

Bava Basra – Simanim

דף פב – Daf 82

פרק ה – המוכר את הספינה

1. כל שרואה פני חמה means מן הגזע

The Mishnah on Daf 81a taught (where someone bought trees but not land) that whatever grows from the גזע – *trunk* belongs to the buyer, and whatever grows from the שרשין – *roots* belongs to the seller. Rebbe Yochanan defines these terms: כל שרואה פני חמה – *anything that sees the face of the sun*, i.e., that begins growing above ground, זהו מן הגזע – *this is categorized as from the trunk*, and ושאינו רואה פני חמה – *and anything that does not see the face of the sun*, i.e., it begins growing from underground, זהו מן השרשין – *this is categorized as from the roots*. The Gemara asks that if the buyer keeps shoots growing out from the base of the trunk, we should be concerned דלמא מסקא ארעא שירטון – *perhaps soil will build up between them*, giving the shoot an appearance of a separate tree. The buyer can then claim, “You sold me three trees, and I have right to land!” Rav Nachman says: יקוץ – [the buyer] *must cut down* any shoots which grow from the trunk; the Mishnah means only that the wood belongs to the buyer.

2. A buyer of three trees has a right to land כמלוא אורה וסלו

The Mishnah taught that one who buys three trees acquires land. Rebbe Yochanan explained how much land is acquired: וחוצה להן כמלוא אורה וסלו – *and land outside [the trees] large enough for one picking fruit and his basket beside him*. Rebbe Elazar asked: השתא דרך אין לו – *Now, if he does not even have a path through the seller’s field, but must purchase a right-of-way to access his trees, can he have space for a picker and his basket, which is less necessary?!* The buyer has not acquired a path through the seller’s field, דארעא אחריתי היא – *because the land where the trees are growing is another person’s land*, he certainly should not have a right to land in the seller’s field, for the same reason!?! Rebbe Zeira infers from Rebbe Elazar’s words that where someone buys two trees, and does not acquire land, he would have a right to a path, because he can tell the seller: “[My purchased trees] *are standing in your land*, and it was understood that I should have access to them.” Rava explains that Rebbe Elazar’s entire question was based on the premise that our Mishnah holds מוכר בעין רעה, but this is ultimately deflected.

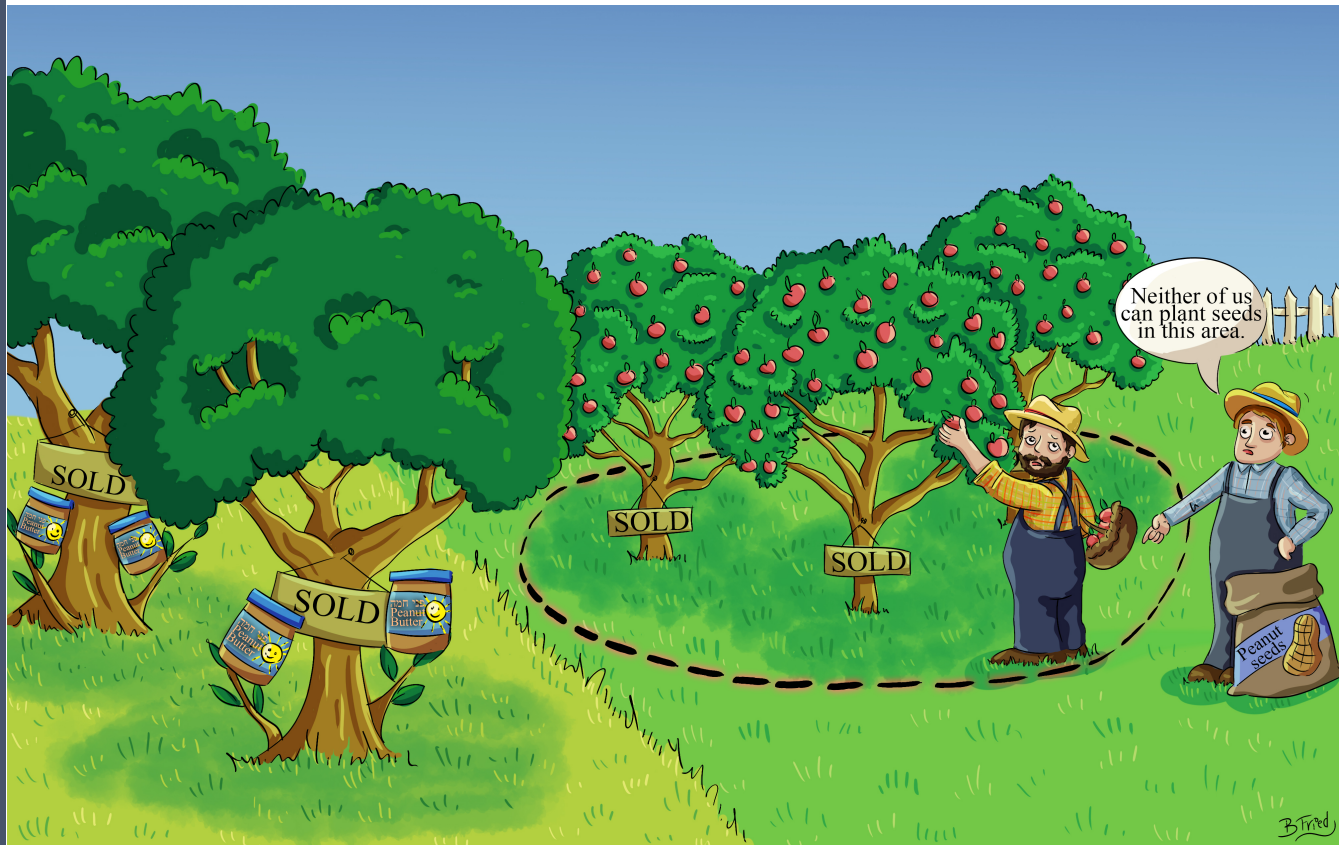
3. Who may plant in the area of אורה וסלו?

Abaye asked Rav Yosef: אותן אורה וסלו מי זורען – *Who may plant the area around the purchased trees for the picker to stand with his basket?* Does the buyer acquire this land fully, and may plant there, or is it essentially the seller’s land, and the buyer merely has the right to use it for harvesting his trees? Rav Yosef quoted a Mishnah, where the owner of an inner garden has a right to a דרך through an outer garden, which states: הדרך – *the owner of the outer garden may plant the path*. Here, too, the seller may plant the area of אורה וסלו, despite the buyer’s right to use it. Abaye objected to the comparison, because whereas the inner owner’s access is not impeded by the planting of the דרך, in our case, אית ליה פסידא ללוקח – *there is a loss to the buyer* if the seller plants in the “אורה וסלו” area, because the buyer can say: קמיטנפי פירי – *“My fruits are soiled by your seeds when they fall on them!”*

Abaye quoted the סיפא of that Mishnah, that if both parties agreed to a specific path on the side, זהו אינן – *neither [party] may plant in it*. Here, too, neither may plant in the אורה וסלו. A Baraisa supports Abaye’s position.

Siman – Peanut Butter

The peanut farmer who put jars of “פני חמה” peanut butter on the shoots growing out of the trunk of a tree he brought to indicate the shoots are his and was busy picking fruit with his basket on the land that came with three trees he bought, was disappointed when he was told that neither he nor the seller may plant peanuts on that area of land.



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3 things to remember

1. כל שרואה פני חמה זהו מן הגזע
2. A buyer of three trees has a right to land במלוא אורה וסלו
3. Who may plant in the area of אורה וסלו?

