

22.5.7

82a (הגדילו) → 82b (וזה וזה אינן רשאים לזרעה)

- I Analysis of next clause in the משנה – cutting down trees etc.
- a Clarification of branch-growth vs. root growth:
- i ר' יוחנן: if it doesn't see the sun – root; else – branch
- 1 *Concern*: what if several sprouts get covered with washed-up dirt and it looks like 3 small trees – and the buyer claims land
  - 2 *Answer* (ר"י & ר"נ): the tree owner gets the growth – but must cut it down
- b *Related ruling* (ר"נ): we hold that a דקל tree has no גזע
- i *Understanding* (ר' זביד): applies to any tree; buyer has no גזע, since, if it dries up, he has no rights to replant - he has been מסיח דעת
- 1 *Challenge*: in our משנה – if one buys two trees, he has no land, yet he keeps the growth of the גזע
  - 2 *Answer*: meaning of ר"נ's ruling – only applies to דקל, which doesn't put out a גזע
    - (a) *Note*: ר' זביד must explain משנה (re: 2 trees) in a case where the buyer bought rights of replanting (e.g. bought for X years) - therefore, he gets the growth on the גזע
- II Analysis of סיפא: if he bought 3 trees, he gets land
- a *Question*: how much land?
- b *Answer* (ר' יוחנן): land underneath, between the trees and around it, enough for harvester and his basket
- c *Challenge* (ר"א): if he doesn't get a path to the tree – as that is the other's land – how could he get land around the tree?
- i *Observation* (רנב"י לרבא): ר"א must not hold like שמואל, his teacher, that כר"ע הלכה כר"ע
- 1 *Explanation*: if he held like ר"ע, the buyer would certainly get a path to the trees (if he bought 3)
- ii *Response* (רבא): indeed, our משנה cannot fit with ר"ע
- 1 *Proof*: the landowner can trim the trees (he sold) if they grow over his land –
    - (a) *Argument*: this would seem to be כרבנן, as ר"ע would argue that the owner sold the tree "generously"
  - 2 *Rejection*: ר"ע only applied his "generous sale" approach to e.g. cistern – which doesn't affect the land
  - 3 *However*: in case of a tree, which affects the land – he allows land owner to maintain preservation rights
    - (a) *Proof*: ר"ע allows land owner to trim tree from neighboring field which leans over his property if it restricts his own animals from working in the field (to the height of the saddle)
- d *Support*: ברייתא rules exactly as ר' יוחנן stated – land underneath and around it to radius of harvester and basket
- III *Question* (ר' יוסף asked of אב"י): who has rights to plant in that radius (during "off-season")?
- a *Answer*: as per משנה – if someone buys a garden "inside" another's, the outside one may plant on the path
- i *Corollary*: the land owner may plant here
  - ii *Block*: in the case of the gardens, the inner one has no loss; but here, the tree owner may claim that his fruit is getting soiled by the land owner's planting
  - iii *Rather*: more similar to 2<sup>nd</sup> clause of that משנה – if the path in is circuitous, such that the inner garden owner has a loss as he has to take a longer route – neither may plant
  - iv *Support*: ברייתא rules that neither of them may plant in that radius around the tree