

If he intended it to be rented out, etc.

אם¹ עשאן לשכר כולי –

OVERVIEW

The גמרא cited a ברייתא that if two brothers inherited a bathhouse; if the intended use of the מרחץ was that it should be rented out, then the two brothers divide the income. Otherwise they divide the use of the מרחץ. Our תוספות qualifies this ruling.

לאו דוקא עשאן לשכר² דהוא הדין אפילו עשאן לעצמו אלא שמוצא³ להשכיר:

It does not necessarily mean **that** the father **specifically intended** that the מרחץ **be rented out** (and [only] in that case do they divide the income), **but rather the same rule applies** (that they divide the income) **even if the father made it for his** own personal use, nevertheless the sons still divide the income **if either** of them is **able to rent it out**.

SUMMARY

One can coerce his partner to rent out something and divide the income when it is not profitable (for one party) to be used personally, regardless of what the original intent was.

THINKING IT OVER

What would be the ruling, in a case where it can be rented out only in a manner that neither of the brothers would be able to use it at all for personal use? Can the poor brother still force the rich brother to rent it out?⁴

¹ This תוספות is referencing the גמרא on 'א עמוד א'.

² When the ברייתא stated עשאן לשכר it was just an example; for in such a case it is assumable that it can be rented out. However the rule applies in all cases even if לעצמו.

³ תוספות is of the opinion that it does not matter what the original intent was; if the one (poorer) brother is able to rent it out he can coerce his other (richer) brother that it should be rented out and they should divide the income (instead of them using it for their own personal use [which is a waste for the poorer brother]).

⁴ See נח"מ.