

בכור ופשוט שהניח להן כולי –

A בכור and a פשוט, which the father left over for them, etc.

OVERVIEW

asked ר"נ according to you that there is no rule of אגוד, גוד או אגוד, what will be in the case where a father left over for a בכור and פשוט a slave or a טמאה; how will they divide it. תוספות explains why the question is (only) by a פשוט בכור.

תוספות asks:

ותימה דאמאי נקט בכור ופשוט ולא נקט פשוט ופשוט¹ –

And it is astounding! For why did רבא mention בכור ופשוט and did not mention פשוט ופשוט, for the same question seemingly applies by פשוט ופשוט as well; how can they divide this single slave (or טמאה) among the two of them!

תוספות answers:

ואומר רבינו תם דפשוט ופשוט נחא ליה שיעבוד לזה יום אחד ולזה יום אחד –

And the ר"ת answers that by פשוט ופשוט it was understood that the slave (or the טמאה) will work one day for this brother and one day for the other brother -

אבל בכור ופשוט קשיא ליה אם יעבוד לבכור ב' ימים הרי נטל הבכור יותר מפי שנים –

However, רבא had a difficulty regarding a בכור ופשוט, for if the slave will work two consecutive days for the בכור and only one day for the פשוט, it will turn out that the בכור took more than the double portion he is entitled to -

שאם יש עיר רחוקה מהלך יום אחד שמשתכרים בה הרבה שיש שם סחורה בזול –

For if there is a distant city, of one day's journey, where one may profit greatly, for there is cheap merchandise to be acquired there (and be resold here) -

ופשוט שאין לו שהות אלא יום אחד לא יוכל לילך שם –

So the פשוט who only has one day's usage of the עבד/בהמה will not be able to go there (since it is a day's journey one way) -

והבכור שיש לו ב' ימים יכול לילך שם ומשתכר יותר הרבה מפשוט –

However the בכור who has two days to utilize the עבד/בהמה can go there, and he will profit much more than the פשוט (which is seemingly unfair) -

ומשני דמכל מקום כך חולקין² –

¹ It would seem that רבא did not assume that they divide the עבד/בהמה by the days (a day for one, etc.), for then there would be no question regarding פשוט ופשוט, just as there is no difficulty regarding בכור ופשוט.

² The בכור enjoys the right to receive double. If as result of him receiving double he is able to turn it to his advantage to receive even more; we cannot prevent that, for this is inherent in his right to receive a double portion and any

However, ר"נ answered him that nevertheless this is how we divide the עבד ובהמה בכור and פשוט, one day for the פשוט and two days for the בכור.

תוספות offers an alternate solution:

ורבינו יצחק מפרש דלהכי נקט בכור ופשוט משום דאמר במי שהיה נשוי (כתובות דף צג,ב) ³ –
And the ר"י explains that the reason he mentioned פשוט and בכור is because the
דשור להרישה ועומד להרישה דכולא עלמא השכר לאמצע ⁴ –
That regarding investing in an ox to plow and he is plowing, everyone agrees
that the profit is divided evenly -

אף על פי שאין לזה כי אם מנה ולזה מאתים –
Even though one partner invested only a מנה and the other partner invested two
hundred (מנים two) זוז –

ולהכי פריך כיצד יעשו דעכשיו אין הבכור נוטל פי שנים ⁵ –
And therefore רבא asked how should they do this; for now the בכור will not
receive a double portion?!

ומשני דעובד לזה יום אחד ולזה ב' ימים ⁶ –
And ר"נ answered that the עבד/בהמה works for the פשוט one day and for the בכור
two days –

תוספות responds to an anticipated difficulty:

ולא דמי לשור להרישה ועומד להרישה –
שור להרישה ועומד And the case of בכור and פשוט is **not comparable to** the case of שור להרישה ועומד, where both partners share equally in the profit, but by בכור and פשוט the בכור receives double the profit than the פשוט –

דהתם הוי השכר לאמצע משום דמעיקרא אדעתא דהכי נשתתפו ⁷ –
Because there by שור להרישה the rental is divided equally because they
partnered initially with this intent to split the profit equally –

advantage that accompanies it.

³ שמואל stated there if two partners invested in purchasing an ox; one invested one מנה and the other two מנים. If they rent out this ox to plow, they divide the rental profits equally, even though one invested twice the amount of the other (seemingly because one cannot plow without the permission of the other).

⁴ If however the ox increased in value and they slaughtered it and sold it at a profit then according to רבא the profit is divided proportionally according to the amount invested.

⁵ רבא (perhaps) assumed that if they inherited one בהמה/עבד they would rent out the עבד or בהמה, but then, according to the כתובות in גמרא, the בכור and the פשוט would share equally in the rental. The בכור will not receive פי שנים.

⁶ This means (as is evident from the continuation of תוספות) that in our case the בכור will receive double the rental than the פשוט.

⁷ When they invested the monies (the מאה and the מאתיים) they did not stipulate that the profits will be divided proportionally to their investment, therefore they share equally.

אבל גבי בכור ופשוט דלא שייך האי טעמא⁸ כל אחד נוטל כפי חלקו:

However, by **this reasoning is not applicable**, therefore **each one takes according to his share**; the בכור receives double than the פשוט.

SUMMARY

According to the ר"ת the question was that if we divide it by days the בכור will receive more than double, the answer is that he is entitled to it. According to the ר"י the question was he will receive less than double, and the answer is that he will receive double regardless.

THINKING IT OVER

1. What is the difference between ר"נ and רבא (according to the ר"י) in explaining the reason why by שור לחרישה they divide equally?⁹
2. תוספות answered; שאני אומר עובד לזה יום אחד וכו'. According to which answer of תוספות (the ר"ת or the ר"י) does this answer seem to be more appropriate?¹⁰
3. According to the ר"י, if they would not rent out the בהמה, but the בכור ופשוט would use it two days and one day respectively, would there be any question from שור לחרישה (according to רבא)?¹¹

⁸ The בכור ופשוט never agreed (or entered in) to any arrangement. The reasoning mentioned in footnote # 7 is not applicable to them, therefore they divide proportionally.

⁹ See נח"מ.

¹⁰ See סוכ"ד אות יח.

¹¹ See סוכ"ד שם.