

22.4.4

64a (משנה ב') → 65a (בעין יפה יהיב)

7. מחת אבתיקד יהיו בניד תשיתמו לשרים בכל הארץ: תהלים מה, יז

- I 'ב משנה: consequences of selling a cistern (terms used: בור דות are equivalent; a דות is a fortified cistern)
- a if: he sells a house, the cistern is not included, even though the מכר שטר stipulated "height and depth" (as above)
- i however: regarding the need for the seller to repurchase an easement to get to the cistern:
- 1 ל"ע he must buy one back – the seller sells "generously" and didn't retain anything for himself
  - 2 חכמים no need to buy one back – the seller sells "narrowly" and retained the easement
    - (a) yet: ר"ע cedes the point in a case where the seller stipulated "excluding the בור/דות" that the easement is also retained
- ii if: he sold the cistern (and kept the house)
- 1 ל"ע no need for the buyer to purchase an easement – it is included
  - 2 חכמים buyer must buy the easement – not included
- b Analysis of the dispute
- i Premise: ר"ע disagree whether a seller sells generously
- ii Assumption (as above): our dispute is whether a seller sells generously – and this is the source for the premise
- 1 Challenge: perhaps our dispute is whether a person, paying for property, minds that another trespass
    - (a) ל"ע a person would not want another (the seller/former owner) to trespass
    - (b) חכמים a person doesn't want to take money and then "have to fly in the air"
- iii Alternate source for premise: 2<sup>nd</sup> half of משנה, dispute if a buyer of the בור/דות needs to buy an easement
- 1 Challenge: perhaps that dispute is whether we allow the interest of the buyer or seller to dictate the sale
    - (a) ל"ע favors interest of buyer
    - (b) חכמים favor interest of seller
- iv Alternate source for premise: ahead (ט:ד), parallel dispute about need to buy easement if field is sold (peripherals aren't sold)
- 1 argument: from extra (superfluous) dispute → their dispute is general about "generosity" of seller
  - 2 challenge: perhaps this is a (necessary) rehash of dispute about house
    - (a) justification:
      - (i) if: we only had א:ד, we may have thought that ר"ע's position is based on consideration of privacy of the new homeowner – which doesn't apply to a field
      - (ii) and if: we only had ט:ד, we may have thought that ר"ע's position is based on consideration for trampling the new owner's field – צריכא
- v accepted source for premise: end of ט:ד, where a repeat of לאחר מוכר is brought; repetition → dispute re עין יפה
- c final ruling:
- i דב follows חכמים (or ר"ע, when positions are flipped; either way, he rules בעין יפה רעה) (מוכר בעין יפה רעה)
  - ii שמואל follows ר"ע – מוכר הוא מוכר – מוכר בעין יפה הוא מוכר
  - iii Suggestion: their positions are consistent with their dispute about brothers dividing father's estate ;
    - 1 שמואל they have no claim of easements from each other (division was done עין יפה)
    - 2 דב they have claims (division was done narrowly and they maintain easements)
      - (a) Justification: if we only had dispute about division of estate, א:ד that ר"ב's position is motivated by v. 1 – but would agree with שמואל in re: sale (flip for צריכותא)
  - iv Final ruling (ר"ה and ר"ג): follows school of שמואל, as they are closer to ריש גלותא and have more access to דיניים
- II Related ruling:
- a If there are two houses owned by one person and he sells them, or gifts them, to two people
- i Then: the inside one has no claim of easement on the outside one; the same level of עין יפה applies to both
  - ii And certainly if: he gives the outer one as a gift (more likely to be עין יפה) and the inner is sold
  - iii Question: what if outer is sold and inner is gifted?
    - 1 Consideration: still no claim
    - 2 Rejection: from ט:ד; a gift is always given generously → the inner one has more generous rights, including the easement to go through the outer one to רה"ר