

22.4.3

63a (דאי נפל הדר בני ליה) → 64a (ת"ר בן לוי שמכר שדה לישראל) 63a

- I שיור במכר – indirect withholding of segment in sale
- a **ברייתא**: if a sells land on condition that he gets the מע"ר – it must come to him
- i *note*: if he stipulates that even posthumously – it goes to his sons
- ii *but if*: he stipulates that it is "as long as you own it" and the buyer sells and reacquires – no claim
- 1 *challenge*: how can the לוי acquire מעשרות which don't yet exist? (אין אדם מקנה דשלבל"ע)
- 2 *answer*: when he makes the sale, he withholds the segment of מעשרות
- (a) *inference* (ל"ל): if someone sells a house on condition that he keeps the upper floor – this is valid
- (i) *application*:
1. **ל"ז זביד**: if he wishes to put out beams, he may do so
- a. *note*: this is a reasonable inference from the ברייתא, as it parallels the שיור מקום
2. **ל"פ**: if it falls, he may rebuild
- a. *note*: this doesn't follow from the ברייתא, as there is no שיור מקום here – קשיא
- II Ruling of ר' דימי of נהרדעא
- a *if*: someone sells a house (and wishes to include upper stories and air rights)
- i *even if*: he wrote עומקא ורומא (depth and height), he must write "from the chasm to the heights of the sky"
- 1 *reason*: עומקא ורומא only allow him to lower or raise the existent building, "from the chasm..." allows him to dig below the house (or to build atop it)
- ii *Suggested support*: from משנה ב – "he doesn't acquire a cistern, even if he wrote עומקא ורומא"
- 1 *Rejection*: that was in a case where he didn't write עומקא ורומא
- 2 *Block*: עומקא ורומא explicitly mentions him having written עומקא ורומא
- (a) *Answer*: משנה means that even if he hadn't written עומקא ורומא, it is assumed; but that doesn't give him rights to the cistern etc. (unless עומקא ורומא was written)
- iii *Suggested support*: from our משנה – excluding the roof if it has a parapet
- 1 *Explanation*: if עומקא ורומא grants him the roof, why would the parapet exclude it?
- 2 *Answer*: the parapet gives the roof significance (as an independent location)
- iv *challenge*: ruling of ר"ל (above), including the applications of ר"ז and ר"פ
- 1 *Explanation*: if עומקא ורומא **doesn't** give the buyer the roof, why the need for the condition (withholding)?
- (a) *Answer*: the condition allows the seller to rebuild if the upper story falls