

By the oldest brother

בגדול אחי –

Overview

ruled that we do not assess the clothes of the **אחי גדול** for it is for the benefit of the brothers (that he dress nicely) in order that he be reckoned with in his dealings for the benefit of the estate. It is not clear if this ruling is imposed upon the brothers or (only) if it is accepted voluntarily by the brothers. תוספות will offer his interpretation.

אם מוחין הרשות בידם¹ –

If they do protest (and want to assess the value of the clothes of the older brother) **they have the right to do so**, and we assess his clothes as well (and it is charged to his share of the estate).

אבל כל זמן שלא מיחו מסתמא נוחא להו² כי היכי דלשתמע מיליה –

However as long³ as they did not protest, it is presumed⁴ that they are satisfied with this arrangement, **in order that** the older brother **be listened to** when attending to the affairs of the estate –

כדאמרינן בהניזקין (גיטין נב,ב) **גבי עמרם צבעא** :

as the **states in פרק הניזקין** **concerning the dyer**.⁵

Summary

The rule of **אחי גדול** is enforced by default; if they do not protest it.

Thinking it over

1. Why is there a difference between the rule of **שעל בניהם** which is imposed on the brothers, and the rule of **אחי גדול** which the brothers can reject?

2. What is the **חידוש** that they can be **מוחה** initially?⁶

¹ The rule of **אחי גדול** cannot be imposed upon them, as the rule of **שעל בניהם וכו'** is.

² They appreciate this for it is worthwhile for them; it is not merely a **מחילה**. See footnote # 5.

³ It may be assumed that after the father died the estate was not divided for some time. During this time the **אחי גדול** (as well as his brothers) bought [nicer] clothes with the money of the estate. At the actual time of the division all the brothers except the **אחי גדול** must account for the clothes they bought and that amount is to be deducted from their share in the estate. The **נמו"** explains תוספות to mean that the brothers have a right to protest only immediately when he bought the clothes. If however they were not **מוחה** initially, they can no longer be **מוחה**. See 'Thinking it over' # 2. See (however) **אמ"ה**.

⁴ Their explicit consent is not required.

⁵ **צבעא** was an **אפטרופות** of **יתומים**. His clothes were bought with their money. They permitted him to do so, in order **כי היכי דלישתמע מיליה**. We derive from this story that it is beneficial for the **יתומים** that their representative be presentable (for **יתומים** cannot be **מוחל**). Therefore, here too, it is not merely a presumption that they are **מוחל** him for his share (for how can we know this), but rather it is an assumption that they are **נוחה** for it is for their benefit.

⁶ See footnote # 3. See also **בל"י**.