

A פרוזבול is effective if there is land

פרוזבול¹ חל על הקרקע –

OVERVIEW

The ברייתא states that a פרוזבול may write a פרוזבול if the לווה owns land, but not if he owns only עבדים (and no קרקע). This seemingly contradicts the view that עבדי דמי². Our תוספות seemingly deals with this issue.³

אין כותבין פרוזבול אלא על דבר שאי אפשר לכלותו -

A פרוזבול is not written unless the לווה possesses something which cannot be destroyed; such as קרקע (but not עבדים).⁴

תוספות responds to an anticipated difficulty:

ואף על גב שכותבין על עציץ נקוב (גיטין לז,א) כיון דחשיב קרקע לא פלוג רבנן:

And even though a פרוזבול is written for a perforated flower pot; which can (easily) be destroyed; תוספות responds that nevertheless, since it is considered as קרקע the רבנן made no distinction, between actual קרקע and an עציץ נקוב which has all the דינים of קרקע concerning תרומות ומעשרות, etc.

SUMMARY

A פרוזבול is written on something which cannot be destroyed (such as קרקע [and an עציץ נקוב which has all the דינים of קרקע]).

THINKING IT OVER

What is the difference between an עציץ נקוב (since it is חשיב קרקע) is כשר for a פרוזבול, and עבדים (which are כמקעי דמי and nevertheless) are not כשר for a פרוזבול (according to some opinions)?⁵

¹ A פרוזבול is (usually a document or) a statement in which the לווה transfers his debts to a ב"ד, (or in this case on the קרקע [see רש"י ד"ה חל] which enables him to collect them even if a שמיטה transpired during the debt period.

² It is not clear whether ר"נ derives his proof that עבדי כמטלטלי דמי from the סיפא of the ברייתא (which states that פרוזבול אינו חל על העבדים) exclusively, or his proof is also from the ruling concerning עבדים.

³ Alternately תוספות may be explaining how ר"נ infers from the ruling that פרוזבול אינו חל על העבדים, that עבדים are כמקעי דמי. [According to this view if we maintain עבדי כמקעי דמי, then a פרוזבול is חל על העבדים. See חידושי ר"נ אות 1. תלד בד"ה אמנם.]

⁴ The reason the effectiveness of a פרוזבול is only if the לווה possesses קרקע is either because it is considered כגבוי or it is a מילתא דשכיחא where the רבנן are inclined to make a תקנה. According to either reason, עבדים are not capable of supplying this qualification, since it is not כגבוי for it is אפשר לכלותו and it is not שכיח for the same reason (people do not depend on it).

⁵ See סוכ"ד אות י.