

פרק רביעי – היזכר את הבית Introduction to

The next four chapters are about commerce and about what items are assumed to be included in particular sales. ch. 24 in (מסכת נזיקין) deals with sale of real estate, including houses, fields etc.

22.4.1

(אמילו בתי ועבדי) 62a → (משנה א) 61a

1. תיצייע התחתנה חמש באמה רחבה והתיכנה שש באמה רחבה והשלישית שבע באמה רחבה כי מגרעות נתן לבית סביב חוצה לבלתי אחז בקירות הבית: מ"א ו: 2. והצלעות צלע אל צלע שלוש ושלשים פעמים ובאות בקיר אשר לבית לצלעות סביב סביב להיות אחוזים ולא יהיו אחוזים בקיר הבית: יחזקאל פרק מא פסוק ו 3. ונתמא קנה אחד ארץ וקנה אחד רחב ובין התאים חמש אמות וסף השער מאצל אולם השער מהבית קנה אחד: יחזקאל פרק מ פסוק ז

I 'משנה א': sale of a house and inclusion of peripherals

- a If: he sells a house, the יצייע is not included, even though it opens into the house
- i Definition of יצייע:
- 1 בבלי: loft (within house – "אפתא")
 - 2 בדקא חלילה) ר' יוסף (בדקא חלילה)
 - (a) Note: those who read "loft" would certainly agree that בדקא חלילה not included
 - (b) But: ר' יוסף would argue that אפתא is included
 - 3 Tangent: ר' יוסף taught that a wing of a building has 3 terms in יצייע: תנ"ך (v. 1), צלע (v. 2), תא (v. 3)
 - (a) Alternatively: תא is inferred from מדות ד: 2
- ii הונא ד'א squared is only excluded if is at least ד'א squared
- 1 Challenge: later משנה which excludes a cistern from sale – what if cistern is small?
 - 2 Answer: a cistern serves a distinct purpose, different from a home; here, the purpose is the same
- b Also not included: a room that is on the inner side of the house
- i Challenge: isn't this obvious, given that a יצייע is excluded?
- 1 Answer: even if the boundaries provided include the room, as per rulings of ר' נחמן (quoting בר אבון):
 - (a) If: someone sells a flat in a house, even if he indicated the broader boundaries, only the room sold
 - (i) Note: must be place where a minority of people refer to בירה as "בית"
 1. Reason: he should have written "I haven't held anything back in sale"; since he didn't write this, we see that he only sold the בית, not the בירה
 - (b) Parallel: if someone sells a field in a valley, even though he uses the entire valley as boundaries, only the field is sold
 - (i) Note: must be place where some people refer to valley as "שדה"
 1. Reason: he should have written "I haven't held anything back in sale"; since he didn't write this, we see that he only sold the field
 - (c) Justification: if we only learned ruling re: house, סד"א since the use of each is distinct, it's not included, but in case of field, since the use is all common, it's included
 - (i) And: if we only learned ruling re: field; סד"א that he couldn't establish clear borders, but re: a house, where borders are clear, his use of larger borders includes בירה – קמ"ל
 - 2 Note: following ר' ג' ruling, we have ruling of אביי that a seller must write כלום קדמי כולם

ii Case: man bought דבי חייא and seller had two plots that were called דבי חייא

 - 1 Ruling (רב אשי): he only said ארעא, meaning 1 of them.
 - (a) However: if he said ארעתא, that would mean at least two
 - (b) And if: he wrote ארעתא כל, that would include all his land, but not gardens nor orchards
 - (c) And if: he wrote זיהרא, it would mean all lands, but not houses or slaves
 - (d) And if: he wrote נכסי ("my property"), it would include houses and slaves as well.

c Nor: the roof, if it has a 10-high parapet

i ד' יהודה: even if the מעקה isn't 10-high; if it has a צורת הפתח, stands independently and isn't included