

22.4.9

71a (משנה ט) → 71b (דאי נפלי הדר שתיל להו) (משנה ט)

- I Continuation of 10 and exceptions to the general rules of the chapter
- a Continuation of exclusions in sale of field
- i Cistern, winepress, dovecote (active or “dead”),
- 1 *Dispute ר"ע/חכמים about the easement:*
- (a) *ר"ע*: seller must buy back an easement to access these places – מוכר בעין יפה הוא מוכר –
- (b) *חכמים*: easement is withheld – מוכר בעין רעה הוא מוכר –
- 2 *inverse of dispute in case these excluded areas alone are sold*
- (a) *ר"ע*: buyer need not purchase easement separately (included in sale)
- (b) *חכמים*: buyer needs to purchase an easement separately (not included in sale)
- b Exceptions:
- i Gifts – giver gives all of these (roof, cistern, bathhouse etc.)
- 1 *Explanation*: in the case of a sale, he was expected to explicate all of the items included; we don't have this expectation of a gift
- (a) *Story*: a man gifted a house “that holds 100 barrels; it was larger (120)
- (b) *מר זוטרא*: suggested that the gift is limited to 5/6 of the house
- (c) *ר' אשי*: since it is a gift, it is given בעין יפה and the entire house is given
- ii Division of estate – once each brother takes possession of his field, he takes full possession
- iii Taking possession of הגר נכסי – once he takes possession, he takes full possession
- iv If he is מקדיש:
- 1 *חכמים*: he is מקדיש all of the field
- 2 *ר"ש*: he is only מקדיש the mature trees (grafted carob, sycamore “stump”)
- v Associated ruling - הונא ר':
- 1 *If*: someone sells land but withholds two trees – he also holds onto land around them
- (a) *Even*: according to ר"ע – whose ruling is limited to cisterns that don't affect (or need) the land
- (b) *Proof*: had he not withheld them, the new owner could tell him to uproot his trees and take them away
- 2 *Challenge*: ר"ש's stated reason for his position in משנה – mature trees nurture from the land of הקדיש
- (a) *Explanation*: if you hold that the owner retains land, they nurture from their own “retained” land
- (b) *Resolution*: הונא ר'’s ruling follows רבנן (עין רעה מוכר); ר"ש follows ר"ע
- (i) *Note*: we are backing away from earlier position that ר"ה's ruling would even be accepted by ר"ע
- (c) *And*: that ר"ה's position follows רבנן is fairly obvious
- (i) *Answer*: ר"ה is teaching that if the tree withers or falls, he may replant in that spot
1. *Explanation*: without ר"ה's ruling, סד"א that he only retains land as long as the original tree is in existence