

22.4.8

69b (איפכא מתנינן לה) → 71a (אמר רב יהודה האי מאן דמזבן ארעא לחבריה)

- I Various rulings of רב יהודה re: sale of land and trees
- a *Ideally*: a שטר should explicate sale of “date trees, dates, branches and saplings”
i *Although*: as per our משנה, without this, all is included (but it “adorns” the שטר)
- b *If he said*: “land and date trees”;
i *If*: he owns 2 date trees there – they are included;
ii *If not*: he must buy 2 date trees and give to buyer
iii *If*: he has 2 date trees that are משועבד, he must “free” them and give to buyer
- c *If he said*: a land of date-trees
i *If*: he has date trees, sale is valid; else, it is a fraudulent sale
- d *If he said*: a land of date trees (ארעא בי דיקלי) no trees are included; meaning is “land that could sustain date trees”
- e *If he said*: besides a particular date tree
i *If*: it is a good one, clearly, all others are included and he withheld this one
ii *But if*: it is a poor one, by implication all are withheld
- f *If he said*: besides trees
i *If*: he has trees, they are excluded; if he only has date trees, excluded; if he only has vines – they’re excluded
ii *If he has*: trees and vines – trees are withheld
iii *If he has*: trees and date trees – trees are withheld
iv *If he has*: vines and date trees – vines are withheld
- g *modification*: included trees (due to their slight height)
i *דב*: if it is so small that it can be scaled without a rope
ii *דייני גולה (שמואל וקרנא)*: if the yoke knocks into the tree and bends it – not withheld
iii *Resolution*: date trees (rope) vs. regular trees (the yoke)
- II Questions posed of ר' ששת regarding שיור במכר (withholding part of a sale)
- a *Version1*: if he retains 1 carob or סדן השקמה – are the rest sold (by implication) or not (by association)?
i *Answer*: all are excluded – meaning of “that one isn’t sold” – neither are others
ii *Proof*: if he sells his field “excluding this field” – nothing is sold
- b *Version2*: if he retains ½ of a carob or sycamore – the rest are clearly excluded but is the other ½ included?
i *Answer*: all excluded – meaning of “that ½ isn’t sold” – neither is other half
ii *Proof*: if he sells his field excluding “half of that field” – nothing is sold
- III Question posed of ר' חסדא regarding a שומר חנם claiming he returned a פקדון, tho the מפקיד still has the שטר
- a *Answer*: שומר is believed – מיגו he could claim that the פקדון was lost /destroyed באונס
- b *Challenge*: if he claimed נאנסו, he would have to take an oath
- c *Answer*: that was the intent – he is believed but must swear that he returned them
i *Suggestion*: this is subject to a dispute among תנאים:
1 *If a שטר כיס (עיסקא) is claimed from orphans*:
(a) *דייני גולה*: claim that it may all be collected (if תובע takes an oath)
(b) *דייני א"י*: claim that only half may be collected בשבועה
(i) *Suggestion*: perhaps they agree that עיסקא is ½ loan, ½ פקדון and they disagree about ר"ח's ruling
(ii) *Rejection*: all agree with ר"ח (claim of בעי מאי בעי is rejected in favor of מיגו)
1. *דייני גולה*: father would have said something before dying
2. *דייני א"י*: perhaps the מלאך המוות got to him suddenly
- d *Related ruling (ר' הונא בר אבין)*: supports ר"ח, yet supports גולה
i *Reason*: had father paid it back, he would have told his children
- e *Final ruling (רבא)*: follows גולה, with reversed positions (only collect half)