

22.7.4

106a (משנה ג) → 108a (סיום הפרק)

- I **ג**: if he indicated the property by its borders (or landmarks) –
- a *If*: the overage/underage is less than 1/6 (far more than the 1/24 of “more or less”) – the deal is valid
- b *If*: the overage/underage is more than 1/6, he must compensate the difference
- i *Status of exactly 1/6*: (each interprets wording of **משנה** to support his read)
- 1 **ר**: *רב הונא*: like less than 1/6 (deal is final)
- 2 **ד**: *רב יהודה*: like more than 1/6 (must be compensated)
- (a) *Challenge (to רב הונא)*: **תוספתא כתובות** – if they used the formula “by its borders and markers” (as in our **משנה**) and misestimated by a 1/6 (over or under) it is like a court’s appraisal and the deal is final
- (i) *Explanation*: in the case of court’s appraisal, 1/6 is “over the limit” and cancels the **שום**
- (ii) *Counter*: it also states **הגיעו** (the deal is final)
- (iii) *Rather (רב הונא)*: it is like **שום** insofar as 1/6 is the **שעור**; but dissimilar; here a 1/6th stands, there it is null
- 3 *Story*: **ר** bought 20 **סאה** of land, turned out to be 15
- (a) **אבני**: no recourse – our ruling is only for a buyer who isn’t familiar with the land
- (i) *Challenge (ר*): the seller declared “20”!
- (ii) *Defense*: he meant “land that is as good as 20 **סאה**-worth”
- II **א**: if brothers divide using a **גורל**, once one of their portions is determined, the split is final
- a *Reason (ר*): as per original division of land
- i *Challenge*: if so, should require all of the appurtenances (**א** etc.)
- ii *Rather (ר*): since they all agreed to divide this way, the **הנאה** that they all obey each other’s agreement is **מקנה**
- b *Related discussion*: if brothers divide and then a (previously unknown) brother shows up:
- i **ד**: original division is nullified
- ii **שמואל**: the brothers contract their holdings to make room for the new brother (i.e. maintain original division)
- 1 *Challenge (רב רבא לר*): → **דין** is nullified; if so, when 2 of 3 partners divide, should be null
- (a) *Defense*: in that case, the 2 knew about the third and included him in their consideration
- 2 *Challenge (שמואל ר*): stands; but **שמואל**’s ruling re: **בל** etc. – indicates that **דין** can be **בטל**
- (a) *Defense*: in that case, **חכמים** made ruling that benefits buyer and seller (allowing to renege) (**לא שייך כאן**)
- c *Related discussion*: if brothers divided and a **בע** of father came and took property of one
- i **ד**: they must redivide – brothers dividing are **יורשין**
- ii **שמואל**: the brother loses – brothers dividing are **לקוחות**
- iii **ד**: they must pay him ½ of his loss – money or land – he is in doubt if **יורשין** or **לקוחות**
- 1 *Final ruling (ר*): in all these cases, the other brothers readjust; **אמימר** – division is null (as per **רב**) – **הלכה**
- d *Related discussion*: if 3 people go to assess a property for collection; 1 says 100, 2 say 200, follow majority (also inverse)
- i *But if*: 1 says 80, 1 says 100, other says 120 –
- 1 **רבנן**: 100 (as middle position)
- 2 **דאב**: 90; middle ground between 80 <-> 100 (120 is ignored as **מרובה**)
- 3 **אחרים**: 93.3 – divide difference between poles (40) into 1/3 (=13.3) add to lowest assessment
- ii *Ruling*: **ר** rules as per **אחרים** (or, **דייני גולה**, who had same position)
- 1 *Challenge (ר*): we don’t understand this position; how can we accept it as normative?
- III **ד**: selling a section of a field
- a *If*: sells ½ a field, they estimate the value of the field and he gives him half (value)
- b *If*: sells ½ in the south, they estimate the value of the field and he gives him half (value) in south
- i **ד**: buyer gets poorer ½; split is value (as implied by **סיפא**)
- c *And*: buyer must use some of his space for fence, ditch and sub-ditch
- i *Ditch*: 6 **טפחים** wide – needed behind fence to keep animals from jumping over, using sub-ditch (which is narrow) to stand on its edges
- ii *Subditch*: 3 **טפחים** wide – needed below ditch to keep animals from using ditch to climb over
- 1 *And*: 1 **חריץ** separates **טפח** from **חריץ**