the other seized the trees
- i *Ruling* (ר' זביד): each receives what he seized
- 1 *Challenge* (ר"פ): one who seized land can evict the other,
 - ii *Rather*: the one gets the trees and half the land (i.e. the amount needed for the trees) the other gets half the land
 - 1 *Tangent*: if a landowner sold his land but kept some trees, he automatically withholds land (as per need)
 - (a) *Even*: according to ר"ע, whose position (regarding the sale of a בור is that the seller sells generously and doesn't keep an easement to his own house) – he keeps the land
 - (i) *Explanation*: in the case of a בור, usage around it doesn't hurt the בור; here, if he loses the land, owner new owner of land could tell him to uproot his trees as they use up the land
 - 2 *Inverse*: if a landowner sells his trees
 - (a) *According to* ר"ע: he also sells land (the buyer can plant new trees there is these wither)
 - (i) *Even*: according to ר' זביד, who gives the one who seized the trees no land – that case involves two buyers; in this case, we employ the principle of מוכר בעין יפה הוא מוכר
 - (b) *According to* ר' זבנג: he doesn't sell land, only trees
 - (i) *Even*: according to ר"פ (who gives the one who seized the trees half the land) – that case involves buyers, each of whom may claim that the seller sold generously; but here, we employ the principle of מוכר בעין רעה הוא מוכר

III Return to implication from our משנה – if he harvested 30 trees in בית סאה – חזקה

a *Dissent* (נהרדעי): even if he used all of them all three years – no חזקה

i *Reason*: this isn't the usual method of planting – these trees are too close and must be transplanted

 - 1 *Challenge* (רבא): if so, how is someone מחזיק a bed of lucerne (grows in impacted area); rather...
 - ii רבא: if he sold trees within this confined grove, the buyer gets no land
 - 1 *Reason*: the trees must be uprooted and transplanted, due to the narrow confines
 - iii *Note*: ר' זירא identifies this ruling as subject to a dispute ר"ש חכמים re: כלאי הכרם
 - 1 *Case*: if a vineyard is planted with less than ד"א between each row
 - (a) ר"ש: not considered a כרם
 - (b) חכמים: we ignore the middle ones and it is a כרם

IV Rights to replanting for buyer of tree (alone)

a *נהרדעי*: if he buys a tree, he has rights to the land below

i *Purpose*: if the tree withers, he may replant in that spot

ii *Dissent* (רבא): why can't seller argue that he sold him something to be grown and then excised? *Rather*

b רבא: this is only valid if he makes a claim (that he bought the land as well, lost the שטר as he's been there 3 years)

i *Challenge*; if so, how does someone who *only* sold the tree prevent a חזקה on the land?

 - 1 *Answer*: as we did for דסורא - he must protest every (less than 3) years.